

**THE UNIVERSITY TRIBUNAL
OF THE UNIVERSITY OF TORONTO (APPEAL DIVISION)**

IN THE MATTER OF charges of academic dishonesty made on January 18, 2016

AND IN THE MATTER OF the University of Toronto *Code of Behaviour on Academic Matters, 1995* (the “Code”)

AND IN THE MATTER OF the *University of Toronto Act, 1971*, S.O. 1971, c. 56 as amended S.O. 1978, c. 88

B E T W E E N:

D [REDACTED] ([REDACTED]) H [REDACTED]

Appellant

- and -

THE UNIVERSITY OF TORONTO

Respondent

REASONS FOR DECISION

Appeal hearing date: August 4, 2017

Members of the Discipline Appeal Board:

Ms. Patricia D.S. Jackson, Chair
Mr. Sean McGowan, Student Panel Member
Professor Elizabeth Peter, Faculty Panel Member
Ms. Alena Zelinka, Student Panel Member

Appearances:

Mr. Glenroy K. Bastien, Counsel for the Appellant [REDACTED] (D [REDACTED]) H [REDACTED]
Ms. Tina Lie, Counsel for the Respondent, the University of Toronto

Parties in attendance:

Mr. [REDACTED] (D [REDACTED]) H [REDACTED]

1. Mr. H [REDACTED] (the “Student”) was charged and pleaded guilty to the following academic offences:

1. On or about June 2 and 3, 2015, having an intent to commit an offence under the University Code of Behaviour on Academic Matters, 1995 (the “Code”), you did or omitted to do something for the purpose of carrying out your intention to forge or in any other way alter or falsify an academic record, or utter, circulate or make use of such forged, altered or falsified record, contrary to sections B.II.2 and B.I.3(a) of the Code.
2. On or about June 2, 2015, you knowingly forged or in any other way altered or falsified an academic record, or uttered, circulated or made use of such forged, altered or falsified record in an email to Woodsworth College, contrary to section B.I.3(a) of the Code.
2. At a hearing on March 16, 2016, a panel of the Trial Division of the University Tribunal accepted the plea of guilty and, on consent, adjourned the penalty phase of the hearing. The Tribunal further issued an order requiring a notation on the Student’s academic record and transcript to reflect that he had been found guilty of academic misconduct on March 16, 2016, pending the outcome of the hearing on sanction.
3. On August 9, 2016 the Tribunal conducted a hearing and on November 2, 2016 issued a decision making the following directions on sanctions:
 - (a) that the Tribunal recommends to the President that he recommend to Governing Council that it expel the Student from the University;
 - (b) that the order of the Tribunal dated March 16, 2016 continue until the final disposition of the order made in paragraph (a); and
 - (c) that this case 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.
4. The Student appeals from the sanctions thereby imposed.
5. The Student submits that the Tribunal gave vague and inadequate reasons which gave no indication of how, if at all, the Tribunal considered the Student’s history of anxiety and depression and the extent to which that affected his actions, and that this inadequacy prevents an effective appellate review. Particularly given the catastrophic consequences of an expulsion and the impact of Student’s mental state on his behaviour at the time of

the offence, he says that the recommendation for expulsion was wrong and should be over-ruled.

Background to the Offence

6. The offence at issue was the Student's third offence.
7. **The First Offence** The first offence concerned the Student's alteration of an Economics term test which had been marked and returned to him. He corrected certain answers and then submitted the altered test for re-marking. Before the re-marked test papers were returned to the students, the instructor in the course advised that because of past abuses he sometimes photocopied tests before returning them in order to detect alterations.
8. The next day, the Student met with the instructor and admitted to altering some of the answers on the test that he had submitted for re-marking.
9. Thereafter he met with the Dean's Designate and at that meeting admitted that he had altered his test paper before submitting it for re-marking and that he knew it was wrong to do so. He apologized for his conduct which he described as shameful. He said that he had learned his lesson about the importance of ethics and integrity.
10. The Dean's Designate advised the Student that the typical penalty for such an offence was a zero in the course and a suspension, but that given his honesty in coming forward to the instructor she was imposing a sanction of zero on the test, a further grade reduction equivalent to the value of the test, and a notation on the Student's transcript for two years, from March 1, 2012 to February 28, 2014.
11. In a letter advising the Student of the sanction she concluded with a warning that if there were a further instance of academic misconduct the consequences would be "much more severe".
12. Although advised that the sanction was lenient in the circumstances, the Student wrote to the Vice-Provost requesting a reconsideration of the sanction imposed by the Dean. He explained that he had suffered a "psychological breakdown" when the test was returned to him and committed a "subconscious mistake", that he regained his senses "the very

next day” and that a failure in the course would have a serious impact on him. He further wrote: “This is a life lesson that I will cherish for the rest of my life. Again, I truly understand that this is not something I will ever do again.”

