

**THE UNIVERSITY TRIBUNAL
THE UNIVERSITY OF TORONTO
TRIAL DIVISION**

IN THE MATTER OF charges of academic dishonesty filed on September 14, 2017, and revised on June 29, 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 amended S.O. 1978, c. 88

B E T W E E N :

UNIVERSITY OF TORONTO

- and -

S [REDACTED] W [REDACTED] (the “Student”)

REASONS FOR DECISION ON FINDING

Hearing Date(s): July 17, 2018; August 30, 2018; February 25, 2019; February 28, 2019; March 21, 2019; April 23, 2019

Members of the Panel:

Mr. Nader Hasan, Chair
Professor Pascal van Lieshout, Faculty Panel Member
Ms. Yusra Qazi, Student Panel Member

Appearances:

Ms. Lily Harmer and Ms. Lauren Pearce, Assistant Discipline Counsel, Paliare Roland Rosenberg Rothstein LLP
Mr. Lorne Sabsay, Sabsay Lawyers, counsel for the Student

Hearing Secretary:

Mr. Christopher Lang, Director, Appeals, Discipline and Faculty Grievances (July 17, 2018, August 30, 2018, February 25, 2019, February 28, 2019, March 21, 2019, April 23, 2019)
Ms. Jennifer Dent, Associate Director, Appeals, Discipline and Faculty Grievances (February 25, 2019, February 28, 2019, March 21, 2019)

Interpreter: Mr. Kau Kiang Woo, Mandarin Interpreter for the Student, accredited by the Ontario Ministry of Attorney General

I. CHARGES

1. The Trial Division of the Tribunal held a hearing to address the following charges (the “Charges”) brought by the University of Toronto (the “University”) against the Student under the *Code of Behaviour on Academic Matters* (the “Code”):

1. In or about April or May 2015, you did knowingly forge or in any other way alter or falsify an academic record, and/or did utter, circulate or make use of such forged, altered or falsified record, whether the record be in print or electronic form, namely an Official Transcript from Simon Fraser University submitted with an application for admission to the University, contrary to section B.I.3(a) of the *Code*.

2. In the alternative to paragraph 1, in or about April or May 2015, you did knowingly engage in a form of cheating, academic dishonesty or misconduct, fraud or misrepresentation not otherwise described in the *Code*, in order to obtain academic credit or other academic advantage of any kind, by submitting an Official Transcript from Simon Fraser University submitted with an application for admission to the University which was forged, altered or falsified, contrary to section B.I.3(b) of the *Code*.

3. On or about April 7, 2016, you did knowingly forge or in any other way alter or falsify an academic record, and/or did utter, circulate or make use of such forged, altered or falsified document, whether the record be in print or electronic form, namely the following course outlines from Simon Fraser University which you submitted to the Transcript Centre at the University, contrary to section B.i.3(a)¹ of the *Code*:

ECON 103 - 4 Principles of Microeconomics

EASC 104 – 3 Geohazards – Earth in Turmoil

¹ The Charges that were served on the Student erroneously made reference to section B.i.3(b) instead of section B.i.3(a). During the hearing on July 17, 2018, the University identified this error and verbally corrected it on the record on consent of the parties. The Tribunal agreed at that time that that Charge 3 should be amended to include the correct reference (i.e., section B.i.3(a) instead of section B.i.3(b)).

MATH 157 – 3 Calculus I for the Social Sciences

ECON 105 – 4 Principles of Macroeconomics

ECON 290 -3 Canadian Microeconomic Policy

4. In the alternative to paragraph 3, on or about April 7, 2016, you did knowingly engage in a form of cheating, academic dishonesty or misconduct, fraud or misrepresentation not otherwise described in the *Code*, in order to obtain academic credit or other academic advantage of any kind, by submitting forged, altered or falsified course outlines from Simon Fraser University to the Transcript Centre at the University, contrary to Section B. I.3(b) of the *Code*, as follows:

- (a) ECON 103 - 4 Principles of Microeconomics
- (b) EASC 104 – 3 Geohazards – Earth in Turmoil
- (c) MATH 157 – 3 Calculus I for the Social Sciences
- (d) ECON 105 – 4 Principles of Macroeconomics
- (e) ECON 290 -3 Canadian Microeconomic Policy

2. In sum, the Charges allege that the Student *knowingly* forged or *knowingly made use* of two sets of forged documents: (1) a Simon Fraser University (“SFU”) Transcript, and (2) various SFU course outlines (collectively, the “Forged Documents”).

