

**UNIVERSITY TRIBUNAL
The University of Toronto**

IN THE MATTER of charges of academic dishonesty made on January 11, 2021,

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:

UNIVERSITY OF TORONTO

- and -

U ■■■ M ■■■

REASONS FOR DECISION

Hearing Date: October 21, 2021, via Zoom

Members of the Panel:

Ms. Joelle Ruskin, Chair

Dr. Ian Crandall, Faculty Panel Member

Mr. Branden Cave, Student Panel Member

Appearances:

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

Hearing Secretary:

Ms. Carmelle Salomon-Labbé, Associate Director, Office of Appeals, Discipline and Faculty
Grievances

Not in Attendance:

Mr. U ■■■ M ■■■

1. The Trial Division of the University Tribunal was convened on October 21, 2021 to consider the charges brought by the University of Toronto (the "University") against Mr. U■■■■ M■■■■ (the "Student") under the *Code of Behaviour on Academic Matters, 1995* (the "Code").

A. The Charge

2. The Student was charged on January 11, 2021 of the following:
 1. On or about November 14, 2018, you knowingly forged or in any other way altered or falsified an academic record, and/or uttered, circulated or made use of such forged, altered or falsified record, namely, a document which purported to be your unofficial academic history from the University of Toronto, contrary to section B.I.3(a) of the Code.
3. The Charges contain a statement of Particulars, including the following:
 - (a) You first registered at the University of Toronto Mississauga in Fall 2008. You never graduated from the University.
 - (b) As part of your application for employment to BMO Financial Services, you provided a document that purported to be your academic history at the University of Toronto Mississauga.
 - (c) You forged, altered, or falsified this document and falsely represented to BMO Financial Services that you had graduated from the University of Toronto Mississauga in Winter 2012.
 - (d) In this forged, altered or falsified document, you misrepresented your marks, grades, sessional grade point averages, cumulative grade point averages, and academic history and status.
 - (e) You knew that this document was forged, altered, and/or falsified when you circulated it.
 - (f) You had an obligation to provide accurate and truthful information and not to misrepresent your academic record. You had an obligation not to provide forged or falsified documents in support of your application for employment.

B. Procedural Issues

4. The hearing was scheduled to begin at 9:45 a.m. on October 21, 2021, via Zoom. The Student did not appear. The first issue that the Tribunal dealt with was whether the Student had been provided adequate notice of the hearing and whether the hearing could proceed in his absence.
5. Assistant Discipline Counsel, relying on the Affidavit of Sharon Hawley, an assistant at the law firm of Paliare Roland Rosenberg Rothstein LLP ("PRRR"), submits that the Student had actual notice of the hearing, positively waived his right to attend at the hearing and that the Student agreed that the Tribunal could proceed in his absence. Exhibit 1 of Ms. Hawley's Affidavit is an email exchange between Assistant Discipline Counsel and the Student dated October 18, 2021 (the "October 18, 2021 email exchange").
6. The October 18, 2021 email exchange between Assistant Discipline Counsel and the Student was precipitated by an email of that same date from Samanthe Huang, the University's Quasi-Judicial Administrative Assistant, Office of Appeals, Discipline and Faculty Grievances ("Ms. Huang"). Ms. Huang's email was sent to Assistant Discipline Counsel and to the Student offering the parties an opportunity to test their Zoom connection in advance of the hearing scheduled to take place three days later. Ms. Huang's email was sent to the Student's utoronto email account, the email address provided by the Student in ROSI.
7. Assistant Discipline Counsel replied all to Ms. Huang's email indicating: "No one from my side will need to test their connection". The Student then responded and indicated, among other things, "I won't be able to attend the hearing". Assistant Discipline Counsel wrote back to the Student "Could you please confirm that you waive your right to attend the hearing and agree that the Tribunal should proceed in your absence?" to which the Student responded "Yes".
8. This was not the first time that the Student had emailed from his utoronto email account or accessed that utoronto email account following his being sent the Charges as issued by the

University to his utoronto email account on January 11, 2021, or the Notice of Hearing on September 14, 2021.