13. On receipt of this, the Dean’s Designate wrote to point out that the Student’s statement that he had confessed to the instructor “the very next day” was inaccurate, as he had waiting until the instructor announced that he had detected problematic resubmissions before coming forward. She also noted that the Student did not fail the course as a result of the sanction imposed, and that the sanction was indeed more lenient than that imposed on another student who had committed the same offence but did not voluntarily come forward.
14. The Vice Provost denied the Student’s request for reconsideration.
15. **The Second Offence** In September 2013, the Student submitted an application for a Student internship program with the Canadian Automobile Association (“CAA”). He included a copy of what purported to be his transcript, but which did not include his academic record for the Fall 2011 and Winter 2012 terms (which reflected the reduced grade in Economics and the transcript notation relating to his prior offence).
16. This omission came to the attention of the University, and in consequence the Student met with the Dean’s Designate. During the first hour of the meeting, he insisted that he was “really rushed” when preparing the application package for the CAA and that the omission of part of his academic record was accidental.
17. However, after an hour of discussion, which included two breaks to allow the Student to think about his situation, the Student eventually admitted to the Dean’s Designate that he deliberately omitted the portions of his academic record in order to conceal the reduced grade in Economics and the transcript notation. He also told the Dean’s Designate that when the issue was brought to his attention he wrote a letter of apology to the CAA and that the CAA responded by expressing appreciation for the fact that he had been forthcoming. However both these statements, which were repeated in subsequent emails to the University, were false.

18. The Student was charged with forgery or falsification of an academic record under section B.I.3(a) of the Code. A University Tribunal convened to hear the charges, the Student pleaded guilty and the case proceeded by way of an agreed statement of facts. The Student admitted that he had deliberately omitted his academic record from his CAA application in order to conceal his reduced grade in Economics and the transcript notation relating to his prior offence.
19. The Tribunal accepted the Student's guilty plea and convicted him of the charge.
20. The sanction was contested, the Provost requesting a three-year suspension and a four-year transcript notation, and the Student submitting that a two-year suspension retroactive to September 2014 and a transcript notation of two to three years were appropriate.
21. At the hearing, the Student testified about his personal circumstances including a difficult childhood in Korea and an abusive relationship with another student, which led to an altercation and the arrest of his girlfriend shortly after he had submitted the falsified transcript. He explained his misleading communications with the University concerning his apology to the CAA as being caused by his "stress and his inability to deal with all the things going on" at the time.
22. The Student also presented medical evidence indicating that he had sought medical assistance and had been diagnosed with major depression and anxiety disorder. The Tribunal summarized the Student's statements and his assurances that he would not re-offend in the following terms:

The student asserted that he is now dealing with his stress. With the help of his psychiatrist and doctors, he is learning techniques to calm himself and to cope. *He is taking his medication and dealing with the program at CAMH. He said that he has learned from his mistakes and not will not repeat his misconduct.* Conceding that he had previously said that with respect to the first academic misconduct, he said the second incident is now different because it has been raised to a much more serious level involving these proceedings at the Tribunal compelling him to hire a lawyer and now he was getting the help of a psychiatrist. *He asserted that these types of incidents would never occur again.* (Emphasis added.)

