

THE UNIVERSITY TRIBUNAL  
THE UNIVERSITY OF TORONTO

IN THE MATTER OF charges of academic dishonesty made on October 27, 2008;

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

BETWEEN:

THE UNIVERSITY OF TORONTO

- and -

N [REDACTED] J [REDACTED] O [REDACTED]

**Members of the Panel:**

- Ms. Lisa Brownstone, Chair
- Professor Bruno Magliocchetti, Faculty Panel Member
- Mr. Mir Sadek Ali, Student Panel Member

**Appearances:**

- Ms. Lily Harmer, Assistant Discipline Counsel
- Mr. J [REDACTED] O [REDACTED], the Student, did not attend

**Preliminary**

[1] The Trial Division of the University Tribunal was convened on May 20, 2009 to consider charges under the University of Toronto *Code of Behaviour on Academic Matters, 1995* (the "Code") laid against the student by letter dated October 27, 2008 from Professor Edith Hillan, Vice-Provost, Academic.

[2] The charges are as follows:

- i. In or about January, 2008, you knowingly forged or in any other way altered or falsified an academic record, or uttered, circulated or made use of any such forged, altered or falsified record, namely a letter dated January 8, 2008,

purportedly prepared by the Associate Registrar, University College, contrary to Section B.I 3(a) of the Code.

- ii. In the alternative, in or about January, 2008, 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 to the Canadian High Commission a letter dated January 8, 2008, confirming your registration status at the University purportedly from the Associate Registrar at University College contrary to Section B.I 3(b) of the Code

[3] Particulars of the charges are as follows:

- i. At all material times, you were enrolled at the University of Toronto in the Faculty of Arts and Science.
- ii. On or about January 8, 2008, you requested and were provided with a letter from the Associate Registrar of University College confirming your registration status ("Original Letter").
- iii. On or about January, 2008, you submitted a letter purportedly from the Associate Registrar at University College to the Canadian High Commission in Lagos, Nigeria ("Altered Letter").
- iv. The Altered Note was forged, falsified or altered by you and was not the Original Letter that had been provided to you from the Associate Registrar.
- v. The Altered Letter indicated that you were currently registered at the University, and that you would be eligible to graduate in May, 2008, when you were not registered and not eligible to graduate.
- vi. You submitted this forged, falsified or altered document in support of your application to extend your study permit to permit you to continue attending the University. You submitted the Altered Letter knowing that it was forged, altered or falsified.

[4] The student did not attend the hearing. The University filed the Affidavit of Betty Ann Campbell and proceeded to outline the communications it had had with the student, in support of its argument that sufficient notice had been given to the student to allow the hearing to proceed in his absence.

[5] In August, 2008, the student provided two e-mail addresses to the University at which they could contact him, one being his University address and one being a hotmail account. In addition, the student provided a telephone number.

- [6] The panel was advised that the last communication from the student had been in September 2008. At that time, the student knew that there were allegations against him that he had forged a letter, and knew that the Dean's Office had attempted to get in touch with him in order to deal with those allegations.
- [7] In late September 2008, the student advised the University by e-mail that he would like to cancel his registration and that he did not intend to continue at the University. On October 1, 2008, Dr. Kristi Gourlay, the manager of the University's Office of Academic Integrity, replied and advised that procedures in the Code apply to him whether he is currently registered at the University or not. She also attached a letter from the Dean's Designate which informed the student how the Dean's Designate would be proceeding in this matter. That letter, from Donald Dewees, Professor and Dean's Designate for Academic Integrity, indicated that Professor Dewees understood that the student had received his letter of September 8, 2008 which invited the student to a meeting with Professor Dewees to discuss the allegations that he altered or falsified a document, which Professor Dewees identified, and that the student submitted that altered document to the Canadian High Commission in Lagos, Nigeria. In that correspondence, the Dean's Designate advised that he had sent the case to the Provost for review and that he was confident that the offence had been committed, and that the student would hear from the Provost's Office in due course about the status of his case. On or about November 5, 2008, the Judicial Affairs officer in the Office of the Governing Council e-mailed the student and attached a letter containing procedural information about the charges and the hearing, and suggested that the student seek legal advice.
- [8] Thus, as of September 2008, the student knew that there was ongoing business with the University and that he could not simply cancel or withdraw from the University; rather, the outstanding issue had to be resolved. He was on notice at that time that he needed to stay in touch with and be aware of communications from the University.
- [9] On February 26, 2009, University counsel provided the student by e-mail with a summary of the University's anticipated evidence and the disclosure brief. Counsel provided suggested dates for a tribunal hearing in March and April 2009, and asked that the student contact the law firm regarding his availability on those dates. Again, she advised him that he consider obtaining legal representation and provided him the contact information for Downtown Legal Services. This information was sent to both e-mail addresses that had been provided by the student. The law firm for the University attempted to reach the student by telephone, at a number previously provided by the student, but was unable to do so. In the e-mails, the firm asked for a current mailing or residential address to which it could send a bound copy of the disclosure brief, and asked for a telephone number. He was also asked to up-date his ROSI record.

