

**THE UNIVERSITY TRIBUNAL
THE UNIVERSITY OF TORONTO**

IN THE MATTER OF charges of academic dishonesty made on November 29, 2016,

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 -

YI [REDACTED] D [REDACTED]

REASONS FOR DECISION

Hearing Date: February 28, 2017

Members of the Panel:

Mr. Shaun Laubman, Lawyer, Chair
Professor Graeme Hirst, Faculty Panel Member
Mr. Daniel Lazzam, Student Panel Member

Appearances:

Ms. Lily Harmer, Assistant Discipline Counsel, Paliare Roland Barristers
Ms. Lucy Gaspini, Manager, Academic Integrity and Affairs, Office of the Dean,
University of Toronto – Mississauga

In Attendance:

Mr. Christopher Lang, Director, Appeals, Discipline and Faculty Grievances, University
of Toronto
Mr. Sean Lourim, Technology Assistant, Office of the Governing Council

Not in Attendance:

Mr. YI [REDACTED] D [REDACTED], the Student

1. The Trial Division of the University Tribunal heard this matter on February 28, 2017. As discussed below, Y [REDACTED] D [REDACTED] (the "Student") did not attend and the hearing proceeded in his absence.
2. The Student was charged as follows:
 - a. On or about November 30, 2015, you knowingly falsified evidence required by the University of Toronto ("University"), namely, a Petition Form ("Petition"), which you submitted to the University in support of your request for academic accommodation in each of ECO349H5, STA258H5, and STA260H5 (the "Courses"), contrary to Section B.I.1(a) of the Code;
 - b. On or about December 18, 2015, you knowingly forged or in any other way altered or falsified a document or evidence required by the University, or uttered, circulated or made use of any such forged, altered or falsified document, namely, a University Verification of Student Illness or Injury Form dated April 29, 2015, which you submitted to the University in support of your request for academic accommodation in the Courses, contrary to Section B.I.1(a) of the Code;
 - c. On or about December 18, 2015, you knowingly forged or in any other way altered or falsified a document or evidence required by the University, or uttered, circulated or made use of any such forged, altered or falsified document, namely a handwritten Notice dated April 29, 2015, which you submitted to the University in support of your request for academic accommodation in the Courses, contrary to Section B.I.1(a) of the Code;
 - d. On or about December 18, 2015, you knowingly forged or in any other way altered or falsified a document or evidence required by the University, or uttered, circulated or made use of any such forged, altered or falsified document, namely, a Medical Absence Report from NewHope Health Network dated April 29, 2015, which you submitted to the University in

support of your request for academic accommodation in the Courses, contrary to Section B.I.1(a) of the Code;

- e. In the alternative to charges 1, 2, 3 and 4 above, on or about November 30, 2015 and December 18, 2015, you knowingly engaged in a form of cheating, academic dishonesty or misconduct, fraud or misrepresentation not herein otherwise described, in order to obtain academic credit of other academic advantage of any kind, in connection with the submission of the following documents, contrary to Section B.I.3(b) of the Code:
 - i. Petition form dated November 30, 2015;
 - ii. Verification of Student Illness or Injury Form dated April 29, 2015;
 - iii. Notice dated April 29, 2015; and
 - iv. Medical Absence Report dated April 29, 2015 from NewHope Health Network. (the "Charges")
3. For the reasons set out in this decision, the Student was found guilty at the Hearing of four counts of forgery, contrary to section B.I.1(a) of the Code of Behaviour on Academic Matters.

Decision to Proceed with the Hearing in the Student's Absence

4. Neither the Student nor any representative on his behalf appeared at the hearing. The Tribunal waited past the scheduled commencement time before beginning the proceeding.
5. Ms. Harmer requested that the Tribunal proceed with the hearing in the Student's absence and presented evidence in support of that submission.
6. The affidavit of Virginia Fletcher, a law clerk at Paliare Roland Rosenberg Rothstein LLP, was tendered and admitted into evidence.
7. Ms. Fletcher's affidavit detailed the repeated communications sent by the University to the Student regarding the Charges. The Student appears to have

ignored all of these communications and chosen the route of non-participation in the disciplinary process.

8. In the months of March and May 2016, eight emails were sent by the University to the Student's email account on file in order to schedule a Dean's meeting to discuss the allegations at issue. The Student did not attend either of the two Dean's meetings that were scheduled.
9. Notice of the Charges was both emailed and couriered to the Student in November 2016. Ms. Fletcher's evidence showed that the Student accessed the University's website as recently as December 2, 2016, which was after the Notice of Charges was delivered to him. Furthermore, Ms. Fletcher's evidence established that the copy of the Notice of Charges that was delivered to the Student's home address on record was retrieved by someone from the mailbox.
10. On February 2, 2017, the Office of Appeals, Discipline and Faculty Grievances, couriered the Notice of Hearing to the Student's home address on record. The courier package was received and signed for by the Student.
11. On February 2, 21 and 22, 2017, the University emailed the Student the affidavit evidence that it relied upon at the Hearing. None of these emails bounced back.
12. Ms. Fletcher provided evidence of other efforts made by the University to contact the Student via social media. These efforts were also ignored. Finally, Ms. Fletcher's evidence established that the Student was very likely in the Mississauga region during the period of time when the University was communicating him. His home address on record, where the courier packages were delivered, was in Mississauga.
13. The University must satisfy its burden under the Rules to provide proper notice of a Hearing before a proceeding will be held without the student's participation. However, at the same time, a student cannot derail the disciplinary process by remaining silent and refusing to participate.