23. The Tribunal reserved its decision on sanction.
24. Before the hearing the University had taken steps to ensure that the Student would have appropriate supports in place when the Tribunal decision on sanction was communicated to him. This included requesting that the Student's counsel be given advance notice of the decision in order to enable him to make any necessary arrangements with the University's Counseling and Psychological Services and/or student crisis response programs.
25. Accordingly, when the Tribunal released its decision, which accepted the Provost's requested sanction and imposed a three-year suspension and a four-year notation from the date of the decision, the decision was provided to the Student's counsel, but not to the Student directly.
26. Moreover, out of concern for the Student's mental health and wellbeing, the University decided not to implement the sanctions imposed by the Tribunal immediately but to wait until it had received confirmation that the Tribunal's decision had been communicated to the Student with appropriate supports in place.
27. On June 1, 2015 at 3:00 p.m. the Tribunal's decision was communicated to the Student at the University's counseling and psychological services facility. As of that afternoon, the Student knew that the Tribunal had ordered a three-year suspension and a four-year transcript notation commencing May 19, 2015.
28. The fact that the Student had received the Tribunal's decision was communicated on June 2, 2015, but the sanction was not reflected through a record on ROSI until June 3, 2015.
29. **The Current Offence** During the two days between the communication of the Tribunal's decision to the Student and its implementation on ROSI, the Student made a number of requests for copies of his academic record:
 - (a) the Student requested a total of 10 transcripts and paid the corresponding fee using Student Web services
 - (b) on June 2, 2015 the Student spoke to the Registral Clerk of Woodsworth College requesting letters regarding his academic status at the University. He followed

that up with an email the following day in which he asked for four letters to Immigration Canada, four letters “to whom it may concern”, and two letters to “CPA Ontario”, each advising that “D [REDACTED] is a full-time student in good standing at the University” and is “expected to graduate in June 2017”.

30. Although the Student initially appealed the Tribunal’s decision ordering the three-year suspension and four-year transcript notation, he later withdrew his appeal.

The Charges in this Case

31. **The Misconduct Phase of the Tribunal Hearing** The Student met with the Dean’s Designate concerning his request for transcripts and letters that did not reflect his academic status. He denied that he had committed an academic offence.
32. He was accordingly charged on January 18, 2016.
33. On March 16, 2016, the Tribunal convened to hear the charges. The hearing proceeded by way of an agreed statement of facts and a guilty plea in which Student admitted that:
 - (a) he knew at the time of the first day of the Tribunal hearing that he would likely be suspended by the Tribunal;
 - (b) he knew as of the afternoon of June 1, 2015, that the Tribunal had suspended him for three years commencing on May 19, 2015;
 - (c) he knew that the University had delayed implementing the sanction until it received confirmation from his counsel that the sanction had been communicated to him, out of concern for his mental health and well-being; and
 - (d) when he requested the 10 transcripts on the Student Web Services on June 2 and 3, 2015, he knew that the transcripts did not accurately reflect his academic record and standing with the University and in particular that the sanction had not yet been entered into ROSI or on his transcript. By requesting the transcripts he intended to obtain a record that did not reflect his academic record and standing with the intention of uttering, circulating or making use of them contrary to the Code; and
 - (e) when he requested letters from Woodsworth College by phone and email he knew that he was not “in good standing with the University” and was not expected to graduate from the University in June of 2017 and that his email to the Registral Clerk altered or falsified his academic record contrary to the Code.

34. The Tribunal accepted the guilty pleas and convicted the Student of the two charges. The sanction phase of the hearing was adjourned at the Student's request to enable him to assemble additional evidence. In the interim, at the direction of the Tribunal a notation was placed on the Student's academic record, pending the outcome of the sanction hearing.
35. **Sanction hearing** The Tribunal's hearing on sanction was originally to occur on June 7, 2016 but at the Student's request was adjourned again to August 9, 2016.
36. The Provost requested a recommendation for expulsion. The Student requested a five-year suspension to run consecutively with the current suspension, effectively extending that suspension by five years.
37. At the hearing the Student tendered a letter from Dr. Juan Kim. The University objected to the admission of the letter on the basis that it had only been received the previous day (in contravention of the established timetable) and the University had not had an opportunity either to respond to the evidence or to cross-examine on it. However, the Tribunal admitted the letter into evidence.
38. Dr. Kim is a family physician in Port Moody, British Columbia. In his letter he indicated he had treated the Student from time to time, and had recently spoken to him by telephone, but also said that in terms of his ongoing treatment and medication he concluded that the Student should be followed by a medical professional in Toronto (where he was living at the time of the hearing). He described the Student as suffering from depression and stress and expressed the view that he would be unable to address or deal with anything because of his poor mental state of mind. He knew of the Student's expressions of remorse and concluded with the hope that the Tribunal would be able to be lenient with him.
39. The Student was the only witness to testify at the hearing. He described his personal background, including a difficult childhood in Korea living with an alcoholic father who was physically abusive to his wife and children. Following his parents' divorce, he moved with his mother and sister to a small apartment in British Columbia. Although he

did not speak English when he arrived, he was able to learn English, become Student President in his school and graduate with the second highest average in his grade 12 class.

