

**THE UNIVERSITY TRIBUNAL
THE UNIVERSITY OF TORONTO**

IN THE MATTER OF charges of academic dishonesty made on July 14, 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 -

MS. A. K.

REASONS FOR DECISION

Members of the Panel:

Mr. Andrew Pinto, Chair

Professor Marc Lewis, Faculty Panel Member

Ms. Elena Kuzmin, Student Panel Member

Appearances:

Mr. Robert Centa, Assistant Discipline Counsel

Ms. Tina Lee, Associate to Mr. Centa

Professor Donald Dewees, Dean's Designate, Faculty of Arts and Science

Mr. Isaac Tang, Student Representative, Downtown Legal Services

Ms. A. K., the Student (present)

Preliminary

- [1] The Trial Division of the University Tribunal was convened on November 11, 2008 and December 2, 2008 to consider charges under the University of Toronto *Code of Behaviour on Academic Matters, 1995* (the "Code") laid against the Student by letter dated July 14, 2008 from Professor Edith Hillan, Vice-Provost, Academic.

Hearing on the Facts

- [2] The charges are as follows:

Charges arising from the application to the Woodsworth College Academic Bridging Program

1. On or about October 3, 2003, you knowingly forged or in any other way altered or falsified a document or evidence required by the University of Toronto, or uttered, circulated or made use of any such forged, altered or falsified document, namely, an application form submitted to the Academic Bridging Program at Woodsworth College, University of Toronto, which failed to disclose that you had previously attended a post-secondary institution, contrary to Section B.I.1(a) of the Code.
2. In the alternative, on or about October 3, 2003, 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 an application form to the Academic Bridging Program at Woodsworth College, University of Toronto, which failed to disclose that you had previously attended a post-secondary institution, contrary to Section B.I.3(b) of the Code.

Charges related to the 2007 application for post-admission transfer credits

3. On or about August 31, 2007, you knowingly forged or in any other way altered or falsified a document or evidence required by the University of Toronto, or uttered, circulated or made use of any such forged, altered or falsified document, namely, a letter dated April 16, 2007, which purported to be a request to the Kocaeli University for a transcript of your academic record contrary to Section B.I.1(a) of the Code.
4. On or about August 31, 2007, you knowingly forged or in any other way altered or falsified a document or evidence required by the University of Toronto, or uttered, circulated or made use of any such forged, altered or falsified document, namely, a document that purported to be an official document from Kocaeli University containing course descriptions for five courses you claimed to have taken at the Kocaeli University contrary to Section B.I.1(a) of the Code.

5. On or about August 31, 2007, you knowingly forged or in any other way altered or falsified a document or evidence required by the University of Toronto, or uttered, circulated or made use of any such forged, altered or falsified document, namely, a document that purported to be an official transcript of academic study from Kocaeli University containing course descriptions for five courses you claimed to have taken at the Kocaeli University contrary to Section B.I.1(a) of the Code.
6. In the alternative, in August or September 2007, 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 University of Toronto:
 - i. a letter dated April 16, 2007, which purported to be a request to the Kocaeli University for a transcript of your academic record;
 - ii. a document that purported to be an official document from Kocaeli University containing course descriptions for five courses you claimed to have taken at the Kocaeli University; and
 - iii. a document that purported to be an official transcript of academic study from Kocaeli University containing course descriptions for five courses you claimed to have taken at the Kocaeli University.

[3] Particulars of the charges are as follows:

7. On October 3, 2003 you signed an application for admission into the Woodsworth College Academic Bridging Program. You were required to list all post-secondary institutions that you had attended in Canada and abroad. By signing the application form, you certified that all statements in the form were true, correct and complete and that you had disclosed all material information.
8. You indicated on the form that you had not attended any post-secondary institutions. This statement was not true. You had studied in the department of photography at Kocaeli Vocational School in Turkey. You knowingly withheld this information from your application, which the University relied upon in reaching its decision to admit you to the program.
9. You registered for a course in the Academic Bridging Program in 2003 Winter term, and thereafter remained registered at the University of Toronto.
10. In August 2007 you applied to the University to obtain post-admission transfer credits. You submitted at least three documents in support of your application for post-admission transfer credits:
 - i. a letter dated April 16, 2007, which purported to be a request to the Kocaeli University for a transcript of your academic record;

