

THE UNIVERSITY OF TORONTO
UNIVERSITY TRIBUNAL

IN THE MATTER OF charges of academic misconduct filed on March 5, 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 -

Y [REDACTED] M [REDACTED] (The “Student”)

REASONS FOR DECISION

Hearing Date: June 11, 2020

Panel Members:

Ms. Michelle S. Henry, Chair
Professor Ernest Lam, Faculty Panel Member
Ms. Elizabeth Frangos, Student Panel Member

Appearances:

Ms. Tina Lie, 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 June 11, 2020, 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 March 5, 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 three Affidavits regarding the service on the Student. The Affidavit of Nusaiba Khan, sworn on June 3, 2020 (“Khan Affidavit”). The Khan Affidavit confirmed that, on March 5, 2020, Ms. Khan served the Student with the letter regarding the charges that were filed against her, 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. She served also the Student with these documents by e-mail to the email addresses the Student had provided to the University Repository of Student Information (“ROSI”).
7. The Counsel for the Provost filed the Affidavit of Kimberly Blake, legal assistant at Paliare Roland Rosenberg Rothstein LLP, sworn on June 4, 2020. The evidence of Ms. Blake was as follows:

- a. On March 5, 2020, the Office of the Vice-Provost, Faculty and Academic Life served the charges in this matter on the Student by email to [REDACTED]@mail.utoronto.ca, which is the email address that the Student had provided in ROSI.
 - b. On March 9, 2020, Ms. Lie sent an email to the Student at [REDACTED]@mail.utoronto.ca to introduce herself. Ms. Lie advised that important documents and correspondence would be sent to the Student's utoronto email address.
 - c. On March 26, 2020, Ms. Lie sent the Student a letter and disclosure brief relating to this matter, as well as another copy of the charges and a copy of the University's *Policy on Official Correspondence with Students*. Ms. Lie sent these documents to the Student by email at [REDACTED]@mail.utoronto.ca.
 - d. On April 30, May 5 and May 13, 2020, Ms. Lie sent emails to the Student at [REDACTED]@mail.utoronto.ca regarding the scheduling of the hearing in this matter.
 - e. On May 25 and June 1, 2020, Ms. Lie sent copies of the affidavits on which the University intended to rely at the hearing to the Student at [REDACTED]@mail.utoronto.ca.
 - f. Ms. Lie did not receive a "bounce back" message indicating that any of her emails could not be delivered. The Student did not respond to any of her emails.
 - g. On June 1, 2 and 3, 2020, Ms. Blake tried calling the Student, at different times of the day (i.e., in the morning, afternoon and evening), at 437981-0916, which is the phone number that the Student had provided in ROSI. Each time she tried calling her on her landline, she received a busy signal. There was no opportunity to leave a voicemail message. When she tried to call the Student's number on her cell phone, the call did not connect and her phone indicated that the "call failed".
 - h. On March 26, 2019, the Office of the Registrar and Student Services, Daniels Faculty, sent the Student an email to schedule a meeting for March 28, 2019 to discuss the allegation of academic misconduct that is in issue in this proceeding. However, the Student was a "no show" at the meeting.
 - i. The Student did not contact Ms. Lie's office.
8. The Counsel for the Provost also filed the Affidavit of Mike Wiseman, Associate Director, Strategic Initiatives, Information Security at the University, sworn on June 4, 2020 ("Wiseman Affidavit"). 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 3, 2020, at the request of Tina Lie, Assistant Discipline Counsel for the University of Toronto, Mr. Wiseman checked the data logs to determine the last time someone accessed the email account [REDACTED]@mail.utoronto.ca. He determined that the last time someone accessed this e-mail account was on May 27, 2020 at 9:35 am.
9. Based on the academic history on ROSI, the Student last enrolled in courses at the University in the Fall of 2019. As such, it does not appear that she was a student at the University in 2020, at the time the documents were sent to her. Having said that, based on the Wiseman Affidavit, she accessed her utoronto email account on May 27, 2020, and ought to have seen the Notice of Hearing and the various correspondence from Ms. Khan and Ms. Lie's office.
10. 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 she received the Notice of Hearing advising her that the hearing was scheduled for June 11, 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

11. At all material times, the Student was a registered student at the University, registered in John H. Daniels Faculty of Architecture, Landscape and Design ("Daniels Faculty").
12. The University alleges that the Student, on or about November 19, 2018, the Student 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 such forged, altered or falsified document, namely a Verification of Student Illness or Injury form dated October 29, 2018, which she submitted in support of her request for academic accommodation or relief in ARC100H1, contrary to Section B.I.1(a) of the *Code*.
13. The University alleges that, in the alternative, on or about November 19, 2018, the Student 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 a forged, altered or falsified document, namely a Verification of Student Illness or Injury form dated October 29, 2018, in support of her request for academic accommodation or relief in ARC100H1, contrary to Section B.I.3(b) of the Code.

