

THE UNIVERSITY OF TORONTO
UNIVERSITY TRIBUNAL

IN THE MATTER OF charges of academic misconduct filed on May 15, 2018,
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

BETWEEN:

THE UNIVERSITY OF TORONTO

(The "University")

- and -

D [REDACTED] K [REDACTED]
(The "Student")

REASONS FOR DECISION

Hearing Date: November 2, 2018

Panel Members:

Ms. Michelle S. Henry, Lawyer, Borden Ladner Gervais LLP, Chair
Professor Pierre Desrochers, Faculty Panel Member
Mr. Abdul Sidiqi, Student Panel Member

Appearances:

Ms. Tina Lie, Assistant Discipline Counsel, Paliare Roland Rosenberg Rothstein LLP
Mr. Robert Centa, Assistant Discipline Counsel, Paliare Roland Rosenberg Rothstein LLP

Hearing Secretary

Ms. Tracey Gameiro, Associate Director, Appeals, Discipline and Faculty Grievances,
University of Toronto

Not in Attendance:

Ms. D [REDACTED] K [REDACTED], the Student

1. A Hearing of the Trial Division of the University Tribunal convened on November 2, 2018, 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 May 15, 2018, from Professor Sioban Nelson, Vice-Provost, Faculty & Academic Life.

PRELIMINARY ISSUE: PROCEEDING IN THE ABSENCE OF THE STUDENT

2. The hearing was scheduled to commence at 9:45 a.m. The Tribunal waited until 10:00 a.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 the Affidavit of Tracey Gameiro, sworn on July 12, 2018 (“Gameiro Affidavit”). The Gameiro Affidavit confirmed that, on July 6, 2018, Ms. Gameiro served the Student with the charges issued by Professor Sioban Nelson, Vice-Provost, Faculty & Academic Life. She served the charges on the Student by e-mail to the email addresses the Student had provided to the University in ROSI.
7. The Counsel for the Provost also filed the Affidavit of Janice Patterson, legal assistant to Tina Lie at the law firm of Paliare Roland Rosenberg Rothstein LLP (“PRRR”), sworn on October 23, 2018 (“Patterson Affidavit”). The evidence of Ms. Patterson was as follows:
 - a. Robert Centa, a partner at PRRR, was the Assistant Discipline Counsel who was originally assigned to prosecute the charges filed against the Student.

- b. The hearing into the charges filed against the Student was scheduled for August 14, 2018 at 5:45 pm.
- c. On August 14, 2018 at 2:01 pm, Mr. Centa received an email from the Student, which was also sent to the Law Society of Ontario (“LSO”), attaching a complaint that she had filed to the LSO in respect of Mr. Centa’s conduct.
- d. That day, at 3:35 pm, Mr. Centa sent an email to Christopher Lang, Krista Osbourne and Tracey Gameiro of the Appeals, Discipline and Faculty Grievances (“ADFG”) Office, with a copy to the Student, advising that them that he had received a copy of a complaint filed at the LSO by the Student. Mr. Centa also wrote: “While the Provost and I are both of the view that the complaint is meritless, the Provost is requesting an adjournment so that another assistant discipline counsel can continue the prosecution”.
- e. The Student responded to Mr. Centa’s email at 3:44 pm, copying the LSO.
- f. At 4:05 pm, Ms. Gameiro of the ADFG Office sent an email to Mr. Centa and the Student containing the Chair’s ruling on the Provost’s adjournment request, which was granted.
- g. At 4:12 pm, the Student responded to Ms. Gameiro’s email, copying the LSO as well as michael.thomas3@torontopolice.on.ca.
- h. In light of the Student’s complaint to the LSO, Ms. Lie was assigned to continue the prosecution of the charges against the Student.
- i. On August 15, 2018, at 3:03 pm, Ms. Lie sent an email to the Student introducing herself and advising that she intended to schedule the Student’s hearing for November 2, 2018 at 9:45 am. Ms. Lie asked the Student to let her know by no later than the end of the week if that date and time worked for her.
- j. That day, at 3:10 pm, the Student responded to Ms. Lie’s email, copying the LSO and mike.thomas3@torontopolice.on.ca. The Student wrote:

“Look you fuckin bitch, I have sent this to the Law Society again, plus to the police. Fuck off! I did nothing wrong or I will criminally charge all of you who are guilty.

‘Nough said.

And that’s Dr [Student’s Name], EdD (LLB) you fucking cunt bitch!”

