

**THE UNIVERSITY TRIBUNAL
THE UNIVERSITY OF TORONTO**

IN THE MATTER OF charges of academic dishonesty filed on November 30, 2015,

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 -

S [REDACTED] R [REDACTED]

REASONS FOR DECISION

Hearing Date: March 8, 2016

Members of the Panel:

Ms. Johanna Braden, Barrister and Solicitor, Chair

Professor Michael Evans, Faculty Panel Member

Mr. Adam Wheeler, Student Panel Member

Appearances:

Mr. Robert Centa, Assistant Discipline Counsel, Paliare Roland, Barristers

Ms. Lauren Pearce, Student-at-law, Paliare Roland, Barristers

Ms. Laura Ferlito, University of Toronto Mississauga, Office of the Registrar

In Attendance:

Ms. Lucy Gaspini, Office of the Dean, Manager, Academic Integrity & Affairs

Ms. Tracey Gameiro, Office of Appeals, Discipline and Faculty Grievances

Not In Attendance:

Ms. S [REDACTED] R [REDACTED], Student

1. The Trial Division of the University Tribunal was convened on March 8, 2016, to consider charges brought by the University of Toronto ("the University") against Ms. S [REDACTED] R [REDACTED] ("the Student") under the *University of Toronto Code of Behaviour on Academic Matters*, 1995 ("the Code").

Preliminary Issue: Proceeding in the Absence of the Student

2. The hearing was scheduled to begin at 1:45 pm. The Tribunal waited until 2 pm to commence the hearing. Neither the Student, nor a representative of the Student, appeared.

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. The University requested that the Tribunal proceed with this hearing

4. Pursuant to Rule 9, a notice of hearing may be served on a student by various means, including by:

1. sending a copy of the document by courier to the student's mailing address contained in ROSI (the Repository of Student Information);
or
2. 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. Students are expected to

monitor and retrieve their mail, including electronic messaging accounts issued to them by the University, on a frequent and consistent basis.

6. The onus of proof is on the University under the Act and the Rules to establish that it provided the Student with reasonable notice of the hearing in accordance with these provisions.

7. The University filed affidavit evidence showing that the Student had been sent the Notice of Hearing dated January 26, 2016 by way of email to the Student at the email address she had provided on ROSI, and by courier to the mailing address the Student had provided on ROSI.

8. The University also filed affidavit evidence showing that the Student had been served with the charge filed on November 30, 2015 by way of email to the Student at the email address she had provided on ROSI.

9. The Tribunal reviewed the evidence and the submissions of counsel for the University and concluded that the Student was given reasonable notice of the hearing in compliance with the notice requirements of the Act and the Rules.

10. The University has proven that it provided reasonable notice of the time, date, place and nature of the hearing to the Student. The Tribunal therefore determined that it would proceed to hear the case on its merits in the absence of the Student. The hearing proceeded on the basis that the Student was deemed to deny the Charge made against her.

The Charge and Particulars

11. The Charge and Particulars alleged against the Student are as follows:

1. Between October 9, 2014, and March 17, 2015, you knowingly forged or in any other way altered or falsified an academic record, and/or uttered, circulated or made use of such forged, altered or falsified academic record, namely, a letter purportedly from the Office of The Registrar at the University of Toronto Mississauga, which you submitted in support of your participation in the temporary part-time employment program at Chrysler Canada Inc. ("Program"), contrary to section B.I.3(a) of the Code.

Particulars

The particulars of these charges are as follows

1. You have been employed at the Brampton Assembly Plant of Chrysler Canada Inc. since 2011.
2. You participated in the Program at Chrysler Canada Inc., which required you to confirm that you were a full-time student.
3. In support of your participation in the Program, you, or someone at your direction, knowingly:
 - (i) forged, altered or falsified what purported to be a letter from the Registrar's Office at the University of Toronto Mississauga;
 - (ii) falsely stated in that letter that

- (A) you were a full-time student for the 2014-2015 Fall/Winter academic session;
 - (B) you had completed 15 credits;
 - (C) were considered to be in year 4 of a four-year program; and
- (iii) circulated this forged, altered, or falsified letter to Chrysler Canada Inc. or its agents in support of your participation in the program.
2. You had an obligation to Chrysler Canada Inc. to provide it with accurate and truthful information about your academic record. You had an obligation not to provide falsified documents or statements in support of your application for employment with the Program.
3. You had an obligation not to falsify or make misrepresentations about your academic record at the University of Toronto.