- [10] Having received no response, on March 11, 2009, the law firm sent the student another e-mail requesting a response and advising that the three previously proposed tribunal dates were no longer available. The firm provided him with additional suggested hearing dates in May and June 2009 and asked him to contact them no later than March 13. E-mails were sent to both addresses once again, and no response was received.
- [11] On Monday, March 16, 2009, the firm requested the Judicial Affairs Officer to schedule the Tribunal hearing for May 20, 2009 beginning at 5:30 p.m. The student was notified of the date by e-mail from the Judicial Affairs Officer to both of his addresses on March 18, 2009. The e-mail sent to the hotmail account was returned as undeliverable. On March 19, 2009 further e-mails were sent to the student to confirm the May 20 hearing date. There was no contact received from the student and no delivery failure notices in relation to these e-mails. Attempts to reach the student by telephone were again unsuccessful. The student never updated his ROSI record.
- [12] The Notice of Hearing dated March 18, 2009 was sent to e-mail addresses provided by the student, and contained the underlined warning that "if you do not attend, the hearing may take place without you and you will not be entitled to further notice in the proceeding."
- [13] University counsel also drew the panel's attention to the policy of the University entitled "Policy on Official Correspondence with Students" approved May 1, 2006 and effective since September 1, 2006. The policy requires the student to maintain a current and valid postal address as well as the address for a University-issued electronic mail account, and to advise the University of these addresses. The policy notes that failure to do so may result in a student missing important information, and will not be considered an acceptable rationale for failing to receive official correspondence from the University. The policy also notes 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, and that students have the responsibility to recognize that certain communications may be time critical. Students are to be responsible for ensuring that all electronic messages sent to the official University-issued account are received and read.
- [14] In the University's submission, its efforts were sufficient to provide notice to the student. The student knew that the University needed to speak with him. The student knew the allegations against him. Although there was some evidence that he was not able to enter Canada for a period of two years, he never said that he could not attend a hearing because he could not get into the country but that he would like to attend. He made absolutely no effort to engage with the University after September, 2008, when he knew that these serious allegations were pending against him.

[15] The relevant portions of the *Statutory Powers Procedure Act* provide as follows:

**Notice of hearing**

6.(1)The parties to a proceeding shall be given reasonable notice of the hearing by the tribunal. R.S.O. 1990, c. S.22, s. 6 (1).

**Statutory authority**

(2)A notice of a hearing shall include a reference to the statutory authority under which the hearing will be held.

**Oral hearing**

(3)A notice of an oral hearing shall include,

(a) a statement of the time, place and purpose of the hearing; and

(b) a statement that if the party notified does not attend at the hearing, the tribunal may proceed in the party's absence and the party will not be entitled to any further notice in the proceeding. 1994, c. 27, s. 56 (13).

...

**Effect of non-attendance at hearing after due notice**

7.(1)Where notice of an oral hearing has been given to a party to a proceeding in accordance with this 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. R.S.O. 1990, c. S.22, s. 7; 1994, c. 27, s. 56 (14).