- k. At 3:24 pm, Ms. Lie sent an email to Ms. Osbourne of the ADFG Office requesting that the hearing be scheduled for November 2, 2018 at 9:45 am.
 - l. On August 16, 2018 at 11:29 am, Ms. Osbourne sent an email to the Student attaching the Notice of Hearing. That day, at 1:41 pm, 1:42 pm and 1:44 pm, the Student sent three emails in response to Ms. Osbourne's email.
8. Based on the Student's responses, I am satisfied that she received the Notice of Hearing advising her that the hearing was scheduled for November 2, 2018.
 9. 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 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

10. At all material times, the Student was a registered student at the University, registered in the Doctor of Philosophy Program in Curriculum Studies and Teacher Development at the Ontario Institute for Studies in Education ("OISE"). The University alleges that the Student 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 record by representing that she had either a Doctor of Philosophy degree or a Doctorate in Education from the University when she knew she did not, contrary to section B.i.3(a) of the *Code*.
11. The particulars of the charges were as follows:
 - a. Since 2010, the Student has been enrolled in the Doctor of Philosophy program in Curriculum Studies and Teacher Development in the Department of Curriculum, Teaching and Learning at OISE at the University.
 - b. She did not receive a Doctor of Philosophy degree or a Doctorate in Education from the University.
 - c. The Student has repeatedly claimed to have received a Doctor of Philosophy degree or a Doctorate in Education from the University. For example, she represented or continues to represent that she earned a Doctorate in Education from the University on her LinkedIn profile; she earned a "Doctorate in Education from OISE | the University of Toronto in Curriculum, Teaching and Learning Development" on a resume she posted on the Donna Magazine website; and that her article, "Voices of Black Girls in Toronto", was "a dissertation submitted in

conformity with the requirements for the degree of Doctor of Philosophy Graduate Department of Curriculum, Teaching and Learning, Ontario Institute for Studies in Education of the University of Toronto.”

- d. The Student knew that each of the representations listed above were false at the time she made them.
- e. She was advised that these representations were false and the University requested that she stop making such representations. She did not stop or take down the representations.
- f. The Student knowingly and falsely represented her academic history and status.
- g. She had an obligation to provide accurate and truthful information and not to misrepresent her academic record.

THE EVIDENCE

12. The Tribunal received the evidence of Luc De Nil (“Prof. De Nil”) on behalf of the Provost. Prof. De Nil is the Acting Dean, School of Graduate Studies (“SGS”) and Acting Vice-Provost, Graduate Research and Education, at the University. Prior to that, he served as the Vice-Dean, Students at the University’s SGS, a position which he held from 2012 to 2018. His evidence as set out in his Affidavit sworn on August 2, 2018 was as follows.
13. In the summer of 2010, the Student registered in the Doctor of Philosophy Program in Curriculum Studies and Teacher Development at the Ontario Institute for Studies in Education (“OISE”). The Student finished her comprehensive examinations in 2013 but did not reach the stage of candidacy. She had a leave of absence starting in the fall of 2014, and her last registration was Summer 2016. After that session, she neither registered nor asked for a leave of absence. Her registration status became and remains lapsed, as she has not withdrawn from the program. The Student has not completed her outstanding academic requirements. She did not receive a Doctor of Philosophy degree or a Doctorate in Education from the University. A copy of her academic transcript was entered into evidence and confirms the courses completed.
14. In May or June 2015, Professor Indigo Esmonde advised Prof. De Nil that the Student had been misrepresenting her academic record online and in at least one of her publications. In particular, she was identifying herself as “Dr. [Student’s Name]” and claiming to have received a doctoral degree from the University in 2014.
15. On June 4, 2015, Prof. De Nil sent a letter to the Student setting out the basis for his belief that the Student was misrepresenting her academic record, advising her that such

misrepresentations violated the *Code*, and requesting that she cease misrepresenting her academic record and to take steps to correct the public record.

