

**THE UNIVERSITY TRIBUNAL
THE UNIVERSITY OF TORONTO**

IN THE MATTER OF charges of academic dishonesty filed on May 15, 2019,

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.L. (the “Student”)

REASONS FOR DECISION

Hearing Date: July 19, 2019

Members of the Panel:

Ms. Johanna Braden, Barrister and Solicitor, Chair
Professor Michael Evans, Faculty Panel Member
Ms. Alena Zelinka, Student Panel Member

Appearances:

Ms. Lauren Pearce, Assistant Discipline Counsel, Paliare Roland Rosenberg Rothstein, LLP, Barristers

Hearing Secretary:

Ms. Jennifer Dent, Former Associate Director, Office of the Appeals, Discipline and Faculty Grievances

Not in Attendance

The Student

1. The Trial Division of the University Tribunal was convened on July 19, 2019, to consider charges brought by the University of Toronto (the “University”) against the Student under the *University of Toronto Code of Behaviour on Academic Matters*, 1995 (the “Code”).

Preliminary Issue 1: Proceeding in the Absence of the Student

2. The hearing was scheduled to begin at 9:45 am. Neither the Student, nor a representative on behalf of the Student, were in attendance. The Tribunal waited until 10:00 am to start the hearing. The University then requested that the Tribunal proceed with the hearing in the Student’s absence.
3. Pursuant to Rule 14 of the *University Tribunal Rules of Practice and Procedure* (the “Rules”), notice of an oral hearing must include the date, time, place and purpose of the hearing; a reference to the statutory authority under which the hearing will be held; and a statement that if a person does not attend the hearing, the panel may proceed in the person’s absence. Rule 17 provides that where reasonable notice of an oral hearing has been given to a person and that person does not attend the hearing, the Tribunal may proceed with the hearing in the party’s absence. The Rules conform to sections 6 and 7 of the *Statutory Powers Procedure Act* (the “SPPA”).
4. Pursuant to Rule 9, a notice of hearing may be served on a student by various means, including by emailing a copy of the document to the student’s email address contained in the University’s Repository of Student Information (“ROSI”).
5. The University’s *Policy on Official Correspondence with Students* expressly states that students are responsible for maintaining on ROSI a current and valid mailing address and University-issued email account. Students are expected to monitor and retrieve their email on a frequent and consistent basis.

6. The onus of proof is on the University to establish that it provided with Student with reasonable notice of the hearing in accordance with these Rules.
7. In this case, the University provided evidence that the Student had been served at his ROSI-listed email address with the Charges dated May 15, 2019 and the Notice of Hearing dated June 20, 2019. The Notice of Hearing was also sent to the Student's ROSI-listed mailing address. There was evidence that the Student's email account had been accessed on June 26, 2019, providing him with actual notice of the Charges and the Notice of Hearing. Assistant Discipline Counsel advised that the Student had not been in contact with anyone from her office.
8. In light of the evidence and the submissions of Assistant Discipline Counsel, the Tribunal was satisfied that the Student had been given reasonable notice of the hearing in compliance with the notice requirements of the SPPA and the Rules. The Tribunal determined it would proceed to hear the case on its merits in the absence of the Student. The hearing proceeded on the basis that the Student was deemed to deny the Charges alleged against him.

Preliminary Issue 2: Affidavit Evidence

9. Assistant Discipline Counsel requested leave to introduce an affidavit served on the Student four days before the hearing. Rule 72 requires that affidavits proposed to be tendered in evidence at a hearing are to be disclosed at least 10 days before the hearing. Rule 74 provides that a panel of the Tribunal may grant leave to introduce evidence that does not comply with Rule 72.
10. The affidavit at issue was the Supplementary Affidavit of Natalia Botelho, a legal assistant working in Assistant Discipline Counsel's office. The charges against the Student allege that he fabricated a medical note. Ms. Botelho had made requests for information from doctors potentially involved with the note. One of the doctors had only responded to Ms. Botelho on Friday July 12, 2019. Ms. Botelho prepared

an affidavit including the new information on Monday July 15, and served the affidavit that same day on the Student.