- ii. a document that purported to be an official document from Kocaeli University containing course descriptions for five courses you claimed to have taken at the Kocaeli University; and
 - iii. a document that purported to be an official transcript of academic study from Kocaeli University containing course descriptions for five courses you claimed to have taken at the Kocaeli University.
 - 11. Each of the documents you submitted contained false information. None of the documents was an official document from Kocaeli University. These documents were required by the University of Toronto to support your request for post-admission transfer credits. You either forged, falsified or altered these three documents or had them forged, falsified or altered at your request.
 - 12. You submitted these forged, falsified or altered documents in support of your request for post-admission transfer credit. You submitted these documents knowing them to be forged, altered or falsified.
- [4] The Student entered a guilty plea to Charges 1, 3, 4, and 5.
- [5] Discipline counsel for the University introduced the *Agreed Statement of Facts*, which was entered as Exhibit 1.
- [6] Discipline counsel provided an overview of Exhibit 1:
- i. The Academic Bridging Program (ABP) at Woodsworth College at the University of Toronto is designed for individuals who are at least 20 years old, have been away from formal education for some time and do not meet the University's established requirement for direct entry admissions. The ABP is intended to bridge the gap between a student's prior secondary education and the requirements of first-year university courses. Students who successfully complete the ABP are admitted to degree studies in the Faculty of Arts and Science and receive one full credit towards their degree.
 - ii. Applicants to the ABP are required to list their educational background and are directed that "all studies in Canada and abroad must be listed", including secondary and post-secondary institutions.
 - iii. Applicants are required to sign the following certification as part of the application form:

I hereby certify that all statements on the application and in any material filed in support hereof are true, correct, and complete and all material information has been disclosed. I understand that if the University finds to the contrary, my association with, admission to or registration in the University may be rescinded and cancelled after notice in writing to me at my home address as shown hereon. If I am withdrawn from the Academic Bridging Program for not disclosing all the required information

regarding my educational background, I understand that a tuition refund, if any, will be based on the fees scheduled. In addition, other Canadian universities may be contacted.

The Student's 2003 Application to the ABP

- iv. On October 3, 2003, the Student applied for admission to the ABP. On the form she declared that:
 - a. she had attended one secondary school in Turkey from 1989 to 1995;
 - b. she had not attended any post-secondary institutions and wrote "N/A" in that part of the application form;
 - c. between September 1996 and May 1997, she worked for Berlitz in London;
 - d. between August 1997 and August 2000, she worked for Superonline in Turkey;
 - e. all information included in the application was correct and complete and that she had disclosed all relevant information.
- v. The Student admits that from 1996 to 1998 she was enrolled in a 2-year associate degree program at the Kocaeli Vocational School ("KVS"), which is associated with Kocaeli University ("KU"), during which time she studied in the department of photography.
- vi. The Student admits that she did not list her studies at KVS on her ABP application nor did she submit her transcript from KVS as part of the application package.
- vii. The Student agrees that information related to her studies at KVS and KU was material and relevant to the University's consideration of her application to the ABP, and that the terms of the application form required her to provide that information to the University as part of her application
- viii. The Student admits that, contrary to Section B.I.1.(a) of the *Code*, she ought to have known that she had falsified her ABP application form and had circulated that falsified ABP application, which the University required as part of her application to the ABP.
- ix. The Student admits that, contrary to Section B.I.3.(b) of the *Code*, she ought to have known that, by omission, she had misrepresented her academic background on her ABP application form in order to obtain an academic advantage of any kind.

Applications for post-admission transfer credits

- x. Sometimes the University will grant students credit for academic work done at other institutions after they have been enrolled at the University. This is known as a post-admission transfer credit ("PATC").

- xi. Arts and Science students who wish to apply for PATC do so through the Transfer Credit Section ("TCS") of the Office of the Faculty Registrar. As part of the application for PATCs, students must:
 - a. provide a paper copy of, or the website address for, the course description for each course for which credit is sought;
 - b. provide an official transcript from the institution where the credit was earned
 - c. certify that all information provided is true, accurate, and complete
 - d. consent to having the University of Toronto confirm with the other post-secondary institution the accuracy of any information submitted by the student.

The Student's application for PATC

- xii. In late August 2007, the Student applied for PATC. She requested that the University grant her credit for five courses that she claimed to have completed at KU between 1996 and 1998, specifically ENF141Y2, *Introduction to Computer Science*; ENF211Y2, *Introduction to Computer Programming*; Aegean and East Mediterranean Art and Archaeology; *Later Medieval Art and Architecture*; and *The Archaeology of the Ancient Near East*.
- xiii. On August 31, 2007, the TSC received the following documents via courier:
 - a. a letter dated April 16, 2007, which the Student states was written in August, which purported to be from the Student to unnamed officials at KU requesting her official transcript and course descriptions for the five courses.
 - b. a document that purported to be an official academic transcript for the Student from the KU Faculty of Arts and Science.
 - c. a document that purported to be official and certified course descriptions for the five courses.
- xiv. On September 4 and 5, 2007, the Student contacted Ms. Tracy Wood of the TCS to inquire why she was unable to complete the PATC application form on-line.
- xv. Ms. Wood replied that the Student's failure to disclose her prior studies at the time of her application to the ABP was a problem. The Student responded that she had just realized that she could apply for transfer credits, even though she had not completed her prior degree.
- xvi. On November 1, 2007, the Student and Ms. Wood met to discuss the PATC application. The Student indicated that she had sent descriptions of KU courses to KU for approval. During this meeting, the Student did not volunteer that the KU documents were not official.