- (a) On January 28, 2021, the Student, using his utoronto email account, exchanged several emails with Ms. Lauren Pearce ("Ms. Pearce"), who acted as Assistant Discipline Counsel for the University of Toronto on this matter until August 2021. In the email exchange between the Student and Ms. Pearce, the Student states that he read the Charges and acknowledges that a hearing would be scheduled to address the Charges. The email exchange between the Student and Ms. Pearce of January 28, 2021 is attached as Exhibit 1 to Ms. Pearce's Affidavit, affirmed on September 21, 2021 ("Ms. Pearce's Affidavit").
 - (b) Exhibit 1 of Ms. Pearce's Affidavit contains a further email from the Student dated April 6, 2021. The Student's email states, among other things, that "I am not going with any legal team and I would not be on hearing" [*sic*]. This was the last time Assistant Discipline Counsel heard from the Student until the October 18, 2021 email exchange.
 - (c) Mr. Andrew Wagg, the Incident Report Architect at Information Security, Information Technology Services at the University of Toronto, provided an affidavit dated October 5, 2021, indicating that the last login to the Student's utoronto account was October 2, 2021, at 2:58 p.m. local Toronto time. The last login was after the Notice of Hearing had been sent to the Student on September 14, 2021.
 - (d) The Student's email address in all cases referenced above is his utoronto email account.
9. The Student's emails to Ms. Pearce and Assistant Discipline Counsel of January 28, 2021, April 6, 2021, and October 18, 2021, respectively, confirm that the Student was actively using his utoronto email account subsequent to his being sent the Charges on January 11, 2021, and the Notice of Hearing on September 14, 2021.

10. Upon a review of the evidence and upon considering rules 9(c), 13, 16, and 17 of the University Tribunal's *Rules of Practice and Procedure*, the Tribunal was satisfied that the Student was served with the Charges on January 11, 2021, and with the Notice of Electronic Hearing on September 14, 2021, and ordered that the hearing proceed in the Student's absence.

C. Evidence and Findings

11. The evidence of the University on the Charge was presented by way of affidavit of Anastasia Skiba, a Student Success Representative, in the Office of the Registrar, University of Toronto Mississauga ("Ms. Skiba's Affidavit").
12. Ms. Skiba's evidence is that on November 14, 2018, she received a call from Ms. Jessica Logan, Pre-Employment Screening Coordinator, BMO Financial Group, to confirm the authenticity of a transcript of academic record provided to her by the Student as part of a job application (the "Purported Transcript"). Ms. Logan advised Ms. Skiba that the Purported Transcript "looked odd", and asked for Ms. Skiba's assistance to determine whether the Purported Transcript was authentic. On her review of the Purported Transcript, Ms. Skiba noted:
 - (a) it appeared to be an unofficial academic record printed from ACORN;
 - (b) it stated that the University of Toronto Mississauga had conferred an Honours Bachelor of Commerce degree (with distinction) on the Student in June 2012; and
 - (c) it suggested that the Student had graduated with a double major in economics and finance.
13. A true academic record of the Student is attached as Exhibit 2 to Ms. Skiba's Affidavit (the "Authentic Record"). The Authentic Record reports that:
 - (a) the Student first registered as a student at the University of Toronto Mississauga in Fall 2008;
 - (b) the Student majored in geography (science) and applied statistics;

