

THE UNIVERSITY OF TORONTO
UNIVERSITY TRIBUNAL

IN THE MATTER OF charges of academic misconduct filed on April 27, 2020,

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 -

X [REDACTED] T [REDACTED] (The “Student”)

REASONS FOR DECISION

Hearing Date: July 6, 2020, via Zoom

Panel Members:

Ms. Erin Dann, Chair

Professor Margaret MacNeill, Faculty Panel Member

Ms. Alena Zelinka, Student Panel Member

Appearances:

Mr. Robert A. Centa, Assistant Discipline Counsel, Paliare Roland Rosenberg Rothstein LLP

Hearing Secretary:

Ms. Krista Kennedy, Hearings Secretary, Office of the Appeals, Discipline and Faculty Grievances, University of Toronto

Not in Attendance:

The Student

1. A Hearing of the Trial Division of the University Tribunal convened on July 6, 2020, by Zoom, to consider charges of academic dishonesty brought by the University against the Student, under the *Code of Behaviour on Academic Matters*, 1995 (the “Code”). The Student was informed of the charges by letter dated April 27, 2020, from Professor Heather Boon, Vice-Provost, Faculty & Academic Life.

PRELIMINARY ISSUE: PROCEEDING IN THE ABSENCE OF THE STUDENT

2. The hearing was scheduled to commence at 1:45 p.m. The Tribunal waited until 2:00 p.m. before commencing the hearing. The Student did not appear at the hearing.
3. Pursuant to Sections 6 and 7 of the *Statutory Powers Procedure Act* (the “Act”), and *Rule 17* of the University Tribunal *Rules of Practice and Procedure* (the “Rules”), where reasonable notice of an oral hearing has been given to a party in accordance with the *Act* and the party does not attend at the hearing, the Tribunal may proceed in the absence of the party, and the party is not entitled to any further notice in the proceeding. In this case, the University requested that the Tribunal proceed with the hearing in the absence of the Student.
4. Pursuant to *Rule 9*, a Notice of Hearing may be served on a student by various means, including by: sending a copy of the document by courier to the Student’s mailing address contained in the Repository of Student Information (“ROSI”); or emailing a copy of the document to the student’s email address contained in 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 postal address and a University-issued email account. The Policy also makes it clear that students are expected to monitor and retrieve their mail, including electronic messaging account(s) issued to them by the University, on a frequent and consistent basis.
6. Counsel for the Provost filed various affidavits setting out the measures taken regarding service on the Student. The affidavit of Nusaiba Khan confirmed that on June 24, 2020 she served the Student with a Notice of Electronic Hearing by email to [REDACTED]@mail.utoronto.ca which was the email address he provided to the University of Toronto in ROSI.
7. Two affidavits of Sharon Hawley, legal assistant for the Assistant Discipline Counsel, were also filed; one sworn on June 25, 2020 and the other on July 3, 2020. These affidavits confirm that the Student was served by e-mail on April 28, 2020 with the letter regarding the charges that were filed against him, together with copies of the charges, the *Code of Behaviour on Academic Matters*, the *Rules of Practice and Procedure* and a pamphlet for

Downtown Legal Services. That email, along with the emails referred to below, was sent to the address contained in ROSI.