16. On June 12, 2015, the Student responded to his letter with an e-mail in which she indicated that she would not cease the misrepresentation of her academic qualifications. In her email, the Student stated that her decision to call herself “Dr.” was because she had a doctor of journalism degree “that is legal in Canada.” The University has not been able to locate any evidence that the Student has a doctoral level degree from any university.
17. There was no evidence before the Tribunal that the Student had a Doctor of Journalism Degree at the time the representation was made.
18. On August 17, 2015, while Prof. De Nil was on a leave of absence, Elizabeth Smyth, Vice-Dean, Programs at SGS (“Prof. Smyth”), obtained confirmation from Professor Indigo Esmonde at OISE that the Student had removed the requested misrepresentations. No additional steps were taken to address the academic misconduct of the Student at the time.
19. On November 13, 2017, Prof. Smyth received a LinkedIn invite from the Student. The invite represented that the Student was a “Dr.” who had received a Doctorate in Education in 2016 from OISE. Prof. Smyth subsequently received LinkedIn invites from the Student on November 20, 2017, December 5, 2017, December 11, 2017 and March 18, 2018. All the LinkedIn invites made the Student appear as if she had acquired a Doctorate in Education from the University. Prof. Smyth forwarded copies of the e-mails containing the LinkedIn invites to Prof. De Nil. These e-mails were entered into evidence.
20. In or around February 2018, Prof. De Nil was advised by Prof. Smyth that the Student had posted a document that she represented to be her “dissertation submitted in conformity with the requirements for the degree of Doctor of Philosophy” at the University. The Student never submitted a thesis in conformity with the requirements for the degree of Doctor of Philosophy. As such, the University’s position was that this was an inaccurate description of her work.
21. On February 28, 2018, Prof. De Nil confirmed through ROSI that the University had not conferred a Doctor in Philosophy or a Doctorate in Education to the Student.
22. On March 2, 2018, Prof. De Nil received an e-mail from Dianne Snider-Heximer, Executive Assistant to the Vice-Provost, Graduate Research & Education and the Dean, SGS, indicating that the Student had uploaded her resume to her Donna Magazine website. The Student’s resume stated that she has obtained a Doctorate in Education from OISE. A copy of the resume was entered into evidence.

23. On March 19, 2018, an e-mail was sent to the Student requesting that she attend a meeting with Prof. De Nil to discuss this matter. The Student did not respond despite numerous attempts made by Ms. Snider-Heximer.
24. On April 3, 2018, the Student responded to Ms. Snider-Heximer's message by stating, "Fuck off or I'll sue!" The signature block of the Student's e-mail also contained the representation that she had an EdD from OISE. A copy of the Student's e-mail was entered into evidence.
25. On April 4, 2018, Ms. Snider-Heximer sent an e-mail to the Student confirming her meeting with Prof. De Nil on April 9, 2018. The Student responded stating, "Fuck off or I'll sue! Don't you have better fucking things to do! I do!" A copy of the Student's e-mail was entered into evidence.
26. On April 9, 2018, the Student did not appear at the meeting with Prof. De Nil to discuss the matter. Consequently, the matter was referred to the Provost to consider laying charges under the *Code*.
27. On April 10, 2018, Pro. De Nil sent a letter to the Student and informed the Student that he had referred the matter of her academic misconduct to the Provost's Office. The letter was sent via email by Ms. Snider-Heximer.
28. On April 12, 2018, the Student replied to Ms. Snider-Heximer and stated "Honestly, fuck off or I'll sue." A copy of the Student's e-mail was entered into evidence.
29. As of July 26, 2018, the Student still claimed that she has received her Doctorate in Education from the University on both her LinkedIn page and the Donna Magazine website. A screen-shot, taken July 26, 2018, of the Student's LinkedIn page and her resume from the Donna Magazine website were entered into evidence.

DECISION OF THE TRIBUNAL ON CHARGES

Whether the Charges are appropriate under subsection B.I(3)(a) of the *Code*

30. The first issue before the Tribunal was whether the offence alleged against the Student, that she repeatedly misrepresented and claimed to have received a Doctor of Philosophy degree or a Doctorate in Education from the University, could constitute an offence under the *Code*.
31. Section B.i.3 of the *Code* sets out the definition of an Offence and reads in part as follows:

It shall be an offence for a faculty member and student alike 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;

32. In *Shank v. Daniels*, 2002 Carswell 71, the Ontario Superior court of Justice (Divisional Court) considered an application for judicial review of a decision of the Dean of the University's Faculty of Law that the applicant had committed an academic offence under the *Code* and the penalty of a one-year suspension with a notation on record. The offence alleged against the student in that case was that she provided prospective employers with information that inaccurately reported her first-term results in a manner that violated ss B.i.3 (a) and (b) of the *Code*. In that case, the student's conduct at issue was that of sending a letter representing that her marks were as set out in the letter, when, in part, they were not. She did not purport to send a copy of any official University document. One of the issues before the Court was whether her conduct was a falsification of an academic record. In other words, whether sending the letter in question containing the inaccurate grades could constitute an offence under the *Code*, and whether there was falsification of a University record.
33. In finding that the *Code* extends to the act complained of, and that the alleged offence, if proven, would constitute a violation of B.i.3 (a) and (b) of the *Code*, the Court reasoned at paragraph 33 as follows:

...It is surely of fundamental importance that students not misrepresent their achievements. Other students, the business community and the University alike have a stake in the integrity of the record of achievement and the University's Code of Conduct can properly extend to such communications by students to the outside world. There is nothing in the language of s. B.I.3(a) to confine its scope to communications within the University.