11. The Tribunal granted leave permitting introduction of this affidavit for the following reasons:
 - (a) the affidavit contained information that was potentially significant to the merits of the hearing;
 - (b) The University had made reasonable steps to obtain the information earlier, but had been unable to do so; and
 - (c) The Student was not present to assert any prejudice.

The Charges

12. Two charges were laid against the Student, as follows.
 1. On or about April 30, 2018, you knowingly forged, altered, or falsified a document or evidence required by the University of Toronto, or uttered, circulated, or made use of any such forged, altered, or falsified document, namely, a University of Toronto Verification of Student Illness or Injury Form, dated April 30, 2018 (the "Illness Form"), which you submitted in support of your petitions for a first deferral of an unwritten final examination in GGRA03H3 and a first deferral of an unwritten final examination in EESA06H3, contrary to section B.i.1(a) of the Code.
 2. In the alternative to the charge above, on or about April 30, 2018, you knowingly engaged in a form of cheating, academic dishonesty, or misconduct, fraud, or misrepresentation, in order to obtain academic credit or other academic advantage of any kind, in connection with the Illness Form which you submitted in support of your petitions for a first deferral of an unwritten final examination in GGRA03H3 and a first deferral of an unwritten final examination in EESA06H3, which violated section B.i.3(b) of the Code.

The particulars in support of these charges are as follows:

- (a) You were a student at the University of Toronto Scarborough at all material times.
- (b) In the Winter 2018 academic term, you were enrolled in GGRA03H3 – Cities and Environments and EESA06H3 – Introduction to Planet Earth.
- (c) On April 19, 2018, you submitted a a [sic] petition for a first deferral of an unwritten examination in GGRA03H3 (“Petition #CL24535”).
- (d) On April 25, 2018, you submitted a a [sic] petition for a first deferral of an unwritten examination in EESA06H3 (“Petition #CL24755”).
- (e) On April 30, 2018, you submitted an Illness Form dated April 30, 2018, which was purportedly issued at the North York General Hospital. You submitted this Illness Form, as required, in support of Petition #CL24535 and Petition #CL24755.
- (f) You knew that the Illness Form that you submitted was forged, altered, or contained false information when you submitted.
- (g) You knowingly submitted the Illness Form described above:
 - (i) understanding that the University of Toronto required evidence to be presented in order to obtain the academic accommodation you sought.
 - (ii) with the intention that the University of Toronto rely on it in considering whether or not to provide you with the academic accommodations you requested; and
 - (iii) in an attempt to obtain an academic advantage.

The Evidence

13. The University’s first witness was Sherylin Biason, the Assistant Registrar of Petitions at the University of Toronto Scarborough. For 19 years she has assessed

petitions from students for various accommodations, including requests to defer exams because of illness.

14. In 2018, petitions were submitted by students online, with original supporting documents submitted in person. This ensures that her office can inspect the original supporting documents to verify them. A student petitioning to defer an exam because of illness must submit an original form entitled Verification of Student Illness or Injury (an “Illness Form”), which is to be filled out and signed by a licensed health care practitioner. Ms. Biason or her assistant reviews this form to see the timing and nature of illness, the accommodation required, and the identity of the health care practitioner.
15. Ms. Biason identified two petitions submitted by the Student in April of 2018. The on-line portion of the petitions show that the Student claimed to have missed two exams (one of April 17 and one on April 23) because of illness, and asked for permission to write deferred exams. The Student submitted an Illness Form in support of his two petitions. The Illness Form claims that the Student visited a healthcare practitioner on April 17, 2018, and that the Student had an illness considered to be “Serious”, starting on April 17 and anticipated to end on April 23. In the section for “Additional Comments”, someone seems to have written “Influenza - rest.”
16. Ms. Biason was concerned about the Illness Form. It was hard to decipher the doctor’s purported signature (her best guess was “M. Chung”), and the doctor’s purported registration number with the College of Physicians and Surgeons of Ontario (her best guess was “77579”). The Illness Form had a business stamp from North York General Hospital. Ms. Biason called the phone number on the stamp. The phone number was connected to the hospital’s Patient Accounts department. They were not able to assist. Ms. Biason called the Student’s phone number, and received a message that the phone was not in service. Ms. Biason submitted the matter to the Academic Integrity Office. She posted a notice to the Student through

the online service for petitions, advising the Student that the petitions had been denied, the Illness Form was not valid, and the case had been reported to the Academic Integrity Office. A “viewed message” feature on the online service indicates the Student (or someone with access to the Student’s online portal) read these messages from Ms. Biason’s office on May 3, 2018.