- xvii. The TCS attempted to contact officials at KU to authenticate the documents in support of the Student's PATC request. On January 29, 2008, Professor Arif Demir, Vice-Rector of Kocaeli University, replied that the Student had studied at KVS between 1996 and 1998, but that the transcript provided by the Student was a fake.
- xviii. On February 29, 2008, Ms. Wood informed the Student that KU had reported the transcript submitted in support of the PATC request was fraudulent. The Student expressed surprise, assured Ms. Wood that there must be a mistake and that she would follow-up with KU.
- xix. On June 16, 2008, the Student met with Professor Don Dewees, the Dean's Designate for Academic Integrity in the Faculty of Arts and Science. During the meeting, the Student admitted that she had paid \$250 to a person in Turkey to forge the KU transcript and the KU course descriptions for her and that the person did forge those documents for her contrary to Section B.I.1.(a) of the *Code*.
- xx. The Student admits that she knowingly uttered, circulated and made use of the KU transcript and KU course descriptions as part of her application for PATC, knowing that the documents were forged and/or contained falsified information, contrary to Section B.I.1.(a) of the *Code*.
- xxi. The Student admits that she knowingly uttered, circulated to the University, and made use of the Letter as part of her application for PATC knowing that it contained false and falsified information about her academic record at KU, contrary to section B.I.1.(a) of the *Code*.
- xxii. The Student admits that she intended the University to rely on the KU documents in order for her to obtain an academic advantage, namely PATC.

Decision of the Tribunal on Charges

- [7] Following deliberation, the Tribunal accepted the Student's guilty plea on Charges 1, 3, 4, and 5. Consequently, the University withdrew Charges 2 and 6.
- [8] The matter then continued with a hearing into the appropriate sanction. The University advised the Tribunal that it was seeking the ultimate penalty, recommendation for expulsion from the University, pursuant to section C.II.(b)(1)(i) of the *Code*. The University called no evidence but relied upon the Agreed Statement of Facts.
- [9] The Student's representative, Mr. Tang, submitted that there were mitigating factors and that the appropriate sanction was suspension from the University for 5 years and recording of the sanction on the Student's academic record for a period of 5 years from the date of suspension.

[10] The only witness at the hearing was the Student herself.

The Student's Evidence on Sanction

[11] At the outset of the Student's evidence, Mr. Tang provided the University and the Tribunal with a Student's Book of Documents (Penalty Phase). Mr. Centa, on behalf of the University, reserved the right to contest the admissibility or weight of the documents which were being disclosed for the first time.

[12] The Student testified in respect of the penalty phase. She is now 30 years old and married. She stated that she grew up and finished her high school education in Turkey. In terms of post-secondary education, she was enrolled in a degree program at KU in the department of photography and paid tuition for 2 years between 1996 and 1998, but only attended for one year.

[13] The Student produced a document which she identified as her true transcript from KU. The transcript, in the Turkish language, shows course enrollments in respect of the 4 half-year terms from 1996 to 1998. The transcript shows that the Student participated in 20 courses in 1996-97 and obtained marks ranging from 52% to 98%. In 1997-98, the transcript shows the Student enrolled in 12 courses, 7 of which have a grade indication of "Basarisiz", and 5 of which show "Devamsiz". One of the documents in the Student's productions indicates that, in Turkish, "Basarisiz" has two meanings: 1) a course in which one is registered and earns a grade less than 50%; and 2) a course for which one pays tuition (i.e., registers), but does not participate. The Student indicated that the second meaning accurately reflects her situation. She then explained that "Deramsiz" indicates that one neither paid course fees nor participated in the courses in which one enrolled. The Student testified that she did not participate in these 12 courses because her parents' marriage broke up and she had to support her two younger sisters.

[14] The Student immigrated to Canada in September 2002 at the age of 24. She followed her husband who obtained employment in Canada. The Student's entire family remained in Turkey. Her husband and members of his family are in Canada. In 2003, the Student and her husband faced financial hardship and borrowed \$35,000 from her husband's family.

