

**UNIVERSITY TRIBUNAL
UNIVERSITY OF TORONTO**

IN THE MATTER OF charges of academic dishonesty made on July 22, 2011,

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 -

X [REDACTED] [REDACTED] D [REDACTED]

Hearing Date: November 23, 2011

Members of the Panel:

Mr. William McDowell, Barrister and Solicitor, Chair
Dr. Chris Koenig-Woodyard, Faculty of English, Faculty Panel Member
Mr. Jake Brockman, Student Panel Member

Appearances:

Mr. Robert Centa, Assistant Discipline Counsel, Paliare Roland Barristers
Mr. Damon Chevrier, Registrar St. Michael's College
Ms. Deanne Saunders, Director Academic Services
Professor John Britton, Dean's Designate, Faculty of Arts and Science

In Attendance:

Ms. Betty-Ann Campbell, Law Clerk, Paliare Roland Barristers
Mr. Jason Marin, Administrative Assistant, Appeals, Discipline and Faculty Grievances
Ms. Natalie Ramtahal, Coordinator, Appeals, Discipline and Faculty Grievances

Not in Attendance:

Ms. D [REDACTED], the Student

[1] Ms. D■■■■'s matter came before the University Tribunal on November 22, 2011. She did not appear and was convicted in her absence of the offences charged, as set out, *infra*. Having heard submissions from counsel for the University, we directed that Ms. D■■■■ receive the final grade of 0 in the course of specifying the order and that she suspended from the University for five years. The Tribunal further recommended to the President that he recommend to the Governing Council that Ms. D■■■■ be expelled from the University.

[2] Mr. Centa on behalf of the Provost, presented a Notice of Hearing charging Ms. D■■■■ with the following:

1. In December 2010, you knowingly forged or in any other way altered or falsified a document or evidence required by the University of Toronto, or uttered, circulated or made use of any such forged, altered or falsified document, namely, a University of Toronto Student Medical Certificate, dated December 12, 2010, which you submitted to the Faculty of Arts and Science Committee on Standing ("Committee") in support of your request for academic accommodations or relief, contrary to Section B.I.1(a) of the Code.
2. On February 22, 2011, you knowingly forged or in any other way altered or falsified a document or evidence required by the University of Toronto, or uttered, circulated or made use of any such forged, altered or falsified document, namely, a University of Toronto Student Medical Certificate, dated February 15, 2011, which you submitted in support of your request for academic accommodations, contrary to Section B.I.1(a) of the Code.
3. On February 28, 2011, you knowingly forged or in any other way altered or falsified a document or evidence required by the University of Toronto, or uttered, circulated or made use of any such forged, altered or falsified document, namely, a University of Toronto Student Medical Certificate, dated February 28, 2011, which you submitted in support in support of your request for academic accommodations, contrary to Section B.I.1(a) of the Code.
4. On March 1, 2011, you knowingly falsified evidence required by the University of Toronto, namely, a "Personal Statement to the Committee on Standing", which you submitted to the Committee in support of your request for academic accommodations or relief, contrary to Section B.I.1(a) of the Code.
5. On March 1, 2011, you knowingly forged or in any other way altered or falsified a document or evidence required by the University of Toronto, or uttered, circulated or made use of any such forged, altered or falsified document, namely, a University of Toronto Student Medical Certificate, dated December 12, 2010, which you submitted to the Committee in

support of your request for academic accommodations or relief, contrary to Section B.I.1(a) of the Code.

6. On April 27, 2011, you knowingly falsified evidence required by the University of Toronto, namely, a Personal Statement, which you submitted to the Committee in support of your request for academic accommodation, contrary to Section B.I.1(a) of the Code.
7. On April 27, 2011, you knowingly forged or in any other way altered or falsified a document or evidence required by the University of Toronto, or uttered, circulated or made use of any such forged, altered or falsified document, namely, a document that purported to be a University of Toronto Medical Certificate, dated April 5, 2011, which you sent to the Committee in support of your request for academic accommodations, contrary to Section B.I.1(a) of the Code.
8. In the alternative to each of the charges above, you knowingly engaged in a form of cheating, academic dishonesty or misconduct, fraud or misrepresentation not otherwise described in order to obtain academic credit or other academic advantage of any kind by submitting falsified or forged documents to the University of Toronto in support of various forms of academic accommodation or relief, contrary to Section B.I.3(b) of the Code.

[3] For the reasons which follow, the Tribunal found that particulars 1 through 7 had been established. Mr. Centa withdrew charge 8. The Tribunal accepted the submission made on behalf of the University that Ms D [REDACTED] should be expelled.

Service

[4] Mr. Centa took us through the documents related to notice of the hearing. In brief, the Assistant Discipline Counsel and his office had attempted to reach Ms. D [REDACTED] repeatedly since August 2011. The student had moved from her residence at 44 [REDACTED] Street and it proved difficult to serve notice. There was a telephone call between Betty-Ann Campbell, a law clerk who works with the Assistant Discipline Counsel, and Ms. D [REDACTED] on November 4, 2011 and on November 19, 2011 a process server, Mervyn Archdall, served the student with the disclosure brief and Notice of Hearing. While three days' notice might be considered in other circumstances to have been short notice for a hearing of this importance, the student has not appeared, or communicated in any way an intention to take a position with respect to these proceedings. Accordingly, we directed that the matter proceed before us.

