

**THE UNIVERSITY TRIBUNAL
THE UNIVERSITY OF TORONTO**

IN THE MATTER OF charges of academic dishonesty filed on May 14, 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

B E T W E E N:

THE UNIVERSITY OF TORONTO

– AND –

J■■■■ G■■■ (the “Student”)

Hearing Date: September 20, 2019

Members of the Panel:

Mr. Dean Embry, Barrister and Solicitor, Chair
Dr. Gabriele D'Eleuterio, Faculty Panel Member
Ms. Madison Bruno, Student Panel Member

Appearances:

Ms. Lily Harmer, Assistant Discipline Counsel, Paliare Roland Rosenberg Rothstein LLP

Hearing Secretary:

Ms. Jennifer Dent, Associate Director, Office of Appeals, Discipline and Faculty Grievances, University of Toronto

Not in Attendance:

The Student

I. CHARGES

1. The Trial Division of the Tribunal held a hearing on September 20, 2019 to address the following charges brought by the University of Toronto (the “University”) against the Student under the *Code of Behaviour on Academic Matters* (the “**Code**”):
 1. On or about December 16, 2016, you knowingly forged or in any other way altered or falsified a document or evidence required by the University, or uttered, circulated or made use of any such forged, altered or falsified document, namely, a petition including a University Verification of Student Illness or Injury Form dated December 16, 2016 (“LIN VOSI”), which you submitted to the University in support of your request for academic accommodation in LIN204H5, contrary to Section B.I.1(a) of the *Code*.
 2. On or about December 18, 2016, you knowingly forged or in any other way altered or falsified a document or evidence required by the University, or uttered, circulated or made use of any such forged, altered or falsified document, namely, a petition including a University Verification of Student Illness or Injury Form dated December 18, 2016 (“MAT VOSI”), which you submitted to the University in support of your request for academic accommodation in MAT236H5, contrary to Section B.I.1(a) of the *Code*.
 3. In the alternative to charges 1 and 2 above, you knowingly engaged in a form of cheating, academic dishonesty or misconduct, fraud or misrepresentation not herein otherwise described, in order to obtain academic credit or other academic advantage of any kind, in connection with the submission of each of the LIN VOSI and the MAT VOSI, contrary to Section B.I.3(b) of the *Code*.

II. PRELIMINARY ISSUE: Proceeding in the Absence of the Student

2. The Student was neither present nor represented. The University filed evidence that the Student was served with the charges by email at the email address provided by the Student to the University of Toronto in ROSI on May 14, 2019.
3. Further, the University filed evidence that on August 26, 2019 the Student was served with the Notice of Hearing, again via the email address provided in ROSI. On August 27, 2019 the Student was served a hard copy of the Notice of Hearing via courier to the address provided to the University in ROSI.

4. In addition to the above, the University filed evidence demonstrating that extraordinary efforts were made to ensure the Student was aware of the hearing and in a position to attend. In addition to the service of documents outlined above correspondence via email was sent to the Student on July 26, August 7, September 6, September 16 and September 18, 2019. These emails, which included invitations for discussion, efforts to arrange scheduling, disclosure of material and reminders of the hearing all went unanswered.
5. On September 4, 2019 a law clerk from Assistant Discipline Counsel's firm called the Student's phone number as listed on ROSI and spoke to a male who identified himself as "Ken". This individual provided an allegedly current telephone number for the Student but when that number was called a recorded message indicated that the subscriber was unavailable. Contact information for Assistant Discipline Counsel was provided to Ken but no response from the Student was ever received.
6. Given the above the Panel found that the Student was provided with reasonable notice and proper service as contemplated by sections 14 and 9 of the Tribunal's *Rules of Practice and Procedure* (the "Rules"). As such the hearing proceeded in the Student's absence.