17. The University’s second witness was Arnold Doobay, an Academic Integrity Assistant at the University of Toronto Scarborough. He was assigned to investigate the authenticity of the Illness Form submitted by the Student. His evidence about his investigation was as follows.

- (a) He was unable to reach the Student by phone, and the Student did not respond to emails or letters from Mr. Doobay’s office.
- (b) The phone number on the business stamp affixed to the Illness Form was for the Patient Accounts department at the North York General Hospital, and they could not assist Mr. Doobay
- (c) The medical health records department for the North York General Hospital confirmed that there was no patient registered with the hospital matching the Student’s name.
- (d) Mr. Doobay tried to identify the doctor through the CPSO registration number scribbled on the Illness Form. He tried 3 different possible versions of the registration number. None of those doctors had privileges at North York General Hospital. One was a pediatrician, specializing in neurology, whose office refused over the phone to confirm or deny that the Student had ever been a patient. One was a plastic surgeon, who advised Mr. Doobay over the phone that they had no registered patients with the Student’s name and date of birth. The third possible doctor was

a general surgeon practicing in Ajax, Scarborough and Pickering. Mr. Doobay did not speak to him.

18. The University's third witness was Natalia Botelho, a legal assistant at Assistant Discipline Counsel's firm. Her evidence was given via affidavit. Ms. Botelho had faxed the three doctors whose CPSO registration number matched the three possible versions of the scribbled CPSO number on the Illness Form. All three doctors eventually responded that they never saw patients out of North York General Hospital, and had no record of every seeing a patient with any of three variations of the Student's name.

Decision of the Tribunal on the Charges

19. The University bears the burden of proving on a balance of probabilities that the Student knowingly forged, altered or falsified a document required by the University, or uttered, circulated, or made use of a forged, altered or falsified document. The evidence must be clear, cogent and convincing.
20. The evidence in this case was clear that the Student, at a minimum, made use of a forged or falsified Illness Form. It does not matter if the Student forged the document himself or had another person do it for him. The Tribunal was able to view the Illness Form submitted by the Student in support of his two petitions for deferred exams. The Tribunal agreed with the University's witnesses that the scribbled CPSO number on the Illness Form could be any of three possible numbers. The evidence of the University's witnesses was that these three doctors were contacted, and none of them had treated the Student or filled out the Illness Form. This evidence was corroborated by the printouts from the CPSO's on-line register, showing that none of the doctors had privileges at the North York General Hospital. The hospital stamp on the Illness Form could not be traced to any particular doctor, but rather was the general stamp used by the hospital's Patient Accounts department. The medical records department at the hospital told Mr.

Doobay it had no record of the Student. The University reached out to the Student multiple times in multiple ways, seeking an explanation. The Student never responded.

21. The Tribunal found that the Student is guilty of Charge 1. Charge 2 was withdrawn by the University.

Evidence on Penalty

22. The University called further evidence on the issue of penalty. The Student started his University studies in the Fall of 2016. In his second term - Winter 2017 - the Student admitted to the Dean's Designate that he had plagiarized an assignment. In light of the Student's quick admission, no Tribunal hearing was necessary. The Student received a grade of 0 on the plagiarized assignment, and a two-year notation in his transcript indicating that the Student had been sanctioned for academic misconduct.

Decision of the Tribunal on Penalty

23. The University sought the following sanctions:
 - (a) a final grade of zero in courses GGRA03H3 and EESA06H3, those being the two final exams the Student had sought to defer with a fake Illness Form;
 - (b) a suspension from the University for three years from the date of the hearing, ending on July 18, 2022;
 - (c) a notation of this sanction on his academic record and transcript until four years from the date of the hearing, ending on July 18, 2023; and
 - (d) a report to the Provost for publication of a notice of the decision of the Tribunal and the sanctions imposed, with the name of the student withheld.

