

THE UNIVERSITY TRIBUNAL
THE UNIVERSITY OF TORONTO

IN THE MATTER OF charges of academic misconduct filed on June 15, 2023,

AND IN THE MATTER OF the University of Toronto *Code of Behaviour on Academic Matters, 2019*,

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 -

Y [REDACTED] W [REDACTED]

REASONS FOR DECISION

Hearing Dates: June 4, November 8 & 11, 2024, via Zoom

Members of the Panel:

Omo Akintan, Chair

Professor Ted Kesik, Faculty Panel Member

Farhana Islam, Student Panel Member

Appearances:

Harris Rosen, Counsel for the Student, Harris Rosen Professional Corporation

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

Sonia Patel, Assistant Discipline Counsel, Paliare Roland Rosenberg Rothstein LLP

Janet Song, Co-Counsel, Paliare Roland Rosenberg Rothstein LLP

Hearing Secretaries:

Christopher Lang, Director, Office of Appeals, Discipline & Faculty Grievances

Karen Bellinger, Associate Director, Office of Appeals, Discipline & Faculty Grievances

In Attendance:

Y [REDACTED] W [REDACTED]

Charges and Appearances

1. The Trial Division of the Tribunal heard the matter on June 4, November 8 and November 11, 2024, via Zoom to consider charges brought by the University of Toronto (the “University”) against Y■■■■ W■■■■ (the “Student”) under the University’s *Code of Behaviour on Academic Matters, 2019* (the “Code”).

2. On June 15, 2023, the Student was charged as follows:

Charge 1: On or about August 6, 2021, you knowingly had someone personate you during the oral interview test in FSL102H1S (the “Course”), contrary to sections B.1.1(c) of the *Code*.

Charge 2: In the alternative, on or about August 6, 2021, you knowingly obtained unauthorized assistance in connection with the oral interview test in the Course, contrary to sections B.1.1(b) of the *Code*.

Charge 3: In the further alternative, on or about August 6, 2021, you knowingly engaged 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 in connection with the oral interview test in the Course, contrary to section B.1.3(b) of the *Code*.

3. At the hearing on June 4, 2024, Assistant Discipline Counsel advised that if a finding is made on Charge 1, Charges 2 and 3 would be withdrawn. A finding of guilt was made on Charge 1 on June 4, 2024.

4. Both parties raised a number of preliminary issues with respect to sanction which were, at the direction of the Tribunal, advanced by way of written motions. The Tribunal issued an interim decision dated October 24, 2024, in which those motions were addressed and direction given respecting the admissibility of the subject evidence.

5. The sanction hearing proceeded subsequently on November 8 and November 11, 2024.

Facts

6. The evidence in this case was tendered by way of Agreed Statement of Facts accompanied by a Joint Book of Documents which were introduced by the University at the hearing.

7. At the hearing, the Student's counsel raised a question about whether the Agreed Statement of Facts was under-inclusive. In particular, he submitted that a document referred to as the "Student Academic Integrity" (SAI) Report was omitted.

8. In an exchange between counsel prior to the hearing, the issue with this document had been raised. At the time, the document was indicated as being relevant to sentencing. As such, direction had been given that the case would be bifurcated and scheduled with time between the phases, such that the parties would have an opportunity to raise any preliminary issues or motions prior to the sentencing hearing.

9. Following submissions from the parties respecting whether or not the document was relevant to the liability phase of the hearing, the Student's counsel acknowledged that the possible relevance to the liability phase was tenuous, at best, given the Student's admission of guilt and her continued admission of the facts stated in the Agreed Statement of Facts. The Student's counsel formally withdrew his submissions respecting the document's relevance to the liability phase and the hearing proceeded on the basis of the Agreed Statement of Facts and the Joint Book of Documents.

10. The Agreed Statements of Facts included the following:

- (a) At all material times, the Student was enrolled at the University of Toronto Faculty of Arts and Science;
- (b) In Summer 2021, she enrolled in FSL102H1S (Introductory French);
- (c) Students in the course were evaluated on the basis of, among other things, an oral interview worth 15% of their final grade;

- (d) On August 6, 2021, the instructor conducted the oral interview test. Prior to the test, the student emailed the instructor asking if she could keep her camera off during the test. The instructor indicated that she did not need to be on camera.
- (e) The instructor observed that the quality of French spoken by the person taking the Student's test was far superior to the quality of French spoken by the student during another test on July 21, 2021. At the hearing, Assistant Discipline Counsel played both the recording of the oral test on August 6, 2021, and the recording of the July 21, 2021 test.
- (f) The Student admitted at the meeting with the Dean's Designate that she had asked another person who had lived in Quebec to take the oral interview test for her. The Student indicated that she had really bad oral interview skills, was really unprepared and wanted a good grade. She also explained that she was going through depression and anxiety problems and gets nervous and "blanks off easily" during oral interviews.
- (g) The Student admits that she knew she was not permitted to have anyone personate her in the oral interview test and that she had knowingly paid a fee for another person to personate her during the oral interview test. She admits that she did no work during the oral interview test.
- (h) The Student admitted that she is guilty of knowingly having another person personate her during the oral interview test.
- (i) The Student also admits that, in October 2023, she requested that the hearing in the matter be deferred until after she completes the Winter 2024 semester.