...

[16] The University provided to the Tribunal three cases in support of its position that its efforts constituted reasonable notice in the circumstances.

[17] Although in none of the cases was the student out of the country, the Tribunal was satisfied that the principle articulated in those cases applies to this case. The University had made all reasonable efforts to contact the student, to advise the student of the importance of his remaining in communication with the University, and had exhausted all reasonable approaches to finding the student. Yet, the student had chosen not to respond and not to engage with the University in any way. The University is not to be precluded from proceeding with its important duties by the actions of a student in ignoring or failing to engage at all with the University. In the circumstances, the panel concluded that reasonable notice within the meaning of the *Statutory Powers Procedure Act* had been provided.

**Evidence on the merits**

[18] The University first tendered the evidence of Linda Nauman, the Registrarial Assistant at University College. She has been employed by the University of Toronto since January 2005 and became an Associate Registrar in October 2006, a position that she continues to hold. In that role, she helps students with problems and requests, and manages frontline staff e-mails and telephone calls.

- [19] Ms Nauman testified that she did not know the student personally but that she became aware of him in January 2008, when he telephoned her office requesting a letter to extend his Visa, and requested that this letter be sent by e-mail.
- [20] Her staff responded that such a letter could not be sent by e-mail. Because the student was persistent in his requests, his call was passed on to Ms Nauman. The student insisted that the requested letter be sent by e-mail as he was not in Toronto and had no other way of getting the letter, and therefore Ms Nauman finally reluctantly agreed. He said that he wanted to renew his study permit.
- [21] Ms Nauman outlined for the Panel the usual practice with respect to requests for this sort of letter. That practice is to prepare a hard copy of the letter and require the student to pick it up with a student card, and to provide relevant ROSI information in order to ensure that the letter is going into the right hands. The letters contain the student's registration status, the dates of registration, when the student is expected to graduate, the academic progress as indicated by the projected graduation date, and the fees paid. The letters are on University College Registrar Office letterhead, with the student's name and identification and a few short paragraphs, and a signature and seal. The seal is raised and embossed over the signature and the letters are generally picked up by the students. Sometimes the letters will be faxed to the Canadian Immigration Office or to the student if the student cannot pick it up. The University College Registrar's Office staff asks a number of questions in order to ensure that they are speaking to the student. Ms Nauman did so with this student in order to ensure that it was him that was making the request, and was so satisfied.
- [22] Ms Nauman provided the panel with some background information about the student. The student had been admitted to Arts and Sciences in 2004 with one credit from his international baccalaureate. In the winter of 2005 he had taken half a course which he had failed. He had enrolled in a full course in mathematics from which he had withdrawn late. There were three more courses the student had taken in which he had received a grade of F. In the summer of 2006, the student was placed on academic probation, which occurs if the student has a GPA of less than 1.5. He therefore was suspended for one year from May 2007 to May 2008. He would have been eligible to return for the summer of 2008 if he so chose. After his suspension, the student was permitted one session to show a GPA of 1.7 and if not, the student would have a three year suspension.
- [23] When Ms Nauman was speaking with the student on the telephone at the time he requested the letter, he advised her that he wanted to return in September of 2008, that his study permit had lapsed, and that he needed a new permit and therefore needed a letter from the University. He said that he wanted a letter to say that he was currently registered and Ms Nauman advised that she could not provide such a letter but could say that he was eligible to return in May 2008 to continue his studies. He asked her to do him a favour and write a different letter but eventually accepted this was the only letter she could provide. He wanted the

letter e-mailed, and although Ms Nauman offered to send it by fax, he indicated that he was in Calgary, could not come and pick it up and was not going to be in Toronto and that he had an urgent deadline. He said that he did not have a fax number and Ms Nauman offered to fax it to Nigeria, but he said that he needed to send a package containing the letter. He said that there was no one who could get it for him in Toronto and eventually, Ms Nauman agreed to e-mail it, because, as she described it, she was giving him the benefit of the doubt and wanted to help him. He insisted he needed it that day, and so she sent it to his University of Toronto e-mail address.