8. Ms. Hawley's affidavits further confirm the following:
 - a. On June 1, 2020, Ms. Hawley sent the Student an email, on behalf of Mr. Centa, containing the link to the disclosure brief prepared by the University. The email advised the Student that a hearing would be scheduled without further consultation if he did not respond by June 8, 2020.
 - b. On June 10, 2020, Mr. Centa sent an email to the Student to advise that a hearing would be scheduled for July and asking the Student to contact him to discuss the case immediately.
9. Finally, the affidavit of Mike Wiseman, Associate Director, Strategic Initiatives, Information Security at the University, sworn on June 4, 2020 was also filed. The evidence of Mr. Wiseman was as follows:
 - a. Information Security provides many services to the University of Toronto, including management of the email accounts used by students. To access an email account, one needs to input both the user's login id and the password for that account. Data logs automatically record the last time someone accessed a particular university-issued email account.
 - b. On June 24, 2020, at the request of Mr. Centa, Mr. Wiseman checked the data logs to determine the last time someone accessed the Student's email account. He determined that the last time someone accessed this e-mail account was on June 15, 2020 at 6:39 a.m.
10. Ms. Hawley's July 3, 2020 affidavit confirms that Mr. Wiseman checked the data logs again on July 3, 2020. He determined that the last time someone accessed the Student's email account was July 1, 2020 at 4:09 p.m.
11. Based on the evidence contained in the Hawley and Wiseman affidavits, it appears the Student, at minimum, accessed his utoronto email account on June 15, 2020 and July 1, 2020 and ought to have seen the Notice of Hearing and the various correspondence from the University and from Assistant Discipline Counsel.
12. Having reviewed the evidence and heard the submissions of counsel for the Provost, the Tribunal concluded that the Student was given reasonable notice of the hearing in accordance with the notice requirements set out in the *Act* and the *Rules*. The Panel is satisfied that he received the Notice of Hearing advising him that the hearing was scheduled for July 6, 2020. The University has proven that it provided reasonable notice of the

hearing to the Student. Accordingly, the Tribunal proceeded to hear the case on its merits in the absence of the Student.

THE CHARGES

13. At all material times, the Student was a registered student at the University in the Faculty of Arts & Science.
14. The University alleged that the Student, on or about December 18, 2019, knowingly altered or falsified a document or evidence required by the University of Toronto, or uttered, circulated or made use of any such altered or falsified document, namely, a University of Toronto Verification of Student Illness or Injury Form (“VOI”), dated December 10, 2019, which he submitted in support of his petition for a late withdrawal from course HMB321H1S (the “Course”) contrary to section B.I.1(a) of the *Code*.
15. The University alleged, in the alternative, that the Student 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, which violated section B.I.3(b) of the Code.
16. The particulars of the charges were as follows:
 - a. In the Winter 2019, the Student was registered in the Course;
 - b. On December 18, 2019, the Student submitted a petition for late withdrawal from the Course.
 - c. In support of his petition, the Student provided a VOI dated December 10, 2019, which was purportedly signed by Dr. Zhong Toni.
 - d. The Student knew that the VOI submitted was forged, altered or contained false information when he submitted it.
 - e. The Student knowingly submitted the VOI described above:
 - i. understanding that the University of Toronto required evidence to be presented in order to obtain the academic accommodation sought.
 - ii. with the intention that the University of Toronto rely on it in considering whether or not to provide the Student with the academic accommodations you requested; and
 - iii. in an attempt to obtain an academic advantage.

THE EVIDENCE

17. The Tribunal received affidavit and *viva voce* evidence from Justina Lee, who in 2019 was the Assistant Registrar, New College, at the University of Toronto. Her evidence was as follows:
18. In Winter 2019, the Student was registered in HMB321 (“the Course”) and received a grade of D-. At the end of the Winter 2019 term, the Student had earned an annual GPA of 1.61 and a cumulative GPA of 1.26. As a result of his low annual GPA, the Student was suspended from the University for three years.
19. Ms. Lee met with the Student on December 16, 2019. He asked her about petitioning to lift this suspension and seeking permission for late withdrawal from his courses in the Winter 2019 term. The Student told Ms. Lee that he had written all his exams despite health issues during the April 2019 exam period. He reported seeing a doctor during the exam period but said he had not obtained documentation of that meeting at the time.
20. On December 18, 2019, the Student submitted a petition for late withdrawal from the Course. If the Student received permission to withdraw from the Course without academic penalty, his annual GPA for the 2018-2019 year would have increased to 1.71. This would allow him to avoid the three-year suspension and to continue studies on academic probation.
21. In support of the petition, the Student submitted a photocopy of a Verification of Student Illness and Injury form (the “VOI”). The VOI submitted is dated December 10, 2019 but lists a visit date of April 14, 2019. The form indicates that the Student was seriously incapacitated from April 13 to April 20, 2019. The VOI has a signature and stamp of Dr. Toni Zhong. It also contains a business stamp for Toronto General Hospital.
22. Ms. Lee believed the VOI form was fraudulent. She recognized the business stamp as having appeared on a fraudulent VOI form submitted the previous year. Notably, the business stamp on the VOI submitted by the Student contains an incorrect postal code for the hospital, namely: M5G ZC4 (underlining added). This, of course, is not the correct lettering and numbering convention for Canadian postal codes. Ms. Lee testified that the same error appeared on the fraudulent VOI submitted the previous year.
23. Ms. Lee contacted the assistant to Dr. Toni Zhong at Toronto General Hospital by fax on December 18, 2019. She received a fax back later the same day. The handwritten note on the return fax states, “NOT A PATIENT OF DR. TONI ZHONG.” The note is accompanied by the stamp of Dr. Toni Zhong. This stamp is different from the one that appears on the VOI submitted by the Student.

