

**THE UNIVERSITY TRIBUNAL
THE UNIVERSITY OF TORONTO**

IN THE MATTER OF charges of academic dishonesty filed on September 14, 2017 and revised on June 29, 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 -

S [REDACTED] W [REDACTED] (the “Student”)

REASONS FOR DECISION ON SANCTION

Sanction Hearing Date: January 17, 2020

Members of the Panel:

Mr. Nader Hasan, Chair
Professor Pascal van Lieshout, Faculty Panel Member
Ms. Yusra Qazi, Student Panel Member

Appearances:

Ms. Lily Harmer and Ms. Lauren Pearce, Assistant Discipline Counsel, Paliare Roland Rosenberg Rothstein LLP
Mr. Lorne Sabsay, Sabsay Lawyers, Counsel for the Student

Hearing Secretary:

Mr. Christopher Lang, Director, Office of Appeals, Discipline and Faculty Grievances

Not In Attendance:

The Student

A. Charges and Hearing

1. The Trial Division of the Tribunal held a hearing to address the following charges (the “Charges”) brought by the University of Toronto (the “University”) against the Student under the *Code of Behaviour on Academic Matters* (the “Code”):

1. In or about April or May 2015, 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 Simon Fraser University submitted with an application for admission to the University, contrary to section B.I.3(a) of the *Code*.
2. In the alternative to paragraph 1, in or about April or May 2015, 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 an Official Transcript from Simon Fraser University submitted with an application for admission to the University which was forged, altered or falsified, contrary to section B.I.3(b) of the *Code*.
3. On or about April 7, 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 document, whether the record be in print or electronic form, namely the following course outlines from Simon Fraser University which you submitted to the Transcript Centre at the University, contrary to section B.I.3(a)¹ of the *Code*:
 - i. ECON 103 – 4 Principles of Microeconomics
 - ii. EASC 104 – 3 Geohazards – Earth in Turmoil

¹ The Charges that were served on the Student erroneously made reference to section B.i.3(b) instead of section B.i.3(a). During the hearing on July 17, 2018, the University identified this error and verbally corrected it on the record on consent of the parties. The Tribunal agreed at that time that Charge 3 should be amended to include the correct reference (i.e., section B.i.3(a) instead of section B.i.3(b)).

- iii. MATH 157 – 3 Calculus I for the Social Sciences
- iv. ECON 105 – 4 Principles of Macroeconomics
- v. ECON 290 – 3 Canadian Microeconomic Policy

4. In the alternative to paragraph 3, on or about April 7, 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 forged, altered or falsified course outlines from Simon Fraser University to the Transcript Centre at the University, contrary to Section B. I.3(b) of the *Code*, as follows:

- i. ECON 103 – 4 Principles of Microeconomics
- ii. EASC 104 – 3 Geohazards – Earth in Turmoil
- iii. MATH 157 – 3 Calculus I for the Social Sciences
- iv. ECON 105 – 4 Principles of Macroeconomics
- v. ECON 290 – 3 Canadian Microeconomic Policy

2. In sum, the Charges allege that the Student knowingly forged or knowingly made use of two sets of forged documents: (1) a Simon Fraser University (“SFU”) Transcript, and (2) various SFU course outlines (collectively, the “Forged Documents”)

B. Liability

3. On August 23, 2019, this Panel found the Student guilty of two counts of knowingly altering or falsifying a document or evidence required by the University, or uttering, circulating or making use of such forged, altered or falsified document, contrary to section B.i.3(a) of the *Code*.

The Reasons for Decision on Finding are reported at *S.W.*, Case No. 948 (August 23, 2019).²

² *Re S.W.* Case No. 948 (August 23, 2019), available at: <https://governingcouncil.utoronto.ca/sites/default/files/university-tribunal-decisions/Case%20948.pdf>

4. In light of the Tribunal's findings on the first and third charges, the Provost withdrew the second and fourth charges.

C. Sanction

5. On January 17, 2020, the Panel convened to hear submissions on sanction. The Provost sought an order imposing the following sanctions on the Student:

- (a) that the Student be immediately be suspended from the University for a period of up to five years from the date of this Order or until Governing Council makes its decision on expulsion, whichever comes first;
- (b) that the Tribunal recommend to the President of the University that he recommend to Governing Council that the Student be expelled from the University;
- (c) that the 5.00 transfer credits assessed and granted as if earned by the Student from Simon Fraser University be cancelled and removed from the Student's academic record; and
- (d) that a permanent notation be placed on the Student's academic record and transcript.