II. SUMMARY OF FACTS/PARTICULARS

3. The University has alleged the following particulars in relation to the Charges:

6. In or about April or May 2015, you knowingly submitted an application to the University for admission as a transfer undergraduate student (“Application”). In support of your Application you submitted an official transcript of an academic record from Simon Fraser University bearing your name (“SFU Transcript”).

7. You were admitted to the University on the basis of your Application and the supporting SFU Transcript.

8. Following your admission to the University you sought to obtain transfer credits for a number of the courses reflected in the SFU Transcript.
9. On or about April 7, 2016, you knowingly submitted to the University five course outlines bearing course codes and information associated with courses offered by Simon Fraser University (“SFU Course Outlines”).
10. On the basis of the SFU Course Outlines you were granted 5.0 academic credits by the University.
11. You did not attend Simon Fraser University at any time, and the SFU Transcript submitted with your Application is forged and contains entirely false information.
12. You did not take the courses which are the subject courses of the SFU Course Outlines, nor did you obtain the SFU Course Outlines from Simon Fraser University; rather they are all forged and falsified.
13. You knowingly submitted the SFU Transcript and the SFU Course Outlines intending that the University rely on them to grant you admission to the University, and to grant you transfer credits for the courses described in the SFU Course Outlines.
14. You knowingly forged, altered and falsified the SFU Transcript and the SFU Course Outlines to obtain academic credit or other academic advantage.

III. THE HEARING

4. The Panel heard from the following witnesses, who were called to testify by the University:
 - a. Kristina McCutcheon, an Academic Advisor at the University of Toronto Mississauga;
 - b. Jessica Olivier, an Academic Advisor at the University of Toronto Mississauga;
 - c. Lynda Onorati, a Senior Admissions Specialist at the University of Toronto;

- d. Adam Giles, a Transfer Credit Specialist at the University of Toronto Mississauga;
 - e. Alexandra Di Blasio, an Governance Coordinator, University of Toronto Mississauga;
 - f. Yifan Liu, the former boyfriend of the Student;
5. In addition, the following witnesses testified on behalf of the Student:
- a. Zhong Hong, the mother of the Student;
 - b. the Student
6. Throughout these proceedings, and pursuant to an order of the Chair, the Student appeared via Skype. On consent of the University, the Student had the assistance of an accredited interpreter throughout the evidentiary portions of the proceedings.

IV. POSITION OF THE UNIVERSITY

7. The University submits that the evidence of the Student's guilt is "overwhelming", and in many respects, "undisputed". The Student has conceded that she did not attend SFU and that the SFU Transcript and SFU Course Outlines were falsified. Further, the Student has admitted that she knew by April 2016 that those falsified academic records were submitted to the University in support of her applications for admission and for transfer credits. The Student has admitted that she had no intention of bringing this state of affairs to the attention of the University. Instead, she testified that, had she not been caught, she would have continued to take advantage of the offer of admission and transfer credits she had received, on false pretenses, for the balance of her time at the University.
8. The University also contends that the Student's attempts to portray herself as an innocent victim fly in the face of the objective record. Despite acknowledging that she had *actual knowledge* of the fraud being committed for her benefit, she says she should escape

liability because she was merely a passive beneficiary of the fraudulent acts of two rogue actors — Xiaoye Tian, the agent that the Student had hired to submit the transfer application to the University on her behalf, and Yifan Liu, the Student’s ex-boyfriend. The University submits that this theory is utterly unbelievable and a brazen attempt to deflect responsibility.