- [24] The letter was filed before the Tribunal. It indicated that the student was not registered in the current academic session but would be eligible to return in the 2008 summer session which would run from May 12, 2008 to August 15, 2008. It also provided Ms Nauman's telephone number and e-mail address if further information was required. The letter was on University College letterhead.
- [25] Ms Nauman testified that she put the letter in PDF format and e-mailed it to the student and heard nothing further. However, she did receive an e-mail from the High Commissioner in Lagos, Nigeria, copies of which were provided to the Tribunal. The e-mail sought authentication of a letter that had been provided by the student to the High Commissioner in Lagos. Ms Nauman noticed that the crest on the letter was different. She testified that it was an alternate University College crest that she assumed the student had obtained from the website. The content of the letter had been changed to make it look as though he was continuously registered with the University. It identified a major subject of study which was not true, and said that he was registered in the current academic session and eligible to graduate in May 2008 (also not true). In addition, it removed her telephone number and changed her e-mail address. She advised the Canadian High Commissioner in Lagos that the letter was not authentic and that she had sent a different letter.
- [26] She did not hear from the student again until August 2008. At that time, he advised her that he was banned from coming to Canada for two years and that it would help if the University of Toronto would allow him back. In the e-mail he confessed that he forged a letter saying that he was still a student and apologized for doing so. He said that he did it because he believed that a Nigerian on suspension would not be granted a single entry Visa. He indicated that he would still like to resume studies as a student at the University and indicated that he was informed that if he returns to Canada, the University would take action against him, and he accepts this. He advised that he has been banned from Canada for two years beginning August 7, 2008 but there is a thirty day period during which the ban could be reversed. He requested that the University assist him in making a new application for single entry Visa and lifting the two-year ban, and asked that the University (Ms Nauman) inform Canadian Immigration that he was suspended and not expelled and that his suspension ends in September 2008. Again, he asked her forgiveness for forging the letter, but explained he did not

want anyone to know he had been suspended. He said that he would submit himself to the University's action when he returned but asked that the University assist him in assuring that his future stays intact. He provided his University of Toronto e-mail address as well as the hotmail account address and a telephone number at which he could be reached in Nigeria.

- [27] Ms Nauman testified that she sent a reply e-mail right away that she could not write a letter at this point given that there was an issue of discipline/academic integrity and that this would have to be resolved before she could write any letter, and that this would not be resolved within thirty days.
- [28] Later in August, she was advised by the student that he wanted to cancel his registration. She advised that he was not currently registered and has not been since May 2007, but that his record remains intact in the case if he ever returned to continue his studies.
- [29] The panel next heard from Dr. Kristi Gourlay who manages the office of Student Academic Integrity. Dr. Gourlay testified that she sent an e-mail to the student in response to being advised he wanted to cancel his registration. That e-mail advised that he was considered to be a student at the time of the alleged academic offence and thus the procedures outlined in the Code of Behaviour in Academic Matters applied to him whether he is currently registered or not. She attached the letter from the Dean's Designate referred to above. Dr. Gourlay testified that she had heard nothing from the student since then.
- [30] University counsel submitted that the evidence established that the student had knowingly forged or in any other way altered or falsified an academic record, or uttered, circulated or made use of any such forged, altered or falsified record, namely a letter dated January 8, 2008, purportedly prepared by the Associate Registrar, University College, contrary to section B.I (3)(a) of the Code. In response to a question from the Tribunal, University counsel submitted that the letter was an "academic record", defined in 2(c) of Appendix A to the Code as "any record or document included within the definition of the official student academic record...and any other record or document of the University or of another educational institution...used, submitted or to be submitted for the purposes of the University."
- [31] In the alternative, the University counsel submitted that the student knowingly engaged in the 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 to the committee and High Commission a letter dated January 8, 2008 confirming his registration status at the University, purportedly from the Associate Registrar at University College contrary to section B.I (3)(b) of the Code. The academic advantage, in the submission of the University counsel, was the ability to attend the University which was an advantage because other international students were unable to get it.