24. Copies of the VOI, Ms. Lee's fax to Dr. Zhong's office and the responding fax were all included as exhibits to Ms. Lee's affidavit.
25. Ms. Lee referred the matter to Laura Ferlito, Associate Director, Academic Integrity & Petitions at the University of Toronto and recommended that the petition be refused, and the matter investigated by the Office of Student Academic Integrity ("OSAI").
26. The Tribunal received the affidavit of Ms. Ferlito. Ms. Ferlito met with the Student on February 6, 2020 to discuss his petition and the information she had received from Ms. Lee. Following her meeting with the Student, Ms. Ferlito emailed the OSAI and provided a summary of the information received from Ms. Lee and the content of her conversation with the Student.
27. Finally, the Tribunal received the affidavit of Christina Di Matteo, an Academic Integrity Specialist at the OSAI. On March 5, 2020, Ms. Di Matteo and Professor William Ju, the Dean's Designate for the Faculty of Arts & Science, met with the Student.
28. Professor Ju read the relevant portions of the *Code of Behaviour on Academic Matters* to the Student and specifically warned the Student that anything he said during that meeting could be received in evidence against him at the Tribunal.
29. The Student explained that he had been experiencing health problems during the April 2019 exam period but chose not to postpone his exams because he did not want to further delay his academic progress. The Student said he met with a doctor in April before the HMB321 exam, but it was not an official appointment. He explained that the doctor was a friend of his parents and he met with her in the lobby of the hospital. According to the Student, the doctor did not conduct any kind of physical exam. The Student said he had arranged the meeting with the doctor by text message but no longer had the messages on his phone.
30. The Student said that the doctor mailed him the VOI form in December 2019 when he decided to apply for the late withdrawal. He could not explain why the doctor's office would say he was not a patient. He speculated that perhaps the doctor had not taken the visit seriously and thought she was simply doing a favour by filling out the form.
31. Finally, the Student maintained that the VOI he submitted was an authentic document signed by a real doctor he met at Toronto General Hospital.
32. As noted above, the Student did not attend the hearing.

DECISION OF THE TRIBUNAL ON CHARGES

33. Having considered all the evidence heard during the hearing and the affidavit evidence, the Tribunal found that the Student knowingly made use of a forged, altered or falsified document in support of his request for late withdrawal from the Course, contrary to section B.I.1.(a) of the *Code*.
34. The totality of the evidence made clear to the Panel that the VOI dated December 10, 2019 was not completed, signed or stamped by Dr. Toni Zhong despite the Student's assertions otherwise. In support of its finding that the VOI was forged, altered or falsified, the Panel notes, in particular, that the business stamp on the VOI contained the same error in the postal code as on a stamp previously affixed to a fraudulent VOI; that Dr. Zhong's office confirmed that the Student was not a patient; and that Dr. Zhong's authentic stamp differed from that affixed to the VOI submitted by the Student. The Student's claim that the doctor met him in the lobby of the hospital in April 2019, did not perform any physical examination and was prepared to complete a VOI in December of 2019, in respect of the April visit, was not credible.
35. Consequently, the Tribunal finds that the Charge #1 (as outlined in paragraph 14) above had been proven with clear and convincing evidence on a balance of probabilities. Accordingly, the Tribunal entered a finding of guilt with respect to the Charge.
36. The Panel was advised that if the Tribunal convicted the Student on Charge #1, the University would withdraw Charge #2 (the alternative charge) and that charge was so withdrawn.