- (c) in Winter 2009, the Student was placed on academic probation for poor academic performance;
 - (d) in Fall 2011, the Student was sanctioned by the University due to academic misconduct, assigned a final mark of zero on a course and an annotation was placed on his transcript for a period of 12 months;
 - (e) in Winter 2012, the Student was suspended for three years because of poor academic performance;
 - (f) the Student did not return to his studies after the completion of that suspension in winter 2015;
 - (g) the Student earned a total of 5 credits since registering at the University in Fall 2008 (a student requires 20 credits to graduate); and
 - (h) the Student did not graduate from the University.
14. Ms. Skiba's evidence is that based on a comparison of the Purported Transcript and the Authentic Record of the Student, she determined that the Purported Transcript had been falsified. Among other things, the University had never conferred a degree on the Student.
15. Assistant Discipline Counsel also drew the Tribunal's attention to internal inconsistencies within the Purported Transcript; namely, that the science/biology courses listed in the academic record submitted to BMO do not support the representation made in the Purported Transcript that the degree conferred on the Student was a Bachelor of Commerce with a double major in economics and finance.
16. Ms. Skiba called Ms. Logan and pointed her in the direction of the University of Toronto transcript centre, which would be able to verify whether the Student had received a degree from the University of Toronto.
17. Paragraphs 9 to 17 of Ms. Skiba's Affidavit explores the apparent source of the Purported Transcript, which was circulated to BMO, and what Ms. Skiba believes might have happened leading up to the commitment of the alleged offence. Evidence regarding the

source or mode of a forged, altered, or falsified academic transcript is not an essential element of the offence under section B.1.3(a) of the Code. The Tribunal did not rely on that evidence in making its determination.

Statements against Interest

18. Assistant Discipline Counsel submits that the Tribunal should treat as admissible statements made by the Student against his interest in emails from the Student to Ms. Pearce and to Assistant Discipline Counsel, respectively. These statements are in an email exchange of April 6, 2021, between the Student and Ms. Pearce (Exhibit 1 of Ms. Pearce's Affidavit) and in the October 18, 2021 email exchange.
19. The April 6, 2021 email forms part of a longer email exchange between the Student and Ms. Pearce, which began with an email on January 28, 2021 from Ms. Pearce. The email directly preceding the April 6, 2021 email of the Student is a March 30, 2021 email from Ms. Pearce advising the Student that if she does not hear from him by April 7, 2021, she would schedule the hearing without further notice.
20. On April 6, 2021, the Student emailed Ms. Pearce as follows:

Hello Lauren,

I am sorry for not being in touch - things haven't been well. I am not going with any legal team and I would not be on hearing, I had made this decision after speaking with the lawyers you had provided the details of.

I accept the charges. The desperate circumstances at that time had led me to do what I did but I accept what I did was absolutely wrong, I don't have any justifications.

I apologize for my tardiness.

[the Student]

[Emphasis added]

21. In her Affidavit, Ms. Pearce states that she did not invite the alleged admission of the Student nor did she indicate to him that their email exchange was without prejudice or confidential.
22. Neither Ms. Pearce nor Assistant Discipline Counsel received any further emails from the Student following this email until the October 18, 2021 email exchange. In his October 18, 2021 email to Assistant Discipline Counsel, the Student states:

Hello Robert,

I am just seeing this email – I won't be able to attend the hearing.

In my previous correspondence **I had admitted by mistake** and provided my side of the story.

[Emphasis added]

23. Assistant Discipline Counsel submits that the Tribunal take into consideration both of these alleged admissions in determining that the Student committed the academic offence of which he is charged.

Decision of the Tribunal

24. The onus is on the University to establish on the balance of probabilities, using clear and convincing evidence, that the academic offence has been committed by the Student.
25. The Student was charged with an offence under section B.1.3(a) of the Code, which reads:

It shall be an offence for a [. . .] student [. . .] knowingly to forge or in any other way alter or falsify any academic record or to utter, circulate or make use of any such forged, altered or falsified record, whether the record be in print or electronic form.
26. The requirement that the Student act “knowingly” is made out if the Student ought reasonably to have known that the academic record in question had been forged, altered or falsified.

27. Following deliberation, based on the University's uncontracted affidavit evidence and the documents in the University's Book of Documents, the Tribunal determined that the evidence clearly established that the Purported Transcript provided by the Student to BMO was false.
28. Having concluded that the Purported Transcript was a forgery, and given that it was circulated and/or made use of by the Student, as evidenced by the fact that the Student provided it to BMO, the Tribunal found it more likely than not that the Student was responsible for circulating and making use of the forged record.
29. The Tribunal found that the Student is guilty of forging or in any other way altering or falsifying an academic record, and/or uttering, circulating or making use of such forged, altered or falsified record, contrary to section B.1.3(a) of the Code. The Tribunal reached this conclusion based on the University's uncontracted affidavit evidence and the documents in the University's Book of Documents presented by the University and without having to determine the admissibility of certain statements made by the Student in his emails to Ms. Pearce and Assistant Discipline Counsel set out in paragraphs 20 and 22 above.