At paragraph 36, the Court concluded:

In our view, it is the information in the official record, and not merely the integrity of an official piece of paper certifying as to that information that is protected by the Code in this section. If tampering with such a certificate were the only way to commit the offence, it would be entirely covered by the word "forge," but the Code goes on to use the language "or in any other way alter or falsify, any academic record. Unquestionably, the applicant's letter constituted the circulation or making use of a false statement of the contents of the University's records.

34. Having regard to the above, the Tribunal concludes that the *Code* extends to the conduct complained of in this case, that is, the public misrepresentation of the Student's academic history and status online.

Finding

35. Having considered all the evidence heard during the hearing and the Affidavit evidence, the Tribunal found that the Student 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 record by representing that she had either a Doctor of Philosophy degree or a Doctorate in Education from the University of Toronto ("University") when she knew she did not, contrary to section B.i.3(a) of the *Code*.

36. Consequently, the Tribunal finds that the Charge #1 (as outlined in paragraph 10 and 11) 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

37. The University sought the following penalties:

- a. The Student shall be immediately suspended from the University of Toronto for a period of up to 5 years from November 2, 2018, or until Governing Council makes its decision on expulsion, whichever comes first, and that a corresponding notation be placed on her academic record and transcript;
- 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; and,
- c. That the case shall 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.

38. The Provost called no further evidence.

DECISION OF THE TRIBUNAL ON PENALTY

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

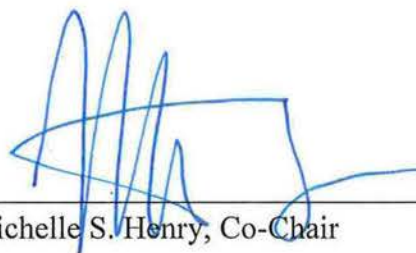
- a) **The character of the Student.** As the Student did not participate in the proceeding, there was no evidence before the Tribunal regarding the Student's character other than the facts relating to this offence and the email responses from the Student, some of which was quoted above. The email correspondences from the Student certainly demonstrated a blatant disrespect for the discipline process and for those involved. Counsel for the Provost also submitted that the act was an act of deliberate dishonesty.
- b) **The likelihood of a repetition of the offence.** The Student did not have a prior record of academic offences. However, this was not the first time the Student was directed by the University to remove misrepresentations of her academic qualifications from the public record, and advised that such misrepresentations violated the *Code*. In the past, she had taken steps to correct the record, as such the Student was aware of her actions and the University's position on such representations. On this occasion, having been directed to cease and desist making such representations by the University, and even when faced with the possibility of being charged with an offence, the Student continued to engage in the misrepresentation.
- c) **The nature of the offence committed.** As noted in a number of Tribunal decisions, including *University of Toronto v. A.P.* (Case No 913, January 16, 2018) (at para 39), and *University of Toronto v. T.C.* (Case No 856, October 6, 2016) (at para 17), misrepresentation of one's academic qualifications and forgery of an academic record are considered a most serious offence. As such, in the absence of mitigating factors, such an offence warrants a recommendation of expulsion.
- 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.** Such offences pose a serious concern and are detrimental to the academic integrity of the University.
- 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 misrepresenting one's academic history and status is a serious offence which will lead to a recommendation of expulsion.

40. 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. (*Discipline Appeal Board, University of Toronto v. D. S.*, Case No 451, August 24, 2007).
41. A review of similar cases provided by Counsel to the University indicates that a student who commits such an offence warrants a recommendation of expulsion. With respect to the length of the suspension, a five-year suspension is generally consistent with the sanctions granted in similar circumstances.
42. 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.
43. At the conclusion of the hearing, the Panel made the following order:
 - a. That the hearing may proceed in the absence of the Student;
 - b. That the Student is guilty of charge #1, that she knowingly falsified her academic record and circulated and made use of such falsified academic record, contrary to section B.I.3(a) of the *Code*;
 - c. That the following sanctions shall be imposed on the Student:
 - i. the Student shall be immediately suspended from the University of Toronto for a period of up to 5 years from the date of this order or until Governing Council makes its decision on expulsion, whichever comes first, and that a corresponding notation be placed on her academic record and transcript; and
 - ii. the Tribunal recommends to the President of the University that he recommend to the Governing Council that the Student be expelled from the University; and
 - iii. 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.

44. An Order was signed at the hearing by the Panel to this effect.

DATED at Toronto, January 25, 2019.

A handwritten signature in blue ink, consisting of several loops and a long horizontal stroke extending to the right.

Michelle S. Henry, Co-Chair