PENALTY

37. The University sought the following penalties:
 - a. a final grade of zero in the course HMB321H1S;
 - b. a suspension from the University of Toronto from the date of this order for a period of two years; and
 - c. a notation of the sanction on his academic record and transcript from the date of this order for a period of three years; and
 - d. that this case be reported to the Provost for publication of a notice of the decision of the Tribunal and the sanction imposed, with the Student's name withheld.
38. The Provost called no further evidence.

DECISION OF THE TRIBUNAL ON PENALTY

39. The Panel also heard submissions regarding the appropriateness of the penalty, reviewed relevant past decisions of the Tribunal submitted by the University, and considered the factors set out in *University of Toronto and C.* (File No. 1976/77-3; dated November 5, 1976).

- a. **The character of the Student.** As the Student did not participate in the proceeding, there was no evidence before the Tribunal regarding the Student's character other than the facts relating to this offence.
- b. **The likelihood of a repetition of the offence.** The Student did not have a prior record of academic offences and the offence here appears to be an isolated incident. Given the Student did not attend the hearing, the Panel was unable to make any further findings regarding the likelihood of a repetition of this offence.
- c. **The nature of the offence committed.** The Panel took into consideration the serious and deliberate nature of the offence and the detriment to the University. Given the size of the University, and the fact that the University is unable to verify every medical note submitted by students, the University must be able to trust that the students are submitting legitimate documentation in support of accommodation and late withdrawal requests.
- d. **Any extenuating circumstances surrounding the commission of the offence.** The Student did not participate in this hearing. Accordingly there is little evidence before the Tribunal of mitigating or extenuating circumstances. The Panel does note that in his petition for late withdrawal and in his meetings with Ms. Ferlito and Ms. Di Matteo, the Student expressed feeling significant stress and anxiety about the delay in his studies caused by his suspension.
- e. **The detriment to the University occasioned by the offence.** The Panel accepts the University's concerns that the Student's conduct implicated medical professionals and undermined the integrity of those charged with providing those medical notes, as well as the University's procedure for assessing and granting accommodations to its students.
- f. **The need to deter others from committing a similar offence.** General deterrence is an important factor in these cases. The Panel accepts that the University and the Tribunal must send a strong message to other students that such misconduct is considered a serious offence.

40. The determination of an appropriate penalty in every case by the Tribunal will depend on an assessment of these principles and factors in the individual circumstances of the case. However, the Discipline Appeals Board has stressed the importance of a general consistency in the approach of Tribunals to sanction, so that the students are treated fairly and equitably.
41. Having regard to the cases presented by the University, the submissions of the University, and the relevant factors outlined above, the Panel agrees that the recommended sanctions are appropriate.
42. Accordingly, at the conclusion of the hearing, the Panel made the following Order:
- a. The hearing proceed in the absence of the Student.
 - b. The Student is guilty of one count of knowingly forging or in any other way altering or falsifying a document or evidence required by the University of Toronto, or uttering, circulating or making use of such forged, altered or falsified document, contrary to section B.I.1.(a) of the *Code*;
 - c. The following sanctions shall be imposed on Mr. T■■■:
 - i) a final grade of zero in the course HMB321H1S;
 - ii) a suspension from the University of Toronto from the date of this order for a period of two years; and
 - iii) a notation of the sanction on his academic record and transcript from the date of this order for a period of three years; and
 - d. This case be reported to the Provost for publication of a notice of the decision of the Tribunal and the sanction imposed, with the Student's name withheld.

DATED at Toronto, September 29, 2020.



Erin Dann, Chair