[15] In October 2003, the Student successfully applied for entry to the University of Toronto through the Academic Bridging Program at Woodsworth College. The Student testified that she did not at the time list her post-secondary attendance at KU in Part D of the ABP Application Form because (i) she did not understand the proper meaning of "abroad"; and (ii) she did not complete a degree at KU.

[16] The Student commenced regular undergraduate studies at the University of Toronto in September 2004. She was pregnant at the time and gave birth to a daughter in April 2005. She testified that she struggled as a new mother as her daughter suffered with colic for more than 10 months and slept poorly. After

giving birth, she developed post-partum anxiety. Previously, the Student had miscarriages in 2000 and 2003.

- [17] The Student testified that her financial difficulties continued and that by the end of 2006, tension with her husband's family became unbearable. The family wanted her to graduate from university as soon as possible and start earning a living. In early 2007, she decided that if she could obtain credit for 2 courses she would save \$1200 in tuition obligations and would graduate sooner. She testified that she tried to obtain her transcript from KU through a friend in Turkey but was unsuccessful. In the summer of 2007, she enrolled in 6 half-courses at the University. During this time, she could not afford proper daycare for her daughter. She was also diagnosed with Graves disease and her anxiety level was very high. She had difficulty sleeping.
- [18] On August 21, 2007 she received a long distance call from an individual in Turkey who identified himself as a legal counselor. Apparently, the Student's friend in Turkey arranged this call. The individual advised the Student that for \$250 (CAD) he would prepare and provide her with documentation showing that she had taken various university courses in Turkey. She could then obtain transfer credits for these courses from the University of Toronto. The Student testified that she did not know what documentation this individual was going to produce, although she did understand that it was going to be fraudulent. On August 23, 2007, the Student participated in a second call with this individual and discussed course names and descriptions. The individual provided her with the text of a cover letter which she signed and sent back to the individual with the \$250 payment. She testified that the two long distance telephone calls and chatting on MSN (Microsoft Network) were the only communications she had with this individual.
- [19] In late August 2007, the Student applied for Post-Admission Transfer Credits (PATC) on the basis of the fraudulent documentation that the individual in Turkey sent to the University. The Student testified that the first time she actually saw the fraudulent documentation was when the University disclosed its documentation to her in the context of this academic discipline hearing.
- [20] In any event, in September 2007, the Student attempted to determine from the University why she could not complete her online transfer credit application. She was advised by Tracy Wood, the University's employee responsible for credit transfers, that there was a problem because the Student had not disclosed her post-secondary attendance at the time of her admission to the University. Ultimately, this led the University to obtain confirmation from KU that the Student's PATC documentation was fraudulent, and the University charged the Student with academic misconduct.
- [21] The Student testified that she felt shame and remorse at her conduct and that she was deeply sorry for her actions. Her dream was to complete a Master's Degree in Fine Arts in the area of Gallery Studies. She stated that if she was

expelled from the University there would be no future for her in Canada and that she would have to consider returning to Turkey.

[22] The Student produced a number of relevant documents in the course of her evidence. Of particular relevance are:

- a recommendation letter dated September 10, 2002 purportedly signed by the Dean of KU. The letter states that "the Student was one of the most successful students in the Photographic and Graphic Arts section."
- a document confirming that the Student obtained her Canadian citizenship in December 2006.
- a medical report dated November 14, 2007 from an endocrinologist who examined the Student. The report is directed to another physician and appears to have been issued in respect of the Student's thyroid problem, among other medical issues. The endocrinologist did not testify at the hearing. The University contested the admissibility of the medical report and, in the alternative, suggested that the Tribunal assign it little weight. The Tribunal permitted the admission of the report into evidence subject to the Tribunal's own determination on weight. The Student highlighted the fact that the Report referred to her as being diagnosed with Graves disease, a thyroid disorder.
- a psychological report dated June 10, 2008 concerning the Student. The author of the report has a Masters degree in Psychology and issued the report at the Student's request. Once again, the University contested the admissibility of the psychological report since its author did not testify at the hearing. The Tribunal allowed this report to be entered into evidence subject to determination regarding weight. The bulk of the psychological report conveys what the Student advised the psychological consultant about her challenges as a new mother and immigrant. The report includes a paragraph that states, "[The Student], a mother of a newborn baby and a full time university student who lacks enough social and financial support probably went through a psychological burnout period. Her poor psychological and physical health (thyroid dysfunction) all combined might have caused her an impaired judgment."
- the Student's University of Toronto transcript as of November 6, 2008 showing her course enrollments, grades, sessional and cumulative grade point averages (GPAs) from September 2003 up to and including Summer 2008. The Student testified, and the transcript confirms, that she has completed 18 course credits. She would need 20 credits to graduate with a Bachelor of Arts degree from the University.