Penalty

30. The University requested that the Tribunal make an order immediately suspending the Student for up to five years, and recommending to the President of the University that he recommend to the Governing Council that the Student be expelled from the University. The University also submitted that this case be reported to the Provost, with the Student's name withheld, for publication of a notice of the decision of the Tribunal and the sanctions imposed.
31. The Code confirms that in the case of forgery or falsification of an academic record, the Provost will ask the Tribunal to recommend expulsion. As noted in Appendix C of the Code, this request by the Provost is considered as “guidance to students facing a hearing at the Tribunal, absent exceptional circumstances”.

32. The Tribunal is required to consider the Mr. C factors (Case No. 1976/77-3 November 5, 1976) to support its decision on penalty: character of student, likelihood of repetition of the offence, nature of the offence committed, existence of extenuating circumstances, detriment to the University and the general need for deterrence.

Character, Extenuating Circumstances, Likelihood of Repetition, Nature of the Offences Committed, Detriment to the University and Deterrence

33. Assistant Discipline Counsel directed the Tribunal's attention to 13 cases involving forgery or falsification of an academic record. In all cases, the University recommended that the student be expelled and the Tribunal granted that order. This conclusion was reached even in cases where the student participated in the hearing and signed an Agreed Statement of Facts ("ASF") to make the processing of the case easier. In 12 of the 13 cases, the Student did not have a prior sanction for academic misconduct.
34. In this case, the Student did not meaningfully participate in the academic discipline process or in this proceeding at all. Although the Student was clearly checking his email account, he did not sign an ASF when given the opportunity.
35. Further, as detailed above at paragraph 13 of these Reasons, in Fall 2011, the Student was sanctioned by the University due to academic misconduct, assigned a final mark of zero on a course, and a notation was placed on his transcript for a period of 12 months. The Tribunal considers the Student's prior sanction as an aggravating factor in determining the appropriate penalty for the offence as charged.
36. Even were this Tribunal to accept as admissible, for the determination of sanction only, the expressions of remorse made by the Student in his emails to Ms. Pearce and Assistant Discipline Counsel (*i.e.*, "I accept what I did was absolutely wrong, I don't have any justifications"; "I had admitted by mistake" or his reference to "desperate times"), those statements do not describe any extenuating circumstances faced by the Student at the time of his committing the offence in question or mitigate against what the Tribunal considers to be premeditated and egregious conduct of the Student in circulating a false academic record to BMO as part of a job application.

37. The cases provided by the University establish that forgery of an academic record is one of the most serious offences a student can commit. In *University of Toronto v. J.R.* (Case No. 1018, November 26, 2019) at paragraph 19, the Tribunal held:

There can be no question that forging and circulating a degree is an extremely serious offence. Forged certificates damage the University's reputation, undermine the trust prospective employers and other academic institutions have in the University and its students, and harm students who have earned their degrees by forcing them to compete for positions against students who have not earned the qualifications they claim to hold.

38. The Tribunal deliberated and concluded that, under the circumstances, it is appropriate to make a recommendation for expulsion.

39. The Tribunal shall report this decision to the Provost for publication of a notice of this decision and the sanction with the Student's name withheld.

40. An Order with the penalty was signed by the Tribunal after the hearing. The Tribunal ordered that the following be imposed:

- a) that the Student be immediately suspended from the University for a period of up to five years;
- b) that the Tribunal recommend to the President of the University that he recommend to the Governing Council that the Student be expelled from the University; and
- c) that this case 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 19 day of January 2022.

Original signed by:

Ms. Joelle D. Ruskin, Chair

On behalf of the Panel