III. SUMMARY OF FACTS/PARTICULARS

7. The University relied on the affidavit of Michelle Kraus to establish the facts underlying the charges.
8. In the Fall 2016 term the Student was enrolled in LIN204H5F – English Grammar I ("LIN Course") and MAT236HF – Vector Calculus ("MAT Course").
9. The final exam for the LIN Course was held on December 14, 2016 ("LIN Exam"). It was worth 38% of the final mark in the LIN Course. The final exam for the MAT Course was held on December 17, 2016 ("MAT Exam"). It was worth 35% of the MAT Course mark. The Student did not write either of these exams.
10. On December 16, 2016, The Student submitted a petition requesting permission to write the LIN Exam on a deferred date, which was assigned a tracking number 51538 ("LIN Petition").

11. On December 18, 2016, The Student submitted a petition requesting permission to write the MAT Exam on a deferred date ("MAT Petition"). The MAT Petition was assigned a tracking number 51744.
12. On January 3, 2017, The Student submitted a Verification of Student Illness form to the Office of the Registrar in support of his LIN Petition which indicated that he had seen Dr. S.P. Kwong at the Finch-Midland Medical Centre on December 14, 2016 ("December 14, 2016 VSI") and that he was severely incapacitated and completely unable to function from December 14 to 15, 2016.
13. On January 6, 2017, The Student submitted a Verification of Student Illness form to the Office of the Registrar in support of his MAT Petition which indicated that he had seen Dr. S.P. Kwong at the Finch-Midland Medical Centre on December 17, 2016 "December 17, 2016 VSI") and that he was severely incapacitated and completely unable to function from December 17 to 18, 2016.
14. Both of the Student's petitions were granted and he was permitted to write deferred final exams in both courses in February 2017.
15. The Student did not attend to write either deferred final exam.
16. In June 2018 during a periodic review of retained documentation the VSIs submitted by the Student raised suspicion insofar as they resembled similar documents that had been submitted in other matters that had proved to be inauthentic.
17. Both the December 14, 2016 and the December 17, 2016 VSI bore a signature and stamp for Dr. S.P. Kwong. On June 28, 2018 Michelle Kraus sent two faxes to Dr. Kwong requesting that he confirm the Student was seen on December 14 and 17, 2016 and that Dr. Kwong filled out the VSIs. Dr. Kwong responded by fax the same day and indicated he did "not have [the Student] as a patient in [his] office" and that he "did not fill out the 'Verification of Student Illness' form [the Student] for the dates as shown (December 14, 2016 and December 17, 2016)".

IV. ARGUMENT OF THE UNIVERSITY

18. Assistant Discipline Counsel submitted that the Affidavit of Michelle Kraus and accompanying exhibits clearly demonstrated the Student's guilt. The Student submitted two

VSI in support of his petitions to defer two exams. When efforts were made to authenticate the VSI the doctor who allegedly saw the Student unequivocally indicated that he did not see the Student or sign the VSIs.

19. The Panel expressed concern that the central piece of evidence – the confirmation from Dr. Kwong that he had not seen the Student – was available only via hearsay. Assistant Discipline Counsel referred the Panel to the section 15(1) of the *Statutory Powers Procedure Act* which allows the reception of evidence whether or not it is given or proven under oath or affirmation. The University relied on the fact that the address for Dr. Kwong noted on the stamp on the VSIs matched the address on Dr. Kwong's faxed response and that the CPSO number from the VSIs matched that provided on the response as circumstantial evidence of the reliability of the evidence. The Panel was satisfied with this explanation.

V. **CONCLUSION ON CHARGES**

20. Following deliberation and based on the filed affidavit evidence, the Panel concluded that charges 1, 2 and 3 had been proven.
21. Given the findings of guilt, the University withdrew charge 3.

VI. **SANCTION**

A. Evidence and Submissions on Sanction

22. The University provided affidavit evidence establishing that the Student had previously been found guilty of an academic offence on November 10, 2015. Specifically, the Student admitted plagiarizing an assignment which he had submitted for credit. The Student received a sanction of zero for the assignment in question and an annotation on his transcript for 12 months.
23. In light of the facts of the present matter and the prior academic offence the University submitted that an appropriate sanction in this matter would be:
 - a. A grade of zero in both involved courses.
 - b. A suspension for up to five years.

- c. A recommendation of expulsion and;
- d. A permanent notation on the Student's transcript.

