

UNIVERSITY OF TORONTO
UNIVERSITY TRIBUNAL

IN THE MATTER OF charges of academic dishonesty filed on November 13, 2017

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

Y [REDACTED] X [REDACTED]

REASONS FOR DECISION

Hearing Date: April 4, 2018

Members of the Panel:

Mr. Paul Michell, Chair
Professor Bruno Magliocchetti, Faculty Panel Member
Mr. David Kleinman, Student Panel Member

Appearances:

Ms. Lily I. Harmer, Assistant Discipline Counsel for the University, Paliare Roland Barristers

In Attendance:

Ms. Tracey Gameiro, Associate Director, Appeals, Discipline and Faculty Grievances
Ms. Nisha Panchal, Student Conduct & Academic Integrity Officer, Office of the Dean & Vice Principal Academic, University of Toronto Scarborough
Mr. Sean Lourim, Technology Assistant, Office of the Governing Council

Not In Attendance:

Ms. Y [REDACTED] X [REDACTED], Student

A. Charges

1. On April 4, 2018, this panel of the University Tribunal held a hearing to consider the charges brought by the University of Toronto against Y [REDACTED] X [REDACTED] (the “Student”) under the *Code of Behaviour on Academic Matters, 1995*.
2. Those charges were detailed in a letter to the Student dated November 13, 2017, as follows:
 1. On or about April 4, 2015, you did knowingly forge or in any other way alter or falsify an academic record, and/or did utter, circulate or make use of such forged, altered or falsified record, whether the record be in print or electronic form, namely an official transcript from Simon Fraser University submitted with an application for admission to the University, contrary to section B.I.3(a) of the *Code*.
 2. In the alternative to paragraph 1, on or about April 4, 2015, you did knowingly engage 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, by submitting an Official Transcript from Simon Fraser University submitted with an application for admission to the University which was forged, altered or falsified, contrary to section B.I.3(b) of the *Code*.
 3. On or about September 30, 2015, you did knowingly forge or in any other way alter or falsify an academic record, and/or did utter, circulate or make use of such forged, altered or falsified record, whether the record be in print or electronic form, namely an official transcript from Simon Fraser University submitted to the University with a request for a transfer credit assessment, contrary to section B.I.3(a) of the *Code*.
 4. In the alternative to paragraph 3, on or about September 30, 2015, you did knowingly engage 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, by submitting an official transcript from Simon Fraser University with a request for a transfer credit assessment by the University which was forged, altered or falsified, contrary to section B.I.3(b) of the *Code*.
3. The Student is an undergraduate at the University of Toronto Scarborough (“UTSC”).

4. The Student did not attend the hearing. She was not represented by counsel. The Tribunal called the hearing to order at the scheduled 5:45 p.m. start time. As the Student was not present, we waited for 15 minutes. The Student did not appear by 6:00 p.m. or afterward.

B. Notice and Hearing in the Student's Absence

5. At that point, the Provost asked the Tribunal to find that the Student had been provided with proper notice of the hearing, and that the hearing should proceed in the Student's absence.

6. The Provost led evidence that the University sent a notice of hearing dated February 16, 2018, and charges dated November 13, 2017 to the University email account provided by the Student and registered in ROSI (the "Account"). The charges were also sent by courier to the Student's postal address registered in ROSI. We discuss that evidence in more detail below.

7. After the University became concerned in September 2016 that the Student may have committed academic offences (due to events described in the Liability section below), Ms. Nisha Panchal (Student Conduct & Academic Integrity Officer, Office of the Dean & Vice Principal Academic, UTSC) sent an email on September 27, 2016 to the Account, attaching a letter from Professor Eleanor Irwin, Dean's Designate, and an Information Sheet.

8. The letter advised the Student of possible academic offences, and asked her to arrange a meeting with Academic Integrity. The Student did not schedule a meeting.

9. Ms. Panchal followed up on October 31, 2006 by an email to the Account, advising that if the Student did not set up a meeting with Academic Integrity within one week, her file would be sent to the Vice Provost for consideration. The Student did not attend a Dean's meeting. On November 15, 2016, Ms. Panchal emailed a letter to the Account from Professor Douglas A.

Bors, advising the Student that her file was being sent to the Vice-Provost with the request that she lay charges against the Student.

10. The University's Policy on Official Correspondence with Students requires students enrolled at the University to maintain a current and valid postal address and an address for a University-issued email account in their ROSI records, to update their records when this information changes, and to monitor and retrieve their mail and email on a frequent and consistent basis.