[23] Mr. Centa, on behalf of the University, cross-examined the Student. He directed her to her October 2003 application for the Academic Bridging Program (ABP). In her evidence-in-chief, the Student had indicated that one of the reasons she did

not indicate her post-secondary attendance at KU was that she didn't understand the word "abroad." However, when confronted with the fact that she had nevertheless listed her high school in Turkey in an earlier section of the ABP Application that required the "name of secondary schools attended in Canada and abroad", the Student stated that she focused on the "secondary schools" aspect. In respect of the Student's other reason for not including her studies at KU - because she did not complete a degree - Mr. Centa drew the Student's attention to the fact that the Application had separate columns for "Degree/Diploma Sought" and "Check if conferred", but the Student had simply written "N/A". There also appeared to be a contradiction between the Student's evidence that, in reality, she was enrolled at KU between 1996 and 1998, and her ABP application which indicated that she was employed at Berlitz in London. The Student responded that that her command of English was considerably worse in 2003.

- [24] Turning to the Student's financial circumstances, the Student confirmed that she did not make a loan application to the Ontario Student Assistance Program (OSAP) which would have provided her with financial assistance. She also conceded that the \$35,000 loan from her husband's family did not contain any interest or fixed repayment obligations.

Submissions

- [25] Mr. Centa, for the University, submitted that the appropriate sanction was recommendation for expulsion and a permanent notation on the Student's record. He suggested that while Tribunal panels are not bound by precedent in the strict legal sense, consistency with earlier Tribunal decisions is to be encouraged. Submission of false transcripts and documentation has been considered one of the most serious forms of academic misconduct. Tribunals have consistently, but not in every case, recommended expulsion.
- [26] Mr. Centa suggested that a recent case, *Ms. K. (November 5, 2008)*, was remarkably similar to the facts of this case and merited particular attention. The Tribunal in *Ms. K.* ultimately recommended expulsion. *Ms. K.*, like the present Student, pleaded guilty to submitting 3 fraudulent documents including a falsified transcript to obtain Post Admission Transfer Credits (PATC). *Ms. K.* involved a third party in her fraudulent scheme, but in her case no money changed hands. *Ms. K.* had obtained 19 credits over a 10 year period, mostly as a part-time student while working. She was just one credit short of being eligible to graduate. The Tribunal determined that, while *Ms. K.* had health problems, including depression, anxiety and panic attacks, *at the material time*, namely when the false documents were created, she was physically and mentally well. As well, although *Ms. K.* pleaded guilty at the discipline hearing stage, she was not forthright when first confronted with the misconduct allegations. Ultimately, the Tribunal recommended expulsion for *Ms. K.* because of the planned and deliberate nature of her offence, which involved a third party with a view to maximizing the scheme's chance of deception. Mr. Centa submitted that, given

the strong similarities between the facts in *Ms. K.* and the present case, the Tribunal should also recommend expulsion.

- [27] Mr. Centa emphasized that the Student's actions were planned and deliberate. The scheme involved a third party (the contact in Turkey), and featured a commercial element (the \$250 payment). The misconduct was not occasioned in a momentary lapse but executed over several months. The omission of post-secondary studies from the Student's ABP in October 2003 appeared deliberate rather than as a result of her misunderstanding the word "abroad" or based on the non-completion of a degree in Turkey. The Student also failed to include as part of her ABP application the recommendation letter that the KU Dean had purportedly provided to her in 2002 which clearly referenced her post-secondary studies in Turkey.
- [28] Mr. Centa submitted that the impact of transcript and academic documentation fraud on the University is grave. He emphasized the importance of general deterrence since the incidence of transcript fraud is on the rise, in part, due to the advance of technology. He suggested that the fact that the *Ms. K.* case and the present case occurred in the recent past provided some evidence justifying the University's growing concern. The aggravating circumstances, which involved a planned and deliberate deception, far outweighed the mitigating factors. The medical evidence concerning the Student's health challenges was weak; and the mitigating circumstances such as the Student's financial and child care stresses were not sufficiently causally connected to her offence.
- [29] In conclusion, Mr. Centa submitted that recommendation for expulsion and permanent notation was the only appropriate penalty. He conceded that an expulsion from the University of Toronto would be a relevant consideration and potential barrier if the Student applied for admission to another university. However, the expulsion should not automatically preclude the Student from completing her Arts degree. Her 18 course credits and related grades from the University remained intact. She may obtain credit for some of these courses and, subject to residency and other requirements, graduate from another institution.
- [30] Mr. Tang, on behalf of the Student, conceded that the Student's misconduct called for a serious sanction but that recommendation for expulsion would be an excessive penalty. He sought a five year suspension and notation on the Student's academic record and argued that this would represent a better balancing and resolution of the *Code's* sanctioning objectives. Mr. Tang suggested that his client, a relatively new mother, struggling with her family to find her footing in Canada, had already learned a harsh lesson. She had admitted guilt at the Dean's Designate meeting in June 2008 and was honest and forthright about the nature of her misconduct at the hearing.
- [31] Mr. Tang disagreed that the Student's misconduct was planned and deliberate and suggested that the fraudulent arrangement came into being over a mere 3 day period in August 2007, during a time of great stress for the Student. He