9. The University submits that the Student was not a credible witness. She told different stories to different listeners at different times about critical facts, depending on her objective at the time. Each time the evidence suggested that she was involved in or aware of her fraudulent academic record prior to April 2016, the Student responded with a convenient and implausible excuse.
10. The University submits that, taken as a whole, the evidence demonstrates that the Student recognized that her University of British Columbia (“UBC”) grades were well below the standard required for admission to the University and that she knowingly hired Mr. Tian to create a falsified SFU Transcript and submit it to the University in support of the Student’s application for admission and her application for transfer credits. The University submits that the Student’s evidence to the contrary (as well as that of the Student’s mother), was internally inconsistent, illogical, self-serving, and ultimately not credible.
11. The University further submits that even if the Tribunal were to accept the evidence tendered by the Student, the University has still met its burden of proving that the Student committed the academic offences as alleged. The Student admits that she knew by April 2016 that she had been admitted to the University and awarded transfer credits on the basis of a falsified SFU Transcript.
12. Further, the Student has admitted that she knowingly permitted Mr. Liu to submit on her behalf SFU Course Outlines for courses that she did not take. She knew that the SFU

Course Outlines were submitted to the University in support of her application for transfer credits that she had not earned.

13. Indeed, the Student testified that, but for Mr. Liu's disclosure to the University (which he provided to the University under an alias after having fallen out with the Student), she would have continued to take advantage of the falsified SFU Transcript and SFU Course Outlines, and that she had no intention of informing the University of the truth. The University submits that, even as described by the Student, this conduct amounts to an academic offence within the meaning of section B.1.3(a) of the *Code*, which prohibits a student from "uttering, circulating and making use of" a falsified academic record.

V. POSITION OF THE STUDENT

14. The Student submits that it was never disputed that a fake transcript was submitted in her name or that fake course outlines were submitted in her name. She submits, however, that she should not bear any responsibility for these fraudulent submissions because both were done without her knowledge. The transcript was submitted by a rogue agent that she and/or her mother had retained to assist with her transfer application from UBC to the University. Meanwhile, the fake outlines were submitted by the Student's ex-boyfriend, Mr. Liu.
15. The Student submits that Mr. Liu is not a credible witness and should not be believed, and that by contrast, the Student and her mother, who testified on her behalf, were credible and should be believed.
16. The Student's position depends in large part on a legal argument regarding the University's evidentiary onus in these proceedings. She asserts that, having chosen to particularize the allegations in the Charges, the University was required to establish each and every fact as alleged in the particulars, and if the University falls short of this onus, the Student is

entitled to an acquittal. For that proposition, the Student cited various criminal law decisions, which hold that where the Crown gives material particulars in an indictment, it must prove them. (See *R. v. Côté* [1986] 1 S.C.R. 2, [1986] S.C.J. No. 2 at para. 56.) On this theory, it is not enough for the Student to have dishonestly benefited from the falsified transcripts and course outlines that were submitted on her behalf. Because the University alleged that the Student forged and submitted the fraudulent documents herself, it must prove those specific facts.

VI. THE APPLICABLE LEGAL FRAMEWORK

17. Under the *Code*, the University bears the onus of establishing on a balance of probabilities, relying on clear and convincing evidence, that the Student committed the academic offences as alleged. Section C.II.(a) 9 of the *Code* provides: “The onus of proof shall be on the prosecutor, who must show on clear and convincing evidence that the accused has committed the alleged offence.” See *University of Toronto vs. A.S. (DAB Case No. 858 – 2nd Appeal, April 18, 2019)*.
18. In other words, the Tribunal must conclude that the evidence indicates that it is more likely than not that the Student engaged in the academic misconduct alleged by the University.
19. Section B.1.3(a) of the *Code* provides that it is an offence to knowingly forge or alter an academic record and/or to utter, circulate or make use of a forged, altered or falsified record. Pursuant to the *Code*, “wherever ... an offence is described on ‘knowing’, the offence shall likewise be deemed to have been committed if the person ought to reasonably have known.” (*Code*, Section B). Knowledge, therefore, is an objective standard. The University need not prove *actual* or *subjective* knowledge.