11. When the University sent the charges and related material to the Account on November 13, 2017, it received no bounceback to the email. However, a courier package with the same contents sent to the Student's address was returned: the concierge at the apartment building advised that it was an "incorrect address." When the University sent a follow up email to the Student (both at her Account, and at another email account), it received no bouncebacks and no response. A subsequent email in February 2018 proposing hearing dates met the same fate.

12. The University sent the notice of hearing to the Student on February 16, 2018 at her Account. In March, it also sent copies of the affidavits of Ms. Panchal and Ms. Onorati (whose evidence we discuss below) to her Account. Again, no bouncebacks were received.

13. The University made additional efforts, through telephone number searches, phone calls, and social media searches and messaging, to contact the Student. It received no response.

14. The Provost led evidence that the Student last accessed the Account on July 18, 2017.

15. The Student has not responded to any of these efforts to contact her, nor contacted counsel for the Provost.

16. In light of this evidence, the Tribunal found that the University had provided the Student with reasonable notice of the hearing and the charges made against her in accordance with rules 9, 13 and 14 of the Tribunal's *Rules of Practice and Procedure* and section 6 of the *Statutory Powers Procedure Act*. The Tribunal ordered that the hearing should proceed in the Student's absence, as rule 17 of the Rules and section 7 of the *Act* provide.

17. The panel is in no position to determine whether the Student had *actual* notice of the hearing or the charges against her: the evidence that she has not accessed her Account since July 2017 would suggest that she did not. But there is no need for us to do so: the University is entitled to rely on its Policy, discussed above, in communicating with students. Students who do not comply with the Policy by failing to provide accurate and up-to-date contact information, or to monitor and retrieve their mail and email on a frequent and consistent basis, run the risk that important steps may be taken in their absence. What the panel must decide is whether the University took reasonable steps to notify the Student of the charges against her and of the hearing. We are satisfied that it did, and that it complied with the *Rules* and the *Act* in doing so. Indeed, the University's efforts exceed what was required of it.

C. Affidavit Evidence

18. The Provost sought to enter two affidavits into evidence: an affidavit of Lynda Onorati affirmed February 27, 2018, and an affidavit of Virginia Fletcher sworn April 4, 2018. On reviewing the affidavits, the Tribunal concluded that this was an appropriate case in which to admit evidence by way of affidavit, as rule 61 of the Rules permits. In the Student's absence, the affiants would not be subject to cross-examination. We did advise Ms. Harmer that if the panel had questions about the affidavit evidence that she was not in a position to address, that the affiants might need to attend the hearing, but this did not prove necessary.

19. The panel also notes that there was evidence that the Provost had provided a copy of Ms. Onorati's affidavit on which it sought to rely to the Student's Account several weeks before the hearing, and Ms. Fletcher's affidavit on the day of the hearing (since it had only been sworn earlier that day), but had received no response from the Student.

D. Liability

20. In April 2015, the Student applied for admission to the University as a transfer undergraduate student. In support of her application, the Student submitted what purported to be an official transcript of her academic record from Simon Fraser University ("SFU") in British Columbia.

21. In June 2015, in reliance on her application and the SFU transcript, the Student was admitted to the University. She began classes in September 2015.

22. In late September 2015, the Student sought to transfer credits through a request for transfer credit assessment for all of the courses reflected in her SFU transcript. The Student's request relied on the same SFU transcript she had submitted in support of her application for admission to the University.

23. In October 2015, on the basis of the SFU transcript, the University granted 9.5 academic credits to the Student. This represented almost all of the courses on the SFU transcript.

24. In Fall 2015, the Student registered for two courses at UTSC, but failed both. In Winter 2016, she registered for three courses, failing two and passing one with a weak ("D") grade.

25. In Fall 2016, the Student registered for classes, but as we note below, withdrew from them in October 2016. By the end of Winter 2016, she had earned only 0.50 credits at UTSC for the single course she had passed, with a cumulative GPA of 0.20.

26. In September 2016, Neil Neebar, Associate Registrar at University of Toronto Mississauga, contacted Ms. Onorati regarding the authenticity of a transcript that appeared to be from SFU and had been submitted by a UTM student.