14. The particulars of the charges were as follows:

- a. In the Fall of 2018, the Student enrolled in ARC100H1 (Drawing and Representation I) (the "Course").
- b. Students in the Course were required to attend several Exercise Reviews. The Student were required to attend in class on November 1, 2018, for her Exercise 2 Review, which was worth 20% of her final grade in the Course. However, she was absent from class on November 1, 2018.
- c. On November 19, 2018, she sent one of the Course instructors a Verification of Student Illness or Injury Form dated October 29, 2018, purportedly signed by Dr. S. Gnanabaskaran of Super Clinic (the "Medical Note"). She submitted the Medical Note to explain her absence from her Exercise 2 Review and to obtain academic accommodation or relief in the Course.
- d. The Medical Note was forged, altered or falsified. It was not prepared or signed by Dr. S. Gnanabaskaran on October 29, 2018.
- e. The Student knowingly submitted the forged, altered or falsified Medical Note:
 - i. understanding that the University of Toronto required legitimate medical documentation and evidence to be presented in order to obtain the academic accommodation or relief she sought;
 - ii. with the intention that the University of Toronto rely on the Medical Note in considering whether or not to provide her with the academic accommodation or relief she requested; and,
 - iii. in an attempt to obtain academic credit and/or other academic advantage.

THE EVIDENCE

15. The Tribunal received the Affidavit evidence of Anne-Marie Armstrong, a sessional lecturer at the Daniels Faculty. Her evidence was as follows:

16. In Fall 2018, she was one of the instructors for the Course. The Course consisted of studio time and lectures. Students were evaluated on a series of Exercise Reviews, which were

project presentations conducted during studio time. Exercise Reviews 1, 2 and 3 were each worth 20% and the final Exercise Review was worth 30% of students' final grades in the Course. An additional 10% of students' final grades was based on a Growth Factor, which assessed students' participation in class.

17. Attendance in studio, lectures and Exercises Reviews was mandatory. Students were told that if they missed class as a result of illness, they were required to submit a Verification of Student Illness or Injury Form completed by a doctor. The course syllabus stated on page 5:

Attendance and participation during the entire scheduled class time for both studio and lecture courses is mandatory. It is not enough to simply show up for a class. Students must be engage in questioning and discussing the work of the class. All students must participate in final studio reviews. The studio grade includes a growth factor/participation through the various studio projects and involvement in the studio. **Unless previously discussed with instructor or cleared with a doctor's note, lateness of more than 10 minutes to studio will result in a 2% deduction from the student's final grade.**

All reviews are mandatory. The dates will be communicated to the class. If you will have to miss class in order to observe a religious holiday, notify the instructor at the beginning of the term by email. In the event of an absence due to illness, injury, or emergency, please communicate with the instructor as soon as possible thereafter.

18. The course syllabus further provided at page 6:

LATE WORK:

All assignments are due in class at the specified time and date. Late submission will result in a 5% deduction (of each assignment's total grade) per day (excluding weekends). In the case of illness or other special circumstance, notification should be given to the instructors and the Registrar as soon as possible and before the deadline in question; where required, the official University of Toronto Verification of Student Illness or Injury form must be submitted. Additional information is available on the Verification of Illness or Injury is available online: <http://www.illnessverification.utoronto.ca/Frequently-Asked-Questions.php>

19. The Student was enrolled in the Course in Fall 2018.

20. On October 18, 2018, the Student sent me an email advising that she was not able to attend class that day due to an illness. She wrote:

My name is Y■■■■ M■■ and I'm in the ARC100 class, 0108. I have caught a flu recently and wasn't able to concentrate on my studies. I had tried my best to study over the passed semester but unfortunately had an extremely bad headache that I wasn't able to attend the class. I'm truly sorry about that and here is my written confirmation. Today I need to go to the clinic again for illness because sudden drop in temperature made the cold become worse.

21. The Student attached a copy of a Verification of Student Illness or Injury form signed by Dr. S. Gnanabaskaran of Super Clinic on October 15, 2018 (the "October 15 Medical Note").

22. A copy of the Student's email and the October 15 Medical Note was included as an exhibit.

23. Since the Student provided the October 15 Medical Note, she was not penalized for her absence in class on October 18, 2018.

24. On November 1, 2018, the Student missed her Exercise Review 2 (which was worth 20% of her final grade).

25. By November 11, 2018, Ms. Armstrong had not heard from the Student about her absence from her Exercise Review 2. As a result, Ms. Armstrong sent the Student an email asking if she still had the flu, and if so, to submit the appropriate documentation. Since she did not receive a response to her email, Ms. Armstrong followed up with the Student on November 16, 2018.