6. The Provost originally indicated that it intended to lead evidence at the sanction hearing, but subsequently advised that the Provost would not be leading evidence. Counsel for the Provost submitted a book of authorities and a chart categorizing the case law, and referred to several cases in argument. Counsel for the Student provided written submissions, a book of authorities, and presented oral argument at the hearing.

General Principles on Sanction

7. In imposing a penalty for forgery or falsification of an academic record, the Tribunal has considered the following principles, which are informed by *C* (Case No.: 1976/77-3, November

5, 1976), a 1976 decision of the Appeals Board, which remains the leading authority on sentencing in the University Tribunal context.

8. First, forgery or falsification of academic records is among the most serious academic offences: *N.R.*, Case No. 714 (October 11, 2013), at para. 22; *D.D.*, Case No. 593 (September 3, 2010), at para. 9; *M.K.*, Case No. 491 (November 5, 2008), at para. 43. Such misconduct undermines the integrity of the University's academic mission. It misrepresents a student's accomplishments. If undetected, it may result in the student obtaining a benefit which he or she does not deserve, deprive another more deserving student of that benefit, and tarnish the reputation of the University, and by extension, that of other students, alumni, and faculty: *A.K.G.*, Case No. 508 (October 14, 2008), at para. 18.

9. Second, forgery may be difficult to detect. Some forgeries are crude and easily revealed. But others are more cunning. The SFU transcript here appears to be genuine. Deterrence is thus a significant consideration.

10. Third, by its nature, forgery is only rarely an offence that can occur through a student's inadvertence or even mere negligence. It is usually the product of planning and knowing participation, not a moment of weakness or poor judgment. As explained in greater detail in the Reasons for Decision on Finding, that was the case here.

11. Given these considerations, the cases commonly impose the most serious sanction — a recommendation of expulsion — other than in exceptional circumstances: *N.R. supra*, para. 25. This sanction has been imposed even where the Student participated in the discipline process, agreed to a joint statement of facts or joint statement on penalty, or showed remorse.

12. There is no significant disagreement from the Student's counsel on the appropriate sanction in light of the factual findings on liability. To his credit, counsel for the Student fairly concedes that given the weight of authority, there is very little room for a student found guilty of these offences to argue for a sanction less than expulsion.³

13. Indeed, in *A.L.*, Case No. 606 (October 10, 2012), in one of the rare cases in which the Tribunal did not recommend expulsion in a forgery case, the Appeals Board reversed. It held that the Tribunal had erred in not recommending expulsion given the absence of mitigating factors.

14. Therefore, although there is no automatic rule weighing in favour of recommending expulsion, these offences will typically result in recommendations of expulsion in all but exceptional cases. The question for this Panel is whether there are mitigating factors sufficient to tip the scale in favour of a lesser sanction in this case.

Mitigating Factors

15. Mr. Sabsay noted that the Student did make certain factual concessions that relieved the Provost of its burden of proof with respect to certain material issues. For example, the Student conceded that the transcripts at issue were in fact forgeries.

16. The Panel would give only minimal weight to this factor. It likely would not have been difficult for the Provost to prove that the transcripts were forgeries. Further, based on her own evidence at the hearing, this factual concession was in the Student's own interest. The Student's defence in these proceedings was that she was an innocent of any wrongdoing, but that the agent

³ Mr. Sabsay's written submissions provide, "As much as I would like to suggest an alternative sanction, the Tribunal's case law does not appear to give traction to such a submission" (para. 12).

whom she had contracted to shepherd her through the transfer application process had gone rogue and submitted fraudulent transcripts without her consent. Thus, her defence relied on the fact that the transcripts were forgeries.

17. Mr. Sabsay also argues that it is a mitigating factor that the Student had been sexually assaulted by her former boyfriend, Yifan Liu, who was one of the Provost's main witnesses in these proceedings.

18. We would not accede to this submission. To accept this argument would require that this Panel find that Mr. Liu did in fact sexually assault the Student. Aside from the fact that there is an insufficient record to make that factual determination, the question of whether a sexual assault took place is beyond the scope of these proceedings.