27. This led Ms. Onorati to contact SFU about six transfer students from SFU, including the Student. Ms. Onorati contacted Rella Ng, Associate Registrar at SFU, and asked her to check the authenticity of the SFU transcripts for the six transfer students, which Ms. Onorati emailed to Ms. Ng after their telephone call.

28. Several days later, Ms. Ng responded by email, advising that none of the six transcripts (including the Student's) had been issued by SFU. She pointed out various discrepancies in each of the six transcripts. In the case of the Student's transcript, Ms. Ng noted that:

- the student number on the Student's transcript was identical to that on the transcript of one of the other students
- the Student's transcript was signed by someone who was no longer at SFU as of the date of the transcript
- the signature line on the transcript did not identify the signor's name and position, while legitimate SFU transcripts contain this information.

29. Ms. Ng also confirmed that the Student had never enrolled at SFU.

30. There were other grounds for concern. A comparison between the transcript submitted by the Student and the transcripts submitted by the other five students that Ms. Onorati had

identified show substantial similarities between the Student's transcript and those of two of the five other students, S.W. and Z.Z. (We discuss Z.Z. briefly in the Sanction section of our reasons below). For the first four semesters, each of these students' transcripts showed the same course codes, description, and grades. The only differences in the first four semesters were the semester date headings, which were slightly different because each student was shown as having taken these courses in different years and semesters (the Student was recorded as starting the four semesters in 2013 Fall; S.W. in 2012 Fall; and Z.Z. in 2012 Winter).

31. Ms. Ng's email led Ms. Onorati to examine the Student's history in more detail. She learned that the Student had previously applied for admission to the University in 2014 as an Ontario high school student, but had been refused admission. Ms. Onorati reviewed the academic history that the Student had provided in support of her 2014 and 2015 applications to the University. That history showed that the Student had attended four academic institutions (SFU, plus three different Ontario high schools) in Fall 2013.

32. The Tribunal deliberated to consider this evidence. Our conclusion was that the evidence was overwhelming that the SFU transcript was a forgery. The evidence from Ms. Ng is itself conclusive. The substantial and implausible overlaps in courses and grades with two other students over four semesters are strong additional evidence. Ms. Onorati's evidence about the Student's supposed attendance at multiple institutions at the same time is suspicious, but given the other evidence it was unnecessary for us to rely on that evidence in making our finding.

33. In our view, the inevitable conclusion from the evidence before us was that the Student either knowingly forged the SFU transcript herself, or more likely in light of evidence of the similarities between her transcript and that of two other students, obtained the assistance of one

or more third parties in forging it. In either case, she then knowingly submitted it to the University to seek admission, and later, to obtain transfer credits from the University. It does not matter whether she was the forger, given the language of the charges and the *Code*. Knowingly uttering, circulating or making use of a forged or falsified transcript is treated as severely as knowingly forging or falsifying a transcript. We are satisfied that the Student knowingly submitted a forged transcript in support of her application for admission to the University, and relied on it in seeking transfer credits from the University after she had been admitted. We found the Student guilty on the first and third charges.

34. In light of our findings on the first and third charges, the Provost withdrew the second and fourth charges.

E. Sanction

35. The Provost sought an order imposing the following sanctions on the Student:
- (a) she be suspended from the University for up to five years, commencing April 4, 2018;
 - (b) the Tribunal recommend to the President of the University that she recommend to the Governing Council that the Student be expelled from the University;
 - (c) the 9.5 transfer credits assessed and granted as if earned by the Student from Simon Fraser University be cancelled and removed from the Student's academic record;
 - (d) a permanent notation be placed on the Student's academic record and transcript; and
 - (e) the decision be reported to the Provost, for publication of a notice of the decision of the Tribunal and the sanctions imposed, with the Student's name withheld.

36. Counsel for the Provost submitted a book of authorities, and referred to several cases in argument. We refer to several of those cases below.

37. After deliberation, we accepted the Provost's submissions on penalty, and signed the Provost's draft order. These are the panel's reasons for that decision.

38. One sanction sought by the Provost concerned the cancellation of academic credits that the Student had been granted on the basis of the forged transcript. The panel was satisfied on the evidence that this was an appropriate remedy in the circumstances, and that it was open to us to order that relief under section C.ii(b)(j)(ii) of the *Code*. We raised the issue of whether it would be open to the panel to revoke the Student's admission to the University on the basis that it had been granted in reliance on a forged transcript. However, Ms. Harmer indicated that the Provost did not seek this sanction here, and that the Provost did not seek the cancelation of the academic credits that had been granted to the Student for the one course that she had passed at the University after her admission. So that issue, which does not appear to us to be squarely addressed by the *Code*, will wait for another day.