The Evidence

12. The University called the evidence of Laura Ferlito. At the time relevant to the Charge (October 9, 2014 to March 17, 2015), Ms. Ferlito was the Assistant Registrar of Frontline Services in the Office of the Registrar at the University of Toronto Mississauga. Her duties included responsibility for overseeing the issuance of official confirmation of enrolment letters. These letters would be used by students to prove their University enrolment for various reasons, including immigration and visa purposes, employer requirements, and others.

13. Ms. Ferlito explained that by October 9, 2014 (the earliest date relevant to the Charge), students would request confirmation of enrolment letters by using an on-line system. The student would populate the required fields and pay a fee. Staff at front-line services in the Office of the Registrar would confirm the information and issue the letter. The Office of the Registrar would keep an electronic record of the letter. The student would receive a paper version of the letter, on University letterhead.

14. On March 17, 2015, Ms. Ferlito received a fax from someone named Tanya Michel at FCA Group. The fax coversheet asked Ms. Ferlito to confirm that the Student was currently a full-time student at the University. The fax enclosed a form on the letterhead of Chrysler Canada called "Academic Waiver", which appears to have been signed by the Student on October 17, 2011. The Academic Waiver authorized the University to disclose to the Human Resources Department of Chrysler Canada any information regarding the Student's academic status to ensure the Student's compliance with "TPT guidelines."

15. The fax from Ms. Michel also included a letter on University letterhead dated October 9, 2014 (the "Letter"). The Letter read:

To Whom It May Concern:

This is to confirm that R [REDACTED], S [REDACTED] [REDACTED] (Student number [REDACTED]) is registered at the University of Toronto Mississauga as a full-time student for the 2014-2015 Fall/Winter academic session (September 2014 to April 2015).

S [REDACTED] [REDACTED] has completed 15 credits and is considered to be in year 4 of a four-year Studies in Social Sciences undergraduate degree program.

Year of study is based on the number of credits completed as of today.

16. The Letter was purportedly signed by "C. Tylak, Office of the Registrar."

17. Ms. Ferlito testified that the Letter was suspicious in several ways.

- (a) After March of 2014, confirmation of enrolment letters would indicate the actual start date and end date of the academic sessions referred to, and would not be as general as the Letter was in setting out the dates.
- (b) Confirmation of enrolment letters would define the year of study with more precision, which was missing from the Letter.
- (c) The name of the degree program specified in the Letter was unusual, in that by Year 4 of a program it should be described with a Bachelor Degree name.
- (d) Although there was a "C. Tylak" working at the Office of the Registrar, Ms. Tylak was a front-line service worker. As of October 9, 2014 (the date of the Letter), all confirmation of enrolment letters included the signature of the Registrar and Director of Enrolment.

18. As a result of her concerns over the Letter, Ms. Ferlito checked the Student's profile on ROSI. It revealed as follows.

- (a) The Student was not, in fact, registered as a student in 2014 or 2015. In fact, the Student had not taken any courses at the University since the 2013 Winter term.
- (b) The Student had only earned 6.5 credits to date, not the 15 credits indicated in the Letter.
- (c) As a result of her earned credits, the Student would be considered in her second year of study, not her fourth year of study as indicated in the Letter.

19. Ms. Ferlito looked to see what the Office of the Registrar had on file for the Student. There was no electronic record of the Letter. The Student had requested and received a confirmation of enrolment letter twice before: once on September 9, 2011 and once on September 12, 2012. Both those letters were signed by C. Tylak.