### Finding

- [32] After some deliberation, the Tribunal concluded that the purposes of the University include assisting its international students to register and attend, and therefore, the document falls within the definition of “academic record” in s. 2(c) of Appendix A. Therefore, the panel found the student had committed the offence outlined in charge 1 and the second charge was withdrawn.

### Sanction

- [33] The University sought to have the student expelled, the most serious possible sanction. University counsel referred to the preamble of the Code which emphasizes the need for integrity, honesty, fairness and mutual respect in the relationship between the University and students. In her submission, forgery and falsifying letters are egregious acts. Although there had only been one instance of misconduct, in the University counsel’s submission, it was of such a nature that it warranted the most onerous penalty. She noted that the student did not engage in the process but communicated only when it was to his benefit to communicate. When Ms Nauman could not be of assistance, he chose to disassociate himself from the University. In University counsel’s submission, there was no compelling reason to give the student another opportunity and the student had done nothing to suggest that he deserves a second chance. This, in her submission, made expulsion, as opposed to lengthy suspension, the appropriate sanction.
- [34] In University counsel’s submission, although the admission in the e-mail to the University was to his credit, the context of confessing only when he was enlisting assistance, and disengaging when he found out the consequences of his actions, indicated that the student had neither asked for nor should receive a second chance. University counsel was careful to indicate that there is no information about why the student had struggled with his courses, and that there was no evidence to suggest any extenuating or mitigating circumstances. In her submission, this was not a case where the student had done so well that there would be a traumatic terrible effect if he were expelled; that is, there was nothing compelling about his academic situation. University counsel submitted that, if the panel was not inclined to order expulsion, a suspension of five years would be a possible alternative penalty.
- [35] University counsel referred the Tribunal to the six factors to consider when assessing appropriate penalty. In terms of character, counsel noted that the student had removed himself from the University and the process; in terms of likelihood of repetition, counsel fairly pointed out that there was no way of knowing this, as it was a first offence. In counsel’s submission, the nature of the offence was egregious, and the University has to be vigilant against this kind of offence; and the detriment to the University was high. In this case, in her submission, there was deliberation in the student’s conduct. He took advantage of Ms Nauman’s conduct and misused the trust that she placed in him after his

begging and pleading with her. Because of the serious detriment to the University, a serious response is warranted.

- [36] In response to a question from the Tribunal, counsel indicated that if there were a five year suspension, she would request a notation to stay on his transcript for seven years.

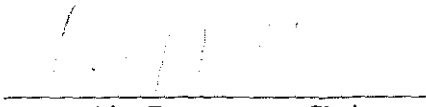
### Decision Sanction

- [37] After deliberation, the Tribunal has concluded that a five year suspension with a seven year notation is the appropriate penalty. Although the acts were egregious, it was the student's first offence. Given the absence of the student, the Tribunal did not have evidence of aggravating or mitigating circumstances before it. Although the offence was egregious, and the student certainly took advantage of the trust that Ms Nauman placed in him, the panel feels that the very lengthy suspension with an even lengthier notation should suffice to demonstrate the seriousness with which the University views this kind of conduct, and serve as both a specific and general deterrent to this kind of action. The Tribunal notes that the document is not a transcript or a ROSI record, as was the case in other cases in which expulsion was ordered. That is, although the document is technically an academic record within the definition in the Appendix, it is not one of the records that goes to the heart of the University and its business. Unlike the other decisions, it did not go to an employer or another academic institution.

- [38] Therefore, the Panel orders:

- (a) that the student be suspended from the University for a period of five (5) years effective September 1, 2008;
- (b) that suspension be recorded on his transcript for a period of seven (7) years, from September 1, 2008; and
- (c) that this case be reported to the Provost for publication in the University newspapers, with the name of the student withheld.

Dated this 11<sup>th</sup> day of October, 2009

  
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Lisa Brownstone, Chair