19. The Student had previously testified against Mr. Liu at his criminal trial. His defence in the criminal trial was that the Student had fabricated the sexual assault allegations as revenge for his decision to bring her academic dishonesty to the attention of the University.

20. Mr. Liu was acquitted at trial, which means that the Crown had not proven its case against him beyond a reasonable doubt. It does not mean that he is "innocent" in a moral sense or that the events complained of did not happen. To be clear, he *could be* factually innocent and is presumed so as a matter of law, but it was not the role of the criminal court to make a determination of innocence — only to determine whether the Crown has proven its case beyond a reasonable doubt.

21. Nor is it the role of this Tribunal to determine whether the alleged sexual assault actually happened. But Mr. Sabsay's submission would require this Tribunal to make precisely that finding. Just as it would not be appropriate for this Panel to conclude that the Student *was not*

sexually assaulted, it would be equally inappropriate — given the issues and evidence before us — for this Panel to conclude that the Student *was* sexually assaulted.

22. Mr. Sabsay also argues that regardless of the merits of the allegations in the criminal case, going through that process caused significant emotional stress for the Student, and this stress was compounded by participating in these Tribunal proceedings. Undoubtedly, this hearing process and the criminal trial process must have been stressful for the Student. For this hearing, the Student was able to participate via video conference from her home in China, but given the time zone differences, the hearings took place very late at night and very early in the morning for her. Further, the Student must have known that if she were found guilty of the offences, she would face significant sanctions. No doubt this was stressful as well.

23. That said, one could make a similar argument for parties and witnesses in court proceedings in many cases (particularly where the issues trench upon deeply private and personal matters). Whether as a witness, a complainant, or an accused person, court proceedings are inherently stressful.

24. The Panel would not foreclose the idea that, in a different case, evidence of trauma might weigh heavily in favour of mitigation. In this case, however, there was no evidence of trauma from any medical professional, any counsellor, the Student's friends or family, nor the Student herself (who did not participate at the sanction hearing).

Aggravating Factors

25. Further, in this case, even if the Panel were to ascribe significant weight to the stress that the Student has endured, the aggravating factors are significant enough to outweigh the mitigating

factors. Beyond the general principles weighing in favour of a recommendation of expulsion for these offences, there are significant aggravating factors present on the facts of this case.

26. Chief among these factors is that these offences did not arise from a momentary lapse in judgment. They were the result of a fraudulent scheme perpetrated over many months. The fraudulent scheme began on or around April 2015 when the Student's agent submitted fraudulent transcripts on her behalf to the University.

27. The Student gained acceptance to the University based on those fraudulent transcripts. Not content with obtaining admission to the University through fraudulent means, the Student then sought credit for courses she had not taken at SFU. With the help of Mr. Liu, she submitted course outlines for courses in order to get credit for the fictitious SFU courses. From June 2015 to April 2016, the Student went back and forth with University administrators many times in her ongoing attempt to obtain transfer credits for courses she had not taken. During the hearing, the Student admitted that had she not been caught, she would have carried on with the scheme through to graduation.

D. Order of the Panel

28. For these reasons, the Tribunal accepts the Provost's submissions on sanction, and holds that the following sanction should be imposed on the Student:

- (a) The Student is guilty of two counts of knowingly altering or falsifying an academic record, or uttering, circulating or making use of such forged, altered or falsified record, contrary to section B.i.3(a) of the *Code*;
- (b) The Student shall immediately be suspended from the University for a period of up to five years from the date of this Order or until Governing Council makes its decision on expulsion, whichever comes first;

- (c) The Tribunal recommends to the President of the University that he recommend to Governing Council that the Student be expelled from the University;
- (d) The 5.00 transfer credits assessed and granted as if earned by the Student from Simon Fraser University in the following courses be cancelled and removed from the Student's academic record:
 - (i) ECON 103 – 4 Principles of Microeconomics
 - (ii) EASC 104 – 3 Geohazards – Earth in Turmoil
 - (iii) MATH 157 – 3 Calculus I for the Social Sciences
 - (iv) ECON 105 – 4 Principles of Macroeconomics
 - (v) ECON 290 – 3 Canadian Microeconomic Policy
- (e) A permanent notation shall be placed on the Student's academic record and transcript; and
- (f) 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 16th day of April, 2020.



Nader R. Hasan, Chair