24. In support of this position the University pointed to a number of factors:

- a. That although the forgery in this case was not particularly serious it can be assumed that the forged doctor's notes were purchased.
- b. The forgeries in this matter undermined the University's system regarding accommodations. The prevalence of forgeries of this kind necessitated more stringent requirements and therefore make it more difficult for students who require genuine accommodations.
- c. The existence of a prior finding of an academic offence approximately one year prior to these offences.
- d. The Student's complete disregard for the process as evidenced by the Student's failure to respond to any of the correspondence regarding this matter.

25. With regard to this final factor the University highlighted the fact that there was evidence that the Student had accessed his email account at such times as would suggest that he received most of the correspondence and the fact that he led the University on a "merry chase" as evidenced by the phones calls with "Ken". The University also highlighted the extraordinary efforts that had been undertaken to provide notice to the Student and secure his attendance at the Hearing or participation in the process.

26. The University provided a collection of cases that featured similar offences as well as similar aggravating features. The University also helpfully provided a summary matrix containing the salient facts present in the various cases along with the ultimate sanction ordered by the Tribunal.

27. The factors reflected in this matrix included the type of documents forged or falsified, whether there had been a prior offence, whether the student attended the hearing, whether there was an agreed statement of facts or a joint position on sentence and any other extenuating or aggravating factors.

28. The sanctions reflected in the matrix ranged from a zero in the course with a three year suspension and 4 year notation on the low end and recommendations for expulsion on the high end.

B. Conclusion of the Panel on Sanction

29. In this case, the Student has been found guilty of two forgery offences. The Panel declines to assume or infer that the forged doctor's notes were purchased. While the Panel heard submissions and some evidence that the documents in this matter were similar to those in other cases there was no evidence that the documents in this case were purchased.
30. The Panel agrees that the fact that the forgeries were used in an accommodation seeking context and the fact that the Student has a previous finding of guilt in an academic offence are significant aggravating factors.
31. The Panel does not agree that the Student's failure to engage with the process is an aggravating factor. While the Student's cooperation may have occasioned some degree of mitigation his lack of participation is not aggravating.
32. More specifically in relation to this case, there is no evidence that the Student led the University on a "merry chase". It is not clear who the individual who identified himself as "Ken" is or what his relationship to the Student is. More importantly there is no evidence that the Student was aware of Ken's interactions with Assistant Discipline Counsel's firm or directed Ken to give or not give any information to Assistant Discipline Counsel.
33. Finally, while there is no doubt that Assistant Discipline Counsel undertook extraordinary efforts to provide the Student with notice and information and to secure his participation in the process these efforts are not strictly necessary under the *Rules*. It is understood and appreciated that these efforts were undertaken in a laudable spirit of fairness. It would be unfair, however, to allow these efforts to effectively enhance the sanction by considering a lack of response to extraordinary efforts aggravating.
34. No two cases are ever going to be identical. Of all the cases provided, however, the one that bore the most similarity to the present case was that of *University of Toronto v. Y.D.* [Case No. 903, April 26, 2017]. That case dealt with a student who submitted multiple fraudulent medical forms and included close proximity to an admission of guilt and sanction

for a prior offence. The student in that case also did not participate in the disciplinary process.

35. As in that case and taking all of the circumstances into account, we find that a 5 year suspension is appropriate and that it should commence on September 20, 2019.

VII. ORDER OF THE PANEL

36. At the conclusion of the hearing, the Panel conferred and made the following order:

37. **THAT** the hearing may proceed in the absence of the Student;

38. **THAT** the Student is guilty of two counts of forgery, contrary to sections B.I.1(a) of the *Code of Behaviour on Academic Matters*;

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

a. a final grade of zero in each of the following courses:

i. LIN204H5 in Fall 2016; and


ii. MAT236H5 in Fall 2016;

b. a suspension from the University for a period of five years, from the date of this order to September 20, 2024;

c. a notation of this sanction shall be placed on the Student's academic record and transcript for a period of 6 years, from September 20, 2019 to September 20, 2025.

- d. 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.

DATED at Toronto, December 17, 2019



Dean Embry, Chair