40. He then enrolled in the commerce program at the University of Toronto in hopes of one day becoming a chartered accountant. However, he has had difficulty with his student life at the University. He dated a fellow student who became increasingly controlling and physically abusive. The relationship ended with his girlfriend's arrest for assaulting him in the lobby of his residence.
41. He has continued to suffer from anxiety and depression and has sought and received counselling. Although at the original hearing he told the Tribunal that he had been taking his medication and receiving medical treatment, during his cross-examination the Student testified that he had only taken a sample of the medication and not filled any of his prescriptions. He also stopped seeing his psychiatrist at the University and did not seek out any other psychiatrists.
42. As to why he had requested the ten transcripts and ten letters, the Student said that his mother had requested (as she had in the past) a letter confirming his enrollment in the University for purposes of his parents' divorce proceedings and in order to obtain funds from his father.
43. However this explanation was contradicted by letters previously obtained from the University for that purpose, which merely confirmed the Student's enrollment (with no indication of an expected graduation date) and included the amounts paid for his tuition.
44. In contrast, the ten letters requested by the Student on this occasion, including letters addressed to Immigration Canada and CPA Ontario indicated that he was a student "in good standing" and expected to graduate in June 2017 (neither of which was true) and did not include any tuition information. The Student also ordered ten transcripts which he acknowledged were not needed for the court case in Korea.
45. He also admitted in cross-examination that he requested the transcripts in order to have the option of transferring to a different school and that he requested the letters and

transcripts because he knew they did not represent his academic standing at the University.

46. At the conclusion of the hearing, the Tribunal reserved its decision.
47. **Tribunal Decision** The Tribunal concluded that a recommendation for expulsion was the appropriate sanction. In addition, it ordered that the transcript notation imposed at the hearing on March 16, 2016 be continued until the final disposition of the recommendation for expulsion.
48. In reaching its decision, the Tribunal concluded that it did not accept the Student's explanation that he acted spontaneously in requesting the 10 transcripts and 10 letters. It held:
 31. The Student explained that when the result was delivered to him on June 1, 2015, he left the room at the University where the doctor was present. He explained that his mother called and asked him for documents to be used for a court proceeding in Korea to verify that the Student was still registered so that the mother could receive payment for these expenses. He testified that the reason he sought the various transcripts and letters in question was to fulfill his mother's request.
 32. On further review of the evidence, the Student's request for documentation from the University went beyond seeking formal documentation to assist his mother in the court case. It included a request for a letter addressed to the Chartered Professional Accountants Association and to Immigration Canada.
 33. He requested that the letter state that he was a "full-time student in good standing at the University and expected to graduate in June 2017". He knew that this was untrue. He admitted in the Agreed Statement of Facts that "he intended to obtain transcripts that did not accurately reflect his academic record and standing with the intention of uttering, circulating or making use of those records".
 34. The Student suggested that he was acting spontaneously while under stress. However, the conduct occurred over a 3 day period. It is quite clear that the Student was not acting spontaneously, but rather quite intentionally in order to take advantage of the University's delay in posting the suspension.
 35. In his evidence he said that after speaking to his mother, he went on the computer and noted that ROSI had not picked up the sanction imposed by the Tribunal. He said he "needed the money" and rushed to get the transcripts and the letters. Obviously, the Student was hoping to get the transcripts and letters before the suspension was recorded so that he could use them knowing they were false. Clearly, his actions involved deliberate steps rather than spontaneous actions.