14. In this case, based on the evidence presented, the Tribunal was satisfied that the University had discharged its obligation to provide proper notice to the Student regarding the Charges and the hearing scheduled for February 28, 2017. Therefore, the Tribunal determined that it would proceed with the Hearing in the Student's absence.

The University's Evidence

15. The University submitted affidavit evidence from the following witnesses:

- a. Alvaro Nosedal Sanchez, the professor for STA260H5;
- b. Ramya Thinniyam, the professor for STA258H5;
- c. Michael Ho, the professor for ECO349H5; and
- d. Laura Ferlito, the Assistant Registrar, Academic Standards & Petitions at the University of Toronto Mississauga ("UTM").

16. All of the aforementioned affidavits were properly served on the Student in accordance with the Rules and were admitted into evidence by the Tribunal. The University also tendered a supplementary affidavit from Ms. Ferlito but this was not admitted into evidence as it was not served on the Student in accordance with the Rules. The decision not to accept Ms. Ferlito's supplementary affidavit as evidence did not affect the Tribunal's ultimate decision on the merits.

17. The University also called Lucy Gaspini, the Manager of Academic Integrity at the UTM, as its witness. Ms. Gaspini assisted the Tribunal by reviewing the Student's academic transcript and giving evidence regarding various notations on it as they related to the Courses.

Events Giving Rise to the Charges

18. The University's evidence, which was unchallenged, established that the Student was enrolled in the three Courses during the Winter 2015 semester. Between April

21 and 23, 2015, the Student was supposed to write the final exams for each of the Courses.

19. The Student did not write the final exams on the scheduled dates. Instead, he submitted a petition to write a deferred exam for each Course. The petitions were granted and the final exams were rescheduled to be written during the April Special Deferred Exam Period between April 28 and May 2, 2015.

20. The Student did not end up writing the final exams on the rescheduled deferral dates. As a result, the Student's GPA fell below 1.50 and he was placed on academic probation.

21. In the Summer 2015 semester, the Student performed poorly in the courses he was enrolled in and was suspended for one year due to his poor academic standing. The suspension was for the period of September 1, 2015 to August 31, 2016.

22. Following his suspension, the Student submitted three on-line petition forms, Petition Nos. 45410, 45411 and 45412, requesting late withdrawal without academic penalty from STA260, ECO349, and STA258. These were the three courses from the Winter 2015 semester where the Student failed to write the deferred final exams. The online Petitions for late withdrawal were submitted on November 30, 2015.

23. In his Petitions, the Student explained that he did not write the deferred exams because he had not recovered in time from the illness that caused him to miss the original exam dates. He also stated that he did not appreciate the impact that missing the exams would have on his university career until he was suspended for a year.

24. The day after he submitted the Petitions, on December 1, 2015, the Student visited the Registrar's Office and indicated that he would not be submitting any supporting medical or other documentation for the November Petitions.

25. Despite what he indicated at the time that he submitted the Petitions, the Student did end up providing supporting documentation. On December 18, 2015, he submitted the following documents:

- a. A Verification of Student Illness or Injury form dated April 29, 2015, bearing the name and signature of John P. Winston, ENT Specialist, CPSO # 77179. The Verification Form purported to verify a severe incapacity on the Student's academic functioning from April 29, 2015 to May 5, 2015;
- b. A handwritten note bearing the signature of John P. Winston, dated April 29, 2015. The note purported to describe symptoms experienced by the Student on April 29, 2015 and prescribed two weeks of rest; and
- c. A Medical Absence Report from NewHope Health Network dated April 29, 2015, bearing a stamp for John P. Winston, M.D. ENT Specialist.

26. The University attempted to authenticate the supporting documentation submitted by the Student but was unable to.

27. In her affidavit, Ms. Ferlito described searches that she performed of the College of Physicians and Surgeons of Ontario ("CPSO") website for the registration number (#77179). This was the number that was given for Dr. John P. Winston on the supporting documents submitted by the Student. However, the number did not match a Dr. John P. Winston on the CPSO website. A further search on the website for a "Dr. John P. Winston" yielded no results.

28. Ms. Ferlito also tried searching online for the NewHope Health Network and the address listed for the Network on the Student's documentation. Her searches failed to turn up any results.

29. Next, Ms. Ferlito tried calling the telephone number listed for the NewHope Health Network on the Medical Absence Report. Her first call was not answered and there was no voicemail. Her second call went to a voicemail box that was full.

30. Finally, in February, 2016, the Student emailed Ms. Ferlito and advised that his doctor had said that he had already contacted the University. Ms. Ferlito responded to the Student's email to tell him that there had been no contact from a doctor.