reminded the Tribunal that the Student testified that in early September 2007 she attempted to cancel the PATC process but this failed when Tracy Wood was not able to meet with her. Mr. Tang disagreed that the October 2003 ABP was a deliberate concealment of the Student's post-secondary studies at KU. The consequences of expulsion, he suggested, would be extremely grave for the Student as she would effectively lose 3 years of labour and seriously jeopardize the likelihood of her ever attaining her degree. He pointed to the mitigating factors operating at the material time such as the medical issues cited in the endocrinologist's and psychological consultant's reports. To this extent, the Student's case was distinguishable from the case of *Ms. K.* Ultimately, a suspension of 5 years would accomplish many of the same deterrence objectives as expulsion, except suspension would provide the Student with some possibility of academic rehabilitation.

- [32] Mr. Centa and Mr. Tang also referred to previous decisions of the Tribunal which appeared to support the sanction they proposed.

Decision of the Tribunal on Sanction

- [33] The Tribunal has carefully reviewed the evidence and the submissions made on behalf of the University and the Student. We have considered the classic factors identified in the *Mr. C.* decision (November 5, 1976):

- a) the character of the person charged;
- b) the likelihood of a repetition of the offence;
- c) the nature of the offence committed;
- d) any extenuating circumstances surrounding the commission of the offence;
- e) the detriment to the University occasioned by the offence; and
- f) the need to deter others from committing a similar offence.

- [34] In our view, the Student's actions in this case merit a recommendation for expulsion and a permanent notation on her academic record. The Tribunal notes that the Student's misconduct occurred during two different time periods, in 2003 and 2007. This significantly undermines the Student's argument that her financial, health and child-care challenges were relevant factors that should mitigate the most serious sanction.

- [35] With respect to Charge # 1, although the Student suggested that her omission of post-secondary studies was the result of her simply misinterpreting the application form, the Tribunal finds that the evidence is more consistent with her deliberately omitting her studies at KU to enhance her eligibility for entrance into the ABP. The Student's explanation that she misunderstood the meaning of "abroad" is contradicted by her apparent understanding of the term in a different part of the application where she listed her secondary schooling in Turkey. Although the Student's first language is not English, the possibility that she

misinterpreted the term "abroad" is also diminished by the fact that the relevant part of the ABP form contains the instruction "If Abroad State Country", in reference to the requirement to list "Post-Secondary Institutions Attended". The Student indicated "N/A" (not applicable) directly below this instruction. The bottom of the ABP application form states "Transcripts from post-secondary institutions must be mailed directly from the institution to us", without referring to the term "abroad", yet the Student did not arrange for her KU transcript to be sent to the University. The Student also did not forward to the University the recommendation letter that the Dean of KU had supposedly prepared for her in September 2002 describing her as "one of the most successful students in the Photograph and Graphic Art section."

- [36] The Student's alternative explanation that she didn't list her KU post-secondary studies because she did not complete her degree is undermined by the fact that the ABP application clearly provides an opportunity for applicants to distinguish between post-secondary degrees sought and those actually conferred. On her ABP application, under "Activities", the Student indicated that she was employed by Berlitz in London at or around the same time that, in reality, she was enrolled at KU. Together these factors make it difficult for the Tribunal to conclude that the Student was merely careless when she omitted her post-secondary studies on her ABP application. The Tribunal finds that the Student falsified her ABP application to obtain academic advantage for admission to the University.
- [37] Unfortunately, four years later in September 2007, the Student's misrepresentation from 2003 revisited her when she attempted to obtain Post-Admission Transfer Credits (PATC) for courses that she claimed to have taken at KU in Turkey. The Student had provided the University with contradictory information. To obtain entry into the ABP in 2003 she claimed that she had no prior post-secondary education, but in 2007 to obtain PATC she claimed that she did. The University made inquiries and, consequently, the Student's misconduct in both instances was exposed.
- [38] The Tribunal finds that the Student also engaged in a planned and deliberate scheme to mislead the University in 2007. In her evidence before the Tribunal concerning sanction, the Student attempted to minimize her involvement concerning the fraudulent cover letter, transcript and course descriptions (which relate to Charges 3, 4 and 5). She suggested that an unscrupulous individual in Turkey contacted her at a time of great stress in her life and, in desperation, she agreed to whatever he suggested. Within a few days, arrangements were in place to obtain the PATC that would allow the Student to graduate sooner and with less financial debt. The Student testified that, with the exception of the cover letter, she did not even know what false documentation had been sent to the University on her behalf. The Tribunal is skeptical of the Student's explanation but more to the point, the Tribunal is not persuaded that a material distinction should be made in sanction between a student who directly perpetrates a fraud and one who contracts out the fraudulent activity to a third party and claims ignorance. Here the Student clearly knew that a fraud was