20. Finally, Ms. Ferlito testified that staff at the Office of the Registrar had one or more telephone conversations with the Student, advising her of the issue. Staff attempted to meet with the Student in person, but such a meeting never took place.

Decision of the Tribunal on the Charges

21. The onus is on the University to establish on the balance of probabilities, using clear and convincing evidence, that the academic offence charged has been committed by the Student.

22. The Student was charged with an offence under B.i.3(a) of the Code. That section reads:

3. It shall be an offence for a ... student ... knowingly:

- (a) to forge or in any other way alter or falsify any academic record, or to utter, circulate or make use of any such forged, altered or falsified record, whether the record be in print or electronic form.

23. The Tribunal reviewed the Letter, the printout of the Student's ROSI information and the Student's file from the Office of the Registrar. The evidence clearly established that the Letter was false. It did not come from the Office of the Registrar. The information contained in the Letter did not match up with the reality of the Student's University registration. The most logical inference was that the Letter had been concocted using previous confirmation of enrolment letters that the Student had obtained from the Office of the Registrar in the past.

24. Having concluded that the Letter was a forgery, the Tribunal found it was more likely than not that, at the very least, the Student was responsible for having circulated and made use of the forgery. There was no direct evidence that the Student created the Letter. However, the Student was the intended beneficiary of the Letter. The Letter was most likely created by someone with access to the Student's two legitimate confirmation of enrolment letters. The Letter was given

(directly or otherwise) to Ms. Michel at FCA Group, who then sent it to Ms. Ferlito for confirmation. The Student had been notified of the problem by staff at the Office of the Registrar, and had not put forth an explanation. There was no evidence pointing the finger at anyone else.

25. Finally, the Tribunal was satisfied that the Letter was an “academic record” as that term is defined in Appendix “A” to the Code.

26. The evidence about the purpose for which the Letter was forged and circulated was unclear. The Academic Waiver sent to Ms. Ferlito, dated October 17, 2011, refers to a “TPT program”. However, the University’s only witness, Ms. Ferlito, had no evidence on what the “TPT program” was, what its requirements were, or whether the Student was enrolled in any such program at the relevant time. She did not know the sender of the fax, Ms. Michel, and gave no evidence about what “FCA Group” was or what its connection to Chrysler Canada might be.

27. Accordingly, the Tribunal could not conclude on the evidence that, as stated in the Charge, the Student had submitted the Letter “in support of [her] participation in the temporary part-time employment program at Chrysler Canada”. Nevertheless, for the reasons given above, the Tribunal found that the essential elements of the academic offence charged were proven on a balance of probabilities.

Submissions on Sanction

28. The University submitted that the Tribunal should make an order immediately suspending the Student from the University for a period of up to five years, and recommending to the President of the University that he recommend to the Governing Council that the Student be expelled from the University.

29. The University submitted further evidence relevant to sanction. That evidence showed that on January 28, 2014, the Student had admitted charges of academic dishonesty at the University. She admitted to having knowingly personated another student when she submitted two assignments on his behalf, and

to knowingly have someone personate her and submit work on her behalf. As a result, the Student was suspended from the University from September 1, 2014 to August 30, 2015. In other words, not only was the Student not enrolled at the University during the time period supposedly confirmed by the Letter, she was in fact suspended from the University because of admitted academic misconduct.

Decision of the Tribunal on Sanction

30. The Tribunal considered the factors and principles and factors relevant to sanction set out by this Tribunal in *University of Toronto and Mr. C* (Case No. 1976/77-3, November 5, 1976).

- (a) The character of the Student: the Student did not attend the hearing. There was no evidence of her character other than her past academic misconduct and the incident now under review.
- (b) The likelihood of a repetition of the offence: the Tribunal was very concerned that the Student had circulated and made use of a forged academic record while she was suspended for academic dishonesty. This suggests that specific deterrence is a significant concern.
- (c) The nature of the offence committed: this was a deliberate and careful falsification. It could not have occurred by accident, or through negligence. It shows calculated dishonesty.
- (d) Any extenuating circumstances surrounding the commission of the offence: as the Student declined to participate in this hearing, the Tribunal had no evidence of any extenuating circumstances.
- (e) The detriment to the University occasioned by the misconduct: the Student misrepresented her academic status and credentials to an outside party. This undermines the public's perception of the integrity of the University's academic records. Confirmation of enrolment

letters are relied upon generally by governments, administrative agencies and employers. They must be reliable.