36. What is particularly troubling is that the Student received some sympathetic treatment from the Tribunal and the University because of his fragile mental state, yet upon receiving the result, he immediately took steps to obtain copies of his academic record which he knew were false. This demonstrates a lack of real remorse and a complete lack of respect for the basic principles of integrity embodied in the Code.
49. The Tribunal considered a number of mitigating circumstances, including that the Student admitted guilt on this and the prior occasions at a very early stage. He cooperated in the proceeding by agreeing to the Agreed Statement of Facts in the first instance and on penalty. He attended the hearing. The Tribunal further noted that the medical evidence submitted indicated that the Student was suffering from significant mental distress at the time of the offence, and that the offence in question occurred at the lowest point in the Student's academic career, after he had just been told that he was to be suspended for 3 years.
50. However, in addition to concluding that the Student had not acted spontaneously in the various steps he took to obtain a falsified academic record, the Tribunal noted that it was obvious that the Student had not learned his lesson from the first or second offence and that it was not possible to conclude he would never do it again. The Tribunal concluded that it was clear that the Student had little or no understanding of the significance of the University's fundamental values of integrity embodied in the policies and procedures under the Code. Moreover, it noted that this third offence, forgery, was at the high end of the scale of wrong-doing, and occurred immediately after the Student being notified of the penalty for his second offence.
51. On this basis, the Tribunal concluded that a recommendation for expulsion was appropriate.

Issues on Appeal

52. **Standard of Review** Under section E7(c) of the Code, the Discipline Appeals Board has the power "to affirm, reverse, quash, vary or modify the verdict, penalty or sanction appealed from and substitute any verdict, penalty or sanction that could have been given or imposed at trial".

53. A number of decisions over the years have recognized the broad powers thus granted to the Appeals Board and that it is not obliged to show deference to the Tribunal below. Similarly, decisions have recognized that it is appropriate for an Appeals Board Panel to vary a sanction which it believes to be wrong whether because of an error of law, significant errors of fact, or a material inconsistency with the weight of other Tribunal and appeal decisions.¹
54. At the same time, and notwithstanding its broad jurisdiction, it is appropriate for the Appeals Board to give deference to a Tribunal panel who has heard the case, particularly on credibility issues where the panel has had the opportunity to observe witnesses giving evidence and draw conclusions from this based on their first-hand exposure to the demeanour and quality of evidence of a witness or witnesses.²
55. **Whether the Tribunal Committed a Reversible Error** The Student asserts that the Tribunal either overlooked the medical evidence he submitted, or failed to provide reasons which indicated what weight, if any, was attached to that evidence. He says, based in part on that evidence, and also on his own testimony that the ordering of ten transcripts and ten letters was a “spontaneous” transaction triggered by his mother’s contact, without regard to whether it was right or wrong.
56. He further submits that in failing to describe what weight if any was attached to the medical evidence, and to advert to the other factors, (frequently described as the *Chelin* factors, based on the name of the case in which they were first enunciated) the Tribunal has failed to provide sufficient reasons for effective appellate review.
57. Finally, the Student says that the Tribunal arbitrarily attempted to fit this case into the penalties imposed in previous cases, without regard to the facts and circumstances, particularly his fragile mental condition, of this particular Student. He says that this is particularly significant because of the devastating impact of the penalty imposed.

¹ e.g. C [Case No. 1976/77-3, November 5, 1976], S [Case No. 451, August 24, 2007], C H & K [Case No. 596, 597, 598, November 23, 2011]

² D [Case No. 606, October 10, 2012]

58. We have considered each of these grounds carefully. We have concluded that we reject them and uphold the Tribunal's decision on sanction.
59. Not only did the Tribunal admit the medical evidence from Dr. Kim (notwithstanding its late delivery, the absence of any cross-examinations or testing and over the objection of the University) it specifically referred to the Student's "fragile mental state", and noted as a mitigating factor that the offence occurred when he was suffering from significant mental distress and at the lowest point of his academic career. However, the Tribunal specifically rejected the Student's argument made before them and repeated on appeal that as a result he should be seen to have been acting spontaneously in his actions ordering 10 transcripts and 10 letters over the three day period in which the offence was committed. Moreover, the Tribunal came to the conclusion having heard and observed the Student's evidence specifically on this point. We see no basis to disturb that conclusion.
60. Moreover, while the Tribunal did not specifically refer to the C [REDACTED] factors as such, it specifically referred to the Student's character, the seriousness of the offence, the likelihood of repetition of the offence and mitigating circumstances in reaching its decision.
61. Nor do we consider that in imposing as a sanction of recommendation for expulsion that the Tribunal was artificially trying to fit this case within the confines of previous cases and without regard to the facts and circumstances of the Student, including his depressed and stressed status, and his expressions of remorse. Unfortunately, on previous occasions the Student had also expressed remorse, also pledged not to re-offend, and had also relied on his medical condition (for which he has said he was being treated), as circumstances which should, and which have, meant that his previous offences of academic dishonesty have not been subjected to the serious penalties (including a recommendation for expulsion) to which they might otherwise be.
62. Unfortunately, on each occasion on which the Student committed an offence of academic dishonesty and promised to never do so again, he quickly engaged in a further offence of academic dishonesty, each more serious than the one before.