The Merits

[5] We ultimately accepted the allegations in the Notice of Hearing that the student filed a number of petitions with supporting medical documentation which was found to have been forged.

[6] On December 12, 2010, Ms. D■■ submitted a medical certificate ostensibly signed by Dr. Paul Arnold which attested to a diagnosis of food poisoning. Ms. D■■ also made a personal statement that claimed that she had suffered from food poisoning together with the usual gastrointestinal symptoms. The medical certificate was forged, and the personal statement was false. Curiously, the student attached the business card of Dr. Paul Arnold, a paediatric psychiatrist at the Hospital for Sick Children, who would not have been a likely candidate to have made the claimed diagnosis. Dr. Paul Arnold, the psychiatrist, suggested that there was another physician at the University Health Network of the same name who practised emergency medicine. Of course, neither physician treated Ms. D■■.

[7] On April 27, 2011, the student submitted a petition to the authorities at St. Michael's College. She explained in her personal statement that medical circumstances required her to defer writing her final exams:

The reason of my petition is illness. I was determined a spontaneous pneumothorax at the beginning of April. When I went to the clinic, the doctor told me it was a collection of air in my chest that causes the lung to collapse, sharp chest pain and shortness breath. After physical examination, he said I needed to do a chest surgery to repair the hole in my lung. The surgery was given on April 7, 2011 and although it was successful I am still required to stay in bed for at least a month. There will be no outdoor activities allowed for me until I am fully recovered. This is why I had to miss all my final exams. [the syntax has not been corrected from the original document]

[8] In support of this broad request, the student furnished a student medical certificate on the standard University form with her student number. Asked to describe the nature of the problem, the physician had written "Spontaneous Pneumothorax, a collection of air in the chest causes the lung to collapse". The physician went on to answer the question related to the effect on the "student's ability to meet, or prevent the student from meeting, academic commitments [...]" as follows:

The student got a chest surgery [sic]. She is required to stay in bed for more than one month and she is not allowed to do any other activities. If worse, admission to emergency is recommended.

[9] It would appear to a reader of the form that Dr. James McNally, a general practitioner at the Bay College Medical and Lockwood Diagnostics Clinic on Bay Street near the University had provided the medical form. The form raised suspicion, however, in that the attending doctor identified himself only as "James M.D." Mr. Chevrier, the Registrar of St. Michael's College, testified that the signature raised sufficient suspicion that other medical certificates and documents submitted by the student were examined.

[10] Dr. McNally did not appear or give evidence. We admitted a note from a member of his office staff, one Helena (surname unknown), in answer to an inquiry from Mr. Chevrier

of St. Michael's College. Helena offered the sensible view that the note appeared to be forged and handwritten by the patient in that Dr. McNally did not sign the way it was written down. The patient was never seen by Dr. McNally and that all the U of T notes are stamped with a note from the clinic. There were apparently no records for the patient of a visit in 2011. We advised counsel that we did not give much weight to this evidence having regard to the fact that it was not under oath and that it was not even correspondence from the physician, but rather from a member of the staff.

[11] The student made significant admissions to Professor John Britton. Professor Britton interviews students who are alleged to have been involved in an academic misconduct. The University requires, pursuant to the Code of Behaviour on Academic Matters, that once an investigation is complete, a student be given a warning by the Dean of the relevant faculty or school or his or her designate. Professor Britton met with Ms. D [REDACTED] and issued the warning in response to which Ms. D [REDACTED] advised that she had provided forged certificates on four occasions. The Code requires that the Dean advise a student that anything that is said in the meeting may be received in evidence against the student at the hearing of any charge with respect to the alleged offence in question. We are satisfied that Ms. D [REDACTED] made the admissions described by Professor Britton during the course of their meeting.

[12] Given that on the occasions on which a forged medical certificate was submitted to the Committee, and the forgeries were accompanied in each instance by a false personal statement, we are satisfied that the seven counts of misconduct have been made out as alleged.

Penalty

[13] We were persuaded that this was an appropriate case in which to recommend to the President that he recommend to Governing Council that it expel the student. We would likely have made such a finding on penalty if even one forgery had been submitted together with one false personal statement given the premeditation involved although we leave that scenario for another day.

[14] In the present case, however, the case for expulsion is extremely strong having regard to the fact that the student neither appeared before us nor offered any explanation for why she had acted as she did.

[15] We have taken account of the factors listed in the matter of Mr. C, November 5, 1976, as they are set out at page 12 of the reasons of the late John Sopinka Q.C. (as he then was). The factors are as follows:

- a) the character of the repetition of the offence;
- b) the likelihood of a repetition of the offence;
- c) the nature of the offence committed;

- d) any extenuating circumstances surrounding the commission of the offence;
- e) the detriment to the University occasioned by the offence;
- f) the need to deter others from committing a similar offence.

[16] In the present case, we know nothing of the character of Ms. D■■■■, the likelihood of a repetition of the offence, or of any extenuating circumstances. It would have been for Ms. D■■■■ to lead evidence about these matters. We do think that the principle of deterrence is important in determination of a fit penalty. In hindsight, the forgeries appear to be obvious. Having said that, they were sufficiently credible to mislead senior officials in two parts of the University. This to us makes it obvious that any penalty imposed must be sufficient to deter others who might consider engaging in this conduct.

Dated at Toronto, this 24th day of January, 2012.



William C. McDowell, Chair