being perpetrated on the University. The fact that she supposedly didn't know or didn't inquire into the precise details is not going to ameliorate the sanction.

- [39] The Tribunal also finds that the Student did not disclose her misconduct at the first opportunity or even early in the discipline process. Assuming, without agreeing, that the misconduct began in August 2007, the Agreed Statement of Facts discloses that the Student continued to mislead the University about the true nature of her KU studies at meetings in September and November 2007 and February 2008. At the February meeting, the Student contacted Ms. Wood and expressed surprise to hear of the allegations of fraud and assured Ms. Wood that there must be a mistake. It was not until June 16, 2008, during the Dean's meeting, that the Student admitted that she paid \$250 to an individual in Turkey to perpetrate the fraud.
- [40] The commercial aspect of the fraud is an aggravating factor that supports the most serious sanction since it relates to the unfortunate institutionalization or professionalization of the academic forgery business. Generally, the University cannot sanction these fraud artists directly but it can strongly sanction the students who unwisely use their services.
- [41] The Tribunal was concerned that the Student was near to the completion of her degree and questioned to what extent this should affect the appropriate sanction. We concluded that the nearness of completion of a degree is a relevant but not determinative factor in respect of sanction. We find support for our decision based on the reasoning of the Tribunal in *The University of Toronto v. Student*, Case No. 499 (2008-2009), which held:

[73] The University argues that in the Mr. P. decision, the Tribunal said at paragraph 13 that while the student's circumstances - "he is very close to obtaining his degree from this University and that, should he be expelled, he may have difficulty in securing a place at another university" - were "perhaps unfortunate, we are not persuaded that this is a relevant factor for us to consider". We note, however, that in the next paragraph, the Tribunal did in fact consider and reject the argument that this detriment should result in mitigation of the expulsion penalty. In this sense, the Mr. P. decision again supports the proposition that consequences for the student - as for the University - are relevant but not determinative considerations in weighing the various factors in Mr. C.

- [42] The student in *Ms. K.* was only one credit away from meeting her graduation requirements when the Tribunal recommended her expulsion. Viewed in isolation, imposing a sanction leading to expulsion on a student who is one or two credits short of graduation may appear unduly harsh. However, these students have likely been part of the university community for a number of years and ought to understand better than most that serious misconduct at any stage in their academic career may result in the ultimate sanction. We advocate an approach that does not view the nearness of completion of a degree in isolation; but rather one that neither penalizes nor rewards a student for this fact in terms of sanction. We suggest that the better approach is for the Tribunal to have greater information on the actual consequences of the proposed sanction. Is the

student unlikely to ever graduate? What kind of courses would the student still have to fulfill? Of course, as in the present case, the answers to these questions may not ultimately result in the Student receiving less than the ultimate sanction, primarily due to the serious nature of the offence involved.