24. The Tribunal considered the factors and principles relevant to sanction as set out by this Tribunal in *University of Toronto and Mr. C.* (Case No. 1976/77-3, November 5, 1976).
- (a) The character of the Student: the Student did not attend the hearing. The Student made no effort to respond to the multiple outreach efforts of the University. The Tribunal has no information about the Student's character other than what is revealed by the nature of the offence.
 - (b) The likelihood of repetition of the offence: some months after admitting to the Dean's Designate that he had plagiarized an assignment, the Student then submitted a fake Illness Form to the University, claiming he had missed two exams because of illness. There is nothing in the record to suggest that the Student is remorseful or repentant. It is possible that the Student might again resort to dishonesty to avoid his academic obligations.
 - (c) The nature of the offence committed: this was a deliberate and careful falsification. This falsified Illness Form could not have occurred by accident or neglect. The Student first petitioned for a deferred exam due to illness on April 19. He submitted the fake Illness Form on April 30. This suggests something more serious than a panicked act of last-minute desperation.
 - (d) Any extenuating circumstances: the Student declined to participate in this hearing. There may have been exceptional, mitigating facts that might have caused the Tribunal to make a more lenient order, however, without the Student's participation, there is no evidence of extenuating circumstances for the Tribunal to consider.
 - (e) The detriment to the University caused by the misconduct: the University works hard to accommodate students who require deferrals for medical reasons. Ms. Biason estimated her office reviewed about 1,000 petitions

last semester alone. Falsified medical documentation undermines the University's system of accommodation, and overburdens the staff charged with reviewing student petitions.

- (f) The need for general deterrence: this is a significant concern. The volume of petitions received by the University is high, and forgery can be difficult to detect.

- 25. Although the Tribunal is not bound by previous cases of this Tribunal, and while each case must be decided on its own facts, it is useful for like cases to be treated alike so that all parties can come to hearings with a reasonable expectation of what kind of penalty they can expect based upon the findings. The Tribunal reviewed six cases involving falsified medical notes and petition documents. In all cases, students received a grade of zero for the affected courses, as a direct and appropriate consequence of the misconduct. In all cases, students received a term of suspension. This ranged from two years to five, depending on the severity of the misconduct and whether there were prior offences.
- 26. A two-year suspension is, as a general rule, the threshold sanction for an act of deliberate dishonesty such as plagiarism or falsified medical documents. In light of the Student's prior, admitted act of plagiarism, and in the absence of any mitigating evidence the Student might have otherwise provided, the Tribunal found that the sanctions requested by the University were fair, proportional and appropriate.

The Tribunal's Order

- 27. The Tribunal made an order as follows.
 - 1. **THAT** the hearing may proceed in the absence of the Student;
 - 2. **THAT** the Affidavit of Natalia Bothelo, sworn on July 15, 2019, may be

introduced as evidence at the hearing;

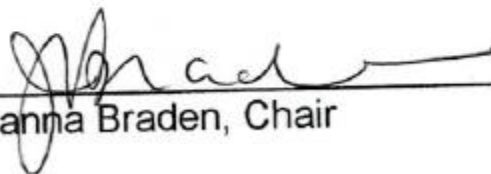
3. **THAT** the Student is guilty of one count of knowingly forging, altering, or falsifying, a document or evidence required by the University, or uttering, circulating, or making use of any such forged, altered, or falsified document, contrary to section B.i.1(a) of the *Code of Behaviour on Academic Matters*;

4. **THAT** the following sanctions shall be imposed on the Student:

- (a) a final grade of zero in the courses GGRA03H3 and EESA06H3;
- (b) a suspension from the University of Toronto for three years from the date of this Order, ending on July 18, 2022; and
- (c) a notation of this sanction on his academic record and transcript until four years from the date of this Order, ending on July 18, 2023;

5. **THAT** this case shall be reported to the Provost for publication of a notice of the decision of the Tribunal and the sanctions imposed, with the name of the student withheld.

Dated at Toronto, this 28th of October, 2019



Ms. Johanna Braden, Chair