63. In the vast majority of cases where a student has, as here, engaged in forgery or falsification of an academic record, the Tribunal has recommended expulsion (or where the student has completed a degree, the revocation of that degree).³ This level of sanction recognizes both the seriousness of the harm inflicted on the institution by this kind of academic dishonesty, and the fact that it is often difficult to determine that it has occurred. As was said in the *George* case:

... We note that the integrity of the University as an educational institution and as a degree granting body is fundamental to the academic relationship. Many important third parties, including potential employers, members of the public and other institutions of higher education rely on records of transcripts and of degrees as correctly representing the academic achievements of those to whom they are awarded. Falsification of records of transcripts and of degrees strikes at the heart of the honesty and integrity which is at the core of the academic experience and evaluation. It undermines not only the credibility of the University but also the credibility of other students who have legitimately achieved the marks and degrees recorded in such records. It is important that when confronted by such falsification, the University treat, and be seen to treat, such conduct very seriously.⁴

64. In the rare cases where expulsion has not been recommended, it is generally on the basis that the student had no prior offences and also, usually, because the case proceeded by way of a joint submission on penalty.


65. In other words, a recommendation for expulsion would have been the penalty typically applied in respect of the Student's conviction on the second charge described above. However, on that occasion, as in the case of the first offence, the Student was shown leniency, as we read it, largely because of the mental stress that was operating on his mind at the time of the offences, his apparently sincere expressions of remorse, his commitment to treatment of the mental condition under which he was operating, and promise that he would not repeat the offence.

³ For example, *R* [Case No.833, April 27, 2016], *A*, *D* [Case No. 450, September 3, 2010], *A* [Case No.726, April 8, 2014], *W* [Case No.762, November 18, 2014], *Ar* [Case No. 540, May 4, 2009], *K* [Case No. 491, November 5, 2008], *L* [Case No. 822, March 22, 2016], *H* [Case No.613, April 5, 2011], *M* [Case No. 510, March 28, 2007], *D* [Case No. 441, 2006] [

⁴ *G* [Case No. 508, October 14, 2008]

66. Unfortunately, these assurances have turned out to be meaningless, and there appears to be no basis upon which to conclude those given now would be otherwise. Rather, the (now) three offences are indications of a continuing dishonest motive and a continuing failure to recognize the importance of or adhere to core University values.
67. In those circumstances it is not surprising, and in our view not an error, that the Tribunal concluded: that the Student had not learned his lesson from the first or second offence; that it was not possible to conclude he would never do it again; and that he demonstrated a lack of real remorse and little or no understanding of the significance of the University's fundamental values of integrity.
68. The Tribunal concluded in the face of all of that and given that the third offence, forgery, was at the high end of the scale of wrongdoing and occurred immediately after the Student was notified of the penalty for his second offence, that a recommendation of expulsion was appropriate.
69. The Tribunal's decision was neither in error nor unreasonable, and we decline to disturb it.
70. The University requested that if we decided to dismiss the appeal, as we have done, that we extend the period of the Student's suspension, currently scheduled to end on May 19, 2018 (as a result of the sanction imposed in the Second Offence), to the earlier of the date of which the Governing Council makes its decision on expulsion, or November 2, 2021. This request arose as a result of the delay associated with the hearing of this appeal because of timing requests made by the Student.
71. While we consider it unlikely that the Governing Council's consideration of the recommendation for expulsion will not be finalized before May 19, 2018, we do agree it would be appropriate to provide for that possibility.
72. We accordingly continue the existing suspension, and further provide that it should expire on the later of May 19, 2018 or the date on which the Governing Council makes its decision on the recommendation for expulsion.

October 13, 2017



Patricia D.S. Jackson, Chair
on behalf of the Appeals Board
Panel