31. There were no further communications from the Student.

Decision of the Tribunal

32. Ms. Harmer, on behalf of the University, submitted that the Student belatedly came to realize the consequences of missing the final exams for the Courses when he was suspended for a year in September 2015. He then decided to apply for late withdrawal from the three Courses in an attempt to avoid the suspension.

33. The University alleged that, in support of his application, the Student submitted false documents, specifically: (1) the Petition forms dated November 30, 2015; (2) the Verification of Student Illness or Injury Form dated April 29, 2015; (3) the Notice dated April 29, 2015; and (4) the Medical Absence Report dated April 29, 2015 from NewHope Health Network.

34. The Tribunal deliberated and after considering the evidence presented by the University and Ms. Harmer's submissions, it unanimously determined that the Student had submitted false documents in an attempt to mislead the University to grant his Petitions for late withdrawal from the Courses.

35. The evidence submitted by the University to support its allegations against the Student was compelling. Ms. Ferlito's evidence cast significant doubt on the authenticity of the so-called medical documents written by a "Dr. John P. Winston" and obtained from the "NewHope Health Network".

36. It also defied logic for the Student to have remained silent for seven months about his alleged illness after missing the deferred final exams. If he had actually obtained the documents in late April 2015, around the time that the deferred final exams were to have been written, one would reasonably expect him to petition for accommodation and provide the documentation at that time.

37. In addition, if the Student actually had been seen by a doctor in April 2015 and had the supporting documentation that he provided in support of his Petitions, it is difficult to explain why he initially told the University that he would not be submitting any supporting documentation for his Petitions. The fact that the Student went completely silent after his email exchange with Ms. Ferlito in February 2016 also is inconsistent with the documentation being authentic.

38. The compelling evidence submitted by the University, coupled with the Student's failure to attend the Hearing and offer any explanation for the suspicious circumstances surrounding his Petitions and supporting documentation, left no doubt for the Tribunal that the Student was guilty of four counts of forgery, contrary to section B.I.1(a) of the Code of Behaviour on Academic Matters.

The Penalty

39. Ms. Gaspini gave evidence for the University at the sanction phase of the Hearing. She explained that on December 1, 2015, the Student admitted guilt for obtaining unauthorized assistance in an unrelated course he took during the 2014 academic year. December 1st was exactly one day after the Student submitted the false Petitions and only a few weeks before he submitted false documents in support of his Petitions.

40. The University provided the Panel with a letter sent to the Student on December 10, 2015, describing the offence for which he had admitted his guilt and outlining the sanction that was imposed on him. That penalty consisted of a mark of zero on the assignment where he obtained the unauthorized assistance, a further reduction of 8 marks to his final grade in the subject course and a notation on his academic record for one year.

41. Importantly, the December 10th letter cautioned the Student about learning from his transgression. The letter spoke to the seriousness of the offence committed by the Student and spoke to the University's belief that "there will be no repetition of similar behaviour in the future." The final paragraph of the letter contained the following

warning “I trust that you have had time to reflect on the seriousness of this incident and will not commit another academic offence.”

42. Despite these warnings, one week after receiving the letter relating to his guilt for obtaining unauthorized assistance in a course, the Student proceeded to submit false documents in an effort to deceive the University and take advantage of a process designed to accommodate students who experience legitimate hardships.
43. In the Tribunal’s view, this type of conduct warrants a strong rebuke and serious sanction.
44. The University provided the Tribunal with a number of precedents for cases where students were found guilty of submitting forged or falsified documents. The University’s submission was helpful in outlining characteristics of the precedents that were either similar or dissimilar from the present case.
45. While the precedents revealed that there is a range in the duration of the suspension imposed as a penalty for these types of cases, a majority of the cases involved a five year suspension.
46. In this case, the Panel felt that a five year suspension was warranted. The aggravating circumstances that were present, including the close proximity of the admission of guilt and sanction for the prior offence, the fact that the Student submitted multiple false documents and the Student’s non-participation in the disciplinary process, all weighed in favour of a penalty towards the upper end of the range. The Tribunal also took account of the importance for the University in maintaining the integrity of the petition process.
47. Accordingly, the Tribunal imposed the following penalty on the Student:
 - a. That the Student receive a final grade of zero in each of the following courses:
 - i. ECO349H5S in Winter 2015;

- ii. STA258H5S in Winter 2015; and
 - iii. STA260H5S in Winter 2015;
- b. That the Student be suspended from the University for a period of five years, commencing on February 28, 2017 and ending on February 27, 2022;
 - c. That the sanction be recorded for a period of six years on the Student's academic record and transcript to the effect that he was sanctioned for academic misconduct, commencing on February 28, 2017 and ending on February 27, 2023; and
 - d. THAT this case shall be reported to the Provost for publication of a notice of the decision of the Tribunal and the sanction or sanctions imposed, with the name of the student withheld.

Dated at Toronto, this 26th day of April, 2017



Shaun Laubman, Co-Chair