11. Based on the evidence, including the student's admission, the Panel concluded that Charge 1 had been proven with clear and convincing evidence on a balance of probabilities and accepted the guilty plea of the Student in respect of that charge.

12. The University withdrew the alternative Charges 2 & 3.

Penalty

Evidence Called by the Student

13. In addition to testifying, the Student called two witnesses in support of her argument for a penalty of a 2-year suspension.

14. Mr. Phillip Potts was called as a ‘character witness’. He also provided a written statement of support. He had been the Student’s English tutor during her elementary and high school years. Mr. Potts was not directly involved with the matters in issue, nor was the Student being tutored by him during the relevant period. He testified that she was a dedicated student, and he commented on his observation that the Student felt quite pressured to do well academically and to please her parents.

15. The Student also called Dr. Julia Kim. Dr. Kim was an employee in the University of Toronto’s Health and Wellness Centre in 2022. She saw the Student for 2 sessions in October 2022. The purpose of the sessions was to gather information about the Student’s needs, to address any immediate issues and to determine what services would be of most benefit. Following the two intake interviews, Dr. Kim assigned the Student to another clinician in the practice and did not provide therapeutic services to the Student herself.

16. Oddly, despite the fact that the Student attended the clinic over a year following being made aware that she had been caught and was charged with academic misconduct, she did not specifically discuss the circumstances that gave rise to the case or the fact that she was facing academic misconduct charges during her consultation with the clinic. Dr. Kim learned of the case when she was contacted by the Student’s counsel. Because Dr. Kim did not see the Student contemporaneous with the incidents at issue in this case nor did she discuss with the Student, Dr. Kim was unable to speak specifically to the Student’s mental health condition at the time of the events that led to this case. Given that, Dr. Kim’s written and oral evidence is of limited value.

17. The Student had also submitted a “character reference” letter from her cousin Tianyong Zhang. We were advised that Tianyong Zhang would attend to testify but he did not. The letter provided speaks to the Student’s general good character and about her desire to please her

traditional Chinese parents but does not speak to any of the specific facts of this case. As such, this written reference is of limited value.

18. The Provost sought:

- (a) a final grade of zero in the course FSL102H1S in Summer 2021;
- (b) a suspension from the University for five years commencing on June 4, 2024; and
- (c) a notation of the sanction on the Student's academic record and transcript for six years from the date of the Order.

Decision of the Panel

19. In determining penalty, the Panel is directed to consider the goals and principles outlined in the seminal *University of Toronto and Mr. C* decision (Case No. 1976/77-3, November 5, 1976):

- (a) *The Character of the Student:* The Student attended every hearing date and appears to have been fully engaged in these proceedings. She testified forthrightly and it is worth noting that she admitted guilt once confronted about the misconduct. Mr. Potts also testified as to her dedication as a student. That said, the conduct in which the Student engaged is also a factor in assessing her character. She contacted her instructor in writing on August 2, 2021 to ask if she could have the camera off during the oral test scheduled to take place on August 6, 2021. In doing so, she was essentially setting the stage for personation. She also testified that she did not know the person she paid to take the oral examination. She testified that her friend helped her make the necessary arrangements and she sent the payment to her friend. The evidence indicates that she went to great lengths to mislead her instructor and cheat on the test. This act of misconduct was at least a few days in the making, meaning there was a lot of time for a rethink. It is true that, once caught, she has been forthright. However, in assessing her character, we must take a holistic view.

- (b) *The likelihood of repetition of the offence:* As indicated above, the Student has expressed remorse. She expressed it in her testimony and also in her written letter of apology which was prepared for the purpose of this hearing. In it, she emphatically promises that “this is the first and last time something like this will ever happen to me.” Having sat through this hearing and having experienced the consequences of academic misconduct one would hope that the likelihood of repetition is small.
- (c) *The nature of the offence committed:* The most notable aspect of this offence is the amount of premeditation required. To pull this off, the Student: sought permission to turn her video off; engaged a third party to assist; through the third party, found someone who both had the skills to perform better than she could on the test and was willing to participate in this act of misconduct; paid the person through the third party; to see this through, she would also have had to provide the person personating her with the credentials necessary to attend the oral test in her place.