39. In imposing a penalty for forgery or falsification of an academic record, we have considered several principles, which I recently outlined in *J.Z.* [Case No. 928; June 5, 2017] at paras. 18-21:

- Forgery or falsification of academic records is among the most serious academic offences
- Forgery may be difficult to detect, so that deterrence is a significant consideration
- By its nature, forgery is only rarely the product of negligence or inadvertence. More commonly, it is the product of planning and knowing participation.

40. These principles lead to the conclusion, which has been repeatedly voiced in recent decisions, that the usual sanction for forgery or falsification of academic transcripts is a recommendation of expulsion: *A.B.* [Case No. 917; June 13, 2017] at para. 18; *J.F.* [Case No. 915; May 29, 2017] at para. 14; *J.Z.*, at para. 22.

41. That conclusion does not depend upon whether the forged transcript purports to be a University document or, to use the language in *J.Z.* at para. 23, an “incoming” transcript from another academic institution that a student submits in support of an application for admission, transfer, academic credit, or another academic purpose. A student who obtained admission to the University on the basis of a forged transcript does so on false pretences. Not only does such conduct harm the University; it also harms a legitimate applicant whose spot the cheating student took: *M.M.* [Case No. 496; April 30, 2009] at para. 13.

42. As we observed above, the Student did not attend the hearing. Indeed, the evidence is that she has failed to play any role in (or respond to) the discipline process. There was thus no evidence before us of any possible explanation or mitigating circumstances that might exist. There was no evidence before us as to whether the Student had any prior record of academic offences, and so we proceeded on the assumption that these were the Student’s first offences.

43. Ms. Harmer advised us that the Provost had also instituted proceedings against Z.Z., one of the other students referred to above who had been granted admission to the University on the basis of what the University later came to believe was a forged SFU transcript. Another panel of the Tribunal heard the charges against Z.Z. [Case No. 958; April 17, 2018] on March 21, 2018, found him guilty of one count of forgery, and recommended that the President of the University

recommend to the Governing Council that Z.Z. be expelled. As of the date of the Student's hearing before us, the panel that heard Z.Z.'s case had not yet released its reasons for decision.

44. We considered the panel's order in Z.Z. and believe that the sanctions ordered here are consistent with it. After the hearing in this case, Z.Z. panel released reasons for decision on April 17, 2018, which we have reviewed and consider persuasive.

45. Ultimately, there is nothing here to dissuade us from imposing the usual sanctions for these serious offences.

46. For these reasons, the Tribunal accepted the Provost's submissions on sanction, and signed an order at the hearing imposing the following sanctions on the Student:

- (a) she be suspended from the University for up to five years, commencing April 4, 2018;
- (b) the Tribunal recommends to the President of the University that he recommend to the Governing Council that the Student be expelled from the University;
- (c) the 9.5 transfer credits assessed and granted as if earned by the Student from Simon Fraser University in the following courses be cancelled and removed from the Student's academic record:
 - (i) MATA30H3 (Calculus for Biological and Physical Sciences);
 - (ii) MGEB31H3 (Public Decision Making);
 - (iii) STAB22H3 (Statistics I);
 - (iv) EESA (Geohazards);
 - (v) ENGA (Intro to Fiction);

- (vi) ENGB (Medieval Literature);
 - (vii) HISA (Canada Since Confederation);
 - (viii) HUMA (Academic Writing);
 - (ix) HUMA (Intro to Humanities);
 - (x) MDSA (Systems of Media);
 - (xi) MGEA (Intro to Microeconomics);
 - (xii) MGEA (Intro to Macroeconomics);
 - (xiii) MGEB (Economic Thought);
 - (xiv) MGEB (Labour Economics)
 - (xv) MGEB (Pre-Industrial Period);
 - (xvi) MGEB (Money and Banking);
 - (xvii) MGEB (Environmental Economics);
 - (xviii) PHLA (Critical Thinking); and
 - (xix) PSYB (Research Methods);
- (d) a permanent notation be placed on the Student's academic record and transcript; and
 - (e) the decision be reported to the Provost, for publication of a notice of the decision of the Tribunal and the sanctions imposed, with the Student's name withheld.

Dated at Toronto, this 19th day of April, 2018.



Paul Michell, Chair