26. On November 19, 2018, the Student responded to Ms. Armstrong's email. She wrote:

I am so sorry to reply to you late, here is my doctor note on presentation day.
We could discuss on Thursday, thanks.

27. The Student's email of November 19, 2018 attached a copy of a Verification of Illness or Injury form signed by Dr. S. Gnanabaskaran on October 29, 2018 (the "October 29 Medical Note"). A copy of my email exchange with the Student, together with the October 29 Medical Note, was attached to Ms. Armstrong's affidavit.

28. Ms. Armstrong stated in her Affidavit that the October 29 Medical Note looked suspicious to her. As a result, she reported the issue to Andrea McGee of the Office of the Registrar and Student Service; at the Daniels Faculty. Someone in Ms. McGee's office confirmed with the doctor that the October 29 Medical Note was forged.

29. On December 10, 2018, Ms. Armstrong met with the Student to discuss her absence for the Exercise Review 2 and the October 29, 2018 Medical Note. This matter was subsequently forwarded to the Office of the Dean.
30. The Tribunal also received the Affidavit evidence of Dr. Gnanbaskaran, the family medicine doctor at the Super Clinic. Dr. Gnanbaskaran confirmed that on October 15, 2018, he saw the Student as a patient in his office. Dr. Gnanbaskaran confirmed that during the October 15, 2018 visit, the Student asked him to fill out a University of Toronto form titled Verification of Student Illness or Injury. He filled out the form, signed and dated it.
31. On February 12, 2020, Dr. Gnanbaskaran confirmed that the October 29, 2018 Medical Note was not signed by him. He confirmed that he did not see the Student on October 29, 2018, and did not complete the October 29, 2018 Medical Note.

DECISION OF THE TRIBUNAL ON CHARGES

32. Having considered all the evidence heard during the hearing and the Affidavit evidence, the Tribunal found that the Student knowingly forged the Verification of Student Illness or Injury form dated October 29, 2018, which she submitted in support of her request for academic accommodation or relief in ARC100H1, contrary to Section B.I.1(a) of the *Code*. It was clear to the Panel that the October 29, 2018 Medical Note was the same October 15, 2018 Medical Note, where the dates had been altered, copied and submitted to Ms. Armstrong.
33. Consequently, the Tribunal finds that the Charge #1 (as outlined in paragraph 12) above had been proven with clear and convincing evidence on a balance of probabilities. Accordingly, the Tribunal entered a finding of guilty with respect to the Charge.

PENALTY

34. The University sought the following penalties:
 - a. a final grade of zero in the course ARC100H1;
 - 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 her 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.

35. The Provost called no further evidence.

DECISION OF THE TRIBUNAL ON PENALTY

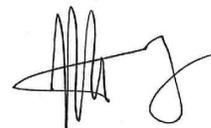
36. The Panel also heard submissions regarding the appropriateness of the penalty, reviewed relevant past decisions of the Tribunal submitted by the University, and considered the factors set out in *University of Toronto and C.* (File No. 1976/77-3; dated November 5, 1976).

- 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 and the lack of response from the Student.
- b. **The likelihood of a repetition of the offence.** The Student did not have a prior record of academic offences. However, given the Student's failure to attend the meeting on March 28, 2019, or attend the hearing, the Panel was unable to make any 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 offences and the detriment to the University. Forgery is considered a serious offence, especially in these circumstances. Given the size of the University, and the fact that the University is unable to verify every single medical note submitted to Instructors, the University must be able to trust that the Students are submitting legitimate Verification of Student Illness or Injury forms and that requests for accommodate are legitimate.
- d. **Any extenuating circumstances surrounding the commission of the offence.** The Student did not participate in this hearing. Accordingly there is no evidence before the Tribunal of mitigating or extenuating circumstances.
- e. **The detriment to the University occasioned by the offence.** The Panel understood and accepted the University's concerns that the Student's conduct in forging medical notes 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. .

37. As established in *University of Toronto and Mr. C, supra* and other cases to follow, 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.
38. Having regard to the cases, the submissions of the University, and the relevant factors outlined above, the Panel agrees that the recommended sanctions are appropriate.
39. At the conclusion of the hearing, the Panel made the following Order:
- a. 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*.
 - b. The following sanctions shall be imposed on the Student:
 - i. a final grade of zero in the course ARC100H1;
 - 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 the Student's academic record and transcript from the date of this order for a period of three years; and
 - c. This case shall 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, June 23, 2020.



Michelle S. Henry, Co-Chair