- (f) The need to deter others from committing similar offences: but for Ms. Michel's diligence in following up with the Office of the Registrar, the Student's dishonesty might never have come to light. Because confirmation of enrolment letters are sent to third parties, this kind of offence is easy for students to commit and hard for the University to police. The need for general deterrence is significant.

31. In addition to the factors from *Mr. C., supra*, the Tribunal also considered other cases from this Tribunal involving similar circumstances.

- (a) In *University of Toronto and T [REDACTED] W [REDACTED]* (Case 762, November 18, 2004), a student falsified a letter and a form to indicate she was a full-time student when she was not. She did this for the purpose of obtaining employment in a program reserved for students. At the hearing, Ms. Wilson admitted her misconduct and had no prior record of academic discipline. The Tribunal recommended expulsion.
- (b) In *University of Toronto and R [REDACTED] A [REDACTED]* (Case 450, July 17, 2009), a student admitted to having composed a forged letter, apparently to obtain a student loan from a bank. This was the student's third academic offence in three years. The Tribunal recommended expulsion, pending which the student would be suspended for up to five years.
- (c) In *University of Toronto and A [REDACTED] A [REDACTED]* (Case 540, May 4, 2009) a student was found to have forged a Letter of Permission from another university and submitted the forged document to the University in support of his visiting student admission application. The student did not attend the hearing to explain himself. He had

admitted to a forgery offence at the University once before. The Tribunal recommended expulsion.

- (d) In *University of Toronto and N [REDACTED] O [REDACTED]* (Case 541, October 7, 2009), the student was found to have forged a letter indicating that he was registered with the University during a time when he was suspended from the University for academic reasons. The student used the letter to extend his visa permitting him entry to Canada. The student was a Nigerian citizen who was concerned that without the letter, he would be denied a single entry visa into Canada. Although the student did not attend the hearing, he had admitted his misconduct and the reasons for it in an email. It was his first academic offence. The Tribunal ordered that the student be suspended for five years.

32. Although each case needs to be considered on its own merits, the review of other cases suggests that this type of offence typically warrants a recommendation of expulsion, or perhaps a five-year suspension, depending on the surrounding circumstances.

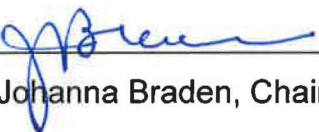
33. A recommendation of expulsion is the most serious sanction this Tribunal can impose on a student. The Tribunal carefully considered whether a five-year suspension would be appropriate, and concluded it would not be. This was a second academic offence involving dishonesty. It was committed while the Student was suspended for the first academic offence, which involved three separate counts of dishonesty. There was no evidence of any mitigating circumstances or prospects for rehabilitation. Without any explanation from or participation by the Student, the Tribunal found that a recommendation of expulsion was warranted.

34. Accordingly, the Tribunal made an order as follows:

- (a) The hearing may proceed in Ms. R [REDACTED]'s absence;

- (b) Ms. R [REDACTED] is guilty of 1 count of knowingly forging, altering, or falsifying, an academic record, or uttering, circulating, or making use of such an academic record, contrary to section B.I.3(a) of the *Code of Behaviour on Academic Matters*;
- (c) Ms. R [REDACTED] shall immediately be suspended from the University for a period of up to five years;
- (d) The Tribunal recommends to the President of the University that he recommend to the Governing Council that Ms. R [REDACTED] be expelled from the University; and
- (e) This case shall be reported to the Provost for publication of a notice of the decision of the Tribunal and the sanction or sanction imposed, with the name of the student withheld.

Dated at Toronto this 27th day of April, 2016


Ms. Johanna Braden, Chair