A less vigilant instructor could have missed the signs of personation. The student abused her instructor’s desire to be accommodating i.e. allowing students to take the test without their video.

The sequence of events leading to this act of personation and the fact that there was a commercial element (she paid the impersonator) are most concerning.

- (d) *Any extenuating circumstances:* The witnesses on behalf of the Student testified to the pressures she felt from her family. Although, neither Mr. Potts nor Dr. Kim could speak to the Student’s specific circumstances at the time of the misconduct, they both spoke of the general pressure she felt to be a higher performer.

The Tribunal is sympathetic to the fact that the Student felt pressure to perform well. That said, we do not find the circumstances so unusual as to amount to an extenuating circumstance for sentencing purposes. It would be troublesome for the Tribunal to find, in broad terms, that a family having a high or very high standard

of their child or a diagnosis of anxiety or depression are an extenuating circumstance that should relieve students from the full consequences of misconduct they engage in. As the Student notes in her apology letter, there were other options available to her and she chose not to avail herself of them. This is not to say that there could not be a case in which the pressure exerted by parents or a student's mental health condition could be so extreme as to be a factor worth considering in sentencing. However, this is not that case. The Tribunal does not find evidence of an extenuating circumstance on these facts.

- (e) *The detriment to the University caused by the misconduct:* As already mentioned, misconduct of this kind is very difficult to detect. On these facts, the Student took advantage of the instructor's attempt to accommodate her. In order to prevent this type of misconduct the University would have to be less willing to accommodate students which will unfairly impact students who legitimately seek such accommodations.

In addition, Universities have an interest in protecting the integrity of the credits, grades and degrees they confer. Had the Student succeeded in misleading the instructor, she may have received a grade which misrepresented her level of French proficiency, and the University would have unwittingly been party to misleading others, including potential employers or other institutions to which the Student may apply with her transcript.

- (f) *The need for general deterrence:* Given the difficulty of detecting these types of misconduct, the consequences upon detection need to be severe enough to deter others from committing similar misconduct.

20. There is no dispute between the parties that a five-year suspension is typical in these cases. In fact, the cases suggest that expulsion would be a reasonable consequence in a personation case. However, a review of the case law in which the student admits guilt and cooperates in the proceeding, indicates that the outcome is typically reduced to a 5-year suspension. In that respect, the penalty sought by the university, in this case, is squarely within the typical range. In the five-year suspension cases, what seems to vary is the length of the

notation on the students' record. In cases in which the students have been fully cooperative, as the Student has been in the case before this tribunal, the period of the notation has ranged from a notation until graduation to a permanent notation. While the range is seemingly wide, the typical notation is 5 – 6 years in duration.

21. The facts in this case are similar to the facts in a number of the personation cases. There are no extenuating circumstances that would dictate an outcome different from the other cases reviewed.

Prosecutorial conduct

22. At various points in the hearing and in submissions, the Student's counsel made comments alleging or suggesting that the Provost's counsel was over-reaching. An example was in his questioning of the Provosts' decision not to address the Student's GPA. When probed and/or when asked if he wished to bring a related motion, he would back away. That was an unusual feature of this case, and I would be remiss if I did not mention it as it came up enough times such that the Provost's counsel addressed it in her submissions.

23. I mention this simply to state that I did not observe anything untoward about the way that counsel conducted themselves through this hearing.

Decision of the Panel

24. During the sanction hearing reference was made to the fact that the Student has continued to take courses at the university during these proceedings. She was enrolled in a course at the time of the sanction hearing. Both counsel pondered how to address that as the fact was news to the Provost's counsel. The Panel deliberated and determined that any suspension imposed would be effective on January 1st, 2025 to allow the student to get the credit for the course that she was taking.

25. For the reasons stated above, at the conclusion of the hearing the Panel made the following orders:

1. **ORDERS THAT** the Student is guilty of one count of personation, contrary to B.I.1(c) of the *Code*;
2. **ORDERS THAT** the following sanctions shall be imposed on the Student:
 - (a) a final grade of zero in FSL102H1S in Summer 2021;
 - (b) a suspension from the University for five years commencing on January 1, 2025;
and
 - (c) a notation of the sanction on the student's academic record and transcript for six years from the date of this order.
3. **ORDERS 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 10th day of February 2025

Original signed by:

Omo Akintan, Chair
On behalf of the Panel