- [43] The Student did provide a letter from an endocrinologist and a psychological consultant. Notice of these documents was given to the University at the last minute and neither witness was called upon to testify. The Tribunal is entitled to permit hearsay evidence subject to a determination of what weight should be attributed to the evidence. With respect to the endocrinologist's letter, while it clearly states that the Student has a thyroid-related medical problem including Graves' disease, the letter does not indicate how, when, and to what extent the problem manifested itself. The letter states that a "scan of the thyroid was done on May 24 [2007] and showed a very elevated radioactive iodine uptake at 58% which is twice normal with a diffuse picture in keeping with Graves' disease." But the endocrinologist's letter, dated November 14, 2007, concludes, "[H]owever, it is very hard to know where she is in terms of the state of the Graves' disease." The letter provides little evidence that the Student's thyroid-related disorder manifested itself in August 2007 in a way that would impair her judgment or provide a sufficient nexus to her misconduct.
- [44] The psychological consultant's report, unlike the endocrinologist's, was clearly written in contemplation of the Student's discipline hearing. The report contains much of the same information as the Student provided in her own evidence; therefore the Tribunal prefers to receive the Student's evidence directly, particularly as the witness was not present to be cross-examined. In any event, the Tribunal finds that this report does not particularly assist the Student as it concludes that, "Her poor psychological and physical health (thyroid dysfunction) all combined *might* have caused her an impaired judgment." [emphasis added]. In the Tribunal's view, the report's tentative conclusion minimizes the Tribunal's reliance on it as evidence of mitigation in respect of the Student's psychological frame of mind at the material time.
- [45] The Student did not provide additional witnesses or documentation that could have spoken to her character or the apparent challenges she was facing in 2007. It is unclear what difference this would have made in light of the evidence that was in fact presented and the serious nature of her misconduct. But the Tribunal was unable to have a greater appreciation of any mitigating factors, assuming they existed, without this evidence. It was also unclear to the Tribunal why the Student would necessarily be forced to return to Turkey if the sanction of recommendation for expulsion was imposed. The Student is a Canadian citizen and she has a husband and young child in Canada. The Tribunal is obliged to be mindful of the potential implications of the penalty it imposes; however, the drastic outcome suggested by the Student appears to be based on a mix of personal and other factors that were not disclosed to the Tribunal at the hearing.
- [46] The Student has shown insight into her regrettable actions. Clearly, she had to juggle some very challenging financial, academic and family responsibilities

shortly after arriving in Canada in 2002. However, the Tribunal is faced with a situation where it was not presented with sufficient evidence of a nexus between the adverse circumstances apparently facing the Student and her impugned conduct. The Tribunal's reasoning in *University of Toronto v. Student*, Case No. 440 (2006-7) seem appropriate:

[26] The Tribunal was not unmoved by the sad circumstances of the Student's life with her parents, her significant others, and her motor vehicle accident. There is no question but that such events presented difficulties for the Student and compromised her happiness and equanimity. Finally, it is clear that she suffered some ill health as a result of being in a motor vehicle accident and the Tribunal accepts that she suffered some pain and that she was obliged to undergo rehabilitative treatments for the effects of the motor vehicle accident. As a consequence, it is clear that these circumstances created adversity for the Student when she was confronted by the rigors of the academic environment in which she enrolled.

[27] The Student explained the decision to purchase essays by reference to these adverse circumstances. The question that arises is whether these adverse circumstances should operate to mitigate the punishment for the offence that occurred. The Tribunal was presented with argument about the causal connection that existed (or, in the argument of the Discipline Counsel, did not exist) between the offence and the adverse circumstances.

[28] Adversity alone is not sufficient to mitigate the punishment for the offences under the Code. If adversity alone could excuse cheating, then the essence of the Code would be demeaned, because it would suggest that the Code requires adherence to a standard of conduct that can only occur where adversity does not exist. This cannot possibly be true. Virtually every student experiences adversity of one kind or another while in the University environment. Whether that adversity is emotional, economic, or physical, it cannot but affect a student negatively. Adversity is part of the human condition. As such, we are entitled to expect that fundamental values survive those aspects of everyday life, one of which is adversity. The ability to persevere and overcome adversity is fundamental to any endeavour and is equally critical to academic success as it is to success in any other field of human endeavour. Adversity itself cannot become an excuse and mitigator of the commission of an offence. The academic environment at the University rewards perseverance in the face of adversity; the Code - which supports the academic environment - does not contemplate adversity as an excuse and mitigator for offences that threaten the integrity of the community.

[29] Of course, there may well be adverse circumstances that give rise to the commission of an offence, and such adverse circumstances might be seen as so clearly causally connected to the offence that they alter the judgment and ability of the student to elect between right and wrong, and therefore those circumstances would operate to mitigate the punishment. The Tribunal did not regard those circumstances offered by the Student as either causally connected to the offence, or as so clearly connected that they had the effect of preventing the Student from knowing or electing between right and wrong.

[47] The Tribunal recognizes that the Student appears to be genuinely remorseful for her conduct. The fact that she eventually admitted to the charges in the Notice speaks positively to her character. The Tribunal also believes that she is unlikely to repeat this offence. However, the oral and written evidence presented by the

Student did not provide a sufficient nexus to the circumstances surrounding the commission of the offence to persuade the Tribunal that a lesser sanction was appropriate.

- [48] We therefore recommend to the President that he recommend to Governing Council that the Student be expelled from the University and that a permanent notation of this expulsion be recorded on the Student's academic record. We further instruct that this case be reported to the Provost, so that a notice of these proceedings may be printed in the University's newspaper with the Student's name withheld.

January 14, 2009

Date

Andrew Pinto

Mr. Andrew Pinto, Chair