20. The University must therefore demonstrate that it is more likely than not that the Student knowingly “forged, altered or falsified”, and/or “did utter, circulate or make use of”, two falsified academic records: the SFU Transcript and the SFU Course Outlines.
21. Despite Mr. Sabsay’s able arguments to the contrary, it is not necessary for the University to establish that the Student herself falsified or submitted the SFU Transcript and SFU Course Outlines knowing them to be forgeries in order to prove that the Student committed the alleged offences.
22. The *Code* makes it an offence for a student merely to “make use of” a forged or falsified record. Accordingly, to establish guilt, the University must prove that the Student knew or ought to have known that the documents used in support of her applications for admission and transfer credit assessment application were forged or falsified and that she knowingly made use of them.
23. The Student submits that, notwithstanding the language of the charge provisions, the University was required to prove each and every fact particularized. This Panel does not give effect to that submission, which is not legally tenable. Mr. Sabsay, on behalf of the Student, attempts to analogize to the criminal context. He says that in the criminal context, where the Crown particularizes facts in the Indictment, they must prove those facts.
24. There are at least two problems with this argument. First, as the University points out, the University Tribunal context and the criminal context are different. The charging documents are different. A criminal Indictment or Information is relatively brief by contrast to the University’s charging document. The University’s charging document not only specifies the charges, but it goes on to particularize the University’s theory of the case. A criminal law Information or Indictment does not do so. The University provides these particulars to discharge its duty of procedural fairness to inform the Student of the

case to meet and because the *Code* requires that the Student be provided with particulars.

Section C.II.(a) 3 of the *Code* provides:

A charge shall be in writing, addressed to the accused, signed by or under the authority of the Provost and filed with the Secretary. It shall contain a statement that the student is charged with having committed an offence specified therein, with sufficient particulars of the circumstances to enable the student to identify the alleged act or conduct giving rise to the charge.

25. From the requirement that the University must furnish particulars of its theory of the case, it does not follow, however, that the University must prove each and every particular alleged. It must prove sufficient facts to substantiate the elements of the offence, but often, as in this case, the particulars go further than the bare elements of the offence. If this Panel were to accede to the Student's argument, it would create a perverse incentive for the University to disclose no more than absolutely necessary to discharge its onus under Section C.II(a) 3.
26. Second, even in the criminal law context, on which the Student relies, an Indictment can be amended to comport with the evidence, particularly *where there is no prejudice to the accused*. (See *Criminal Code*, s. 601). In *R. v. S.M.*, 2017 ONCA 878, for example, the Ontario Court of Appeal held that the Crown is not required to prove that the alleged offence occurred within the timeframe specified in the indictment.
27. Mr. Sabsay submitted in oral argument that the Student has suffered prejudice because, but for their misunderstanding of the law, the Student might not have made certain admissions. A mistake of law, however, is not a type of prejudice recognizable at law, as ignorance of the law is not a defence to misconduct. (See *R. v. Jorgensen*, [1995] 4 S.C.R. 55 at para. 97.) This was the only purported prejudice that the Student's counsel identified.

28. This case is not the first time that a student has raised this type of argument before this Tribunal. In *University of Toronto and M.F.E. (Case No. 638, September 23, 2013)*, this Tribunal considered the level of particularization required to accord procedural fairness to students facing charges of academic discipline. (*The University of Toronto and M.F.E.*, Trial Division, September 23, 2013 ["M.F.E."]). The student in that case was charged with obtaining unauthorized assistance (and with plagiarism in the alternative) in a portfolio assignment. The offence was also described in the further alternative as a form of "cheating, academic dishonesty or misconduct, fraud or misrepresentation not otherwise described" that had been engaged in for an academic advantage.
29. At the hearing, the evidence showed that the student had in fact plagiarized the assignment but the details of the dishonest conduct differed from the particulars set out in the charging document. She had argued that she could not be prosecuted for that conduct because that misconduct was not particularized in the charges and that, if it had been, she might not have testified about and admitted to misleading the University in its investigation. In rejecting that argument, the Tribunal held:

The Panel also notes that, assuming that [the student] could not be prosecuted in this hearing regarding this example of academic dishonesty due to the technical point raised regarding the Particulars, there would seem to be no reason why a subsequent prosecution could not be pursued by the University independently of this hearing. That factor, combined with the view previously stated that the issue of the emails was quite evidently "on the table" throughout this portion of the hearing and the lack of substantive prejudice suffered by [the student] given the way this part of the hearing unfolded, inclined the Chair to rule (and advise the parties) that the Panel would consider the matter of the emails in the course of the hearing, as requested by Discipline Counsel.

M.F.E., paras. 55-57.

30. The Panel cannot accede to the argument that a student who engages in serious academic misconduct (and which meets the elements of the offence) is entitled to a windfall simply because one or more of the particulars have not been proven.
31. The University need not prove every single fact particularized in the charging document. It must “show on clear and convincing evidence that the accused has committed the alleged offence.” *Code*, Section C.II.(a) 9.

VII. FINDINGS OF FACT

32. This was a contested hearing over a number of days and spread out over nine calendar months. The hearing took place on July 17, August 30, and September 12, 2018 (motion) as well as on February 25, 28, and March 21, 2019. The Parties delivered their closing arguments on April 23, 2019. Although there were a number of agreed upon facts and undisputed facts, there were also a number of contentious issues.

A. Facts Not in Dispute

33. Nobody disputes that the SFU Transcript that was submitted on behalf of the Student was a forgery. Nor does anyone dispute that the SFU Course Outlines submitted on behalf of the Student were falsified records.²
34. The Student’s pre-University history is not in dispute. The Student attended high school in Canada from 2009 to June 2011. She graduated high school as an Ontario Scholar with an average exceeding 80%.
35. In Fall 2011, while she was in grade 12, the Student applied to the University, including to the math and physical sciences programs at the downtown St. George campus as well as

² Although the Course Outlines were genuine SFU course outlines, we refer to them throughout as “falsified” and “forgeries” because the Student was never enrolled in the courses described in the Course Outlines.

the competitive Bachelor of Business Administration Co-op Program at the University of Toronto Scarborough Campus (“UTSC”). The Student was not offered admission to the University in any of these programs at that time.

36. Instead, in the 2012-2013 and 2013-2014 academic years, the Student was enrolled at the University of British Columbia in Vancouver, British Columbia (“UBC”). The Student’s success in high school did not carry over to university. She struggled in the two years that she attended UBC, earning a total of 39 credits, with a cumulative average of only 55.6%.
37. After her second year at UBC, the Student took a break from UBC and returned home to China. During that year off, the Student applied to transfer to the University as a second-year student. The Student and her mother, Zhong Hong, hired Xiaoye Tian to assist with the Student’s transfer application to the University.³
38. On April 13, 2015, the University received applications for the Student’s admission to transfer to UTM and/or UTSC. The applications indicated that the Student was applying as a transfer student from SFU in Burnaby, British Columbia.
39. The Student was required to submit transcripts to the University from the postsecondary institutions listed in her application for admission. On May 2, 2015, the University received an SFU transcript of academic record dated December 20, 2014, bearing the Student’s name. The SFU Transcript covered the period from Fall 2012 to Fall 2014. It indicated that the Student had successfully completed 29 credits towards a Bachelor of Business Administration with a Joint Major in Economics, with a cumulative grade point average of 3.2.

³ Mr. Tian apparently also submitted an application, on the Student’s behalf, that used her authentic UBC transcript, but that application was not processed.

40. The information contained in the SFU Application and the SFU Transcript was false, as the Student has never been enrolled at SFU. The Student received an offer of admission to UTM as an Honours Bachelor of Arts student on the basis of the false information contained in the SFU application and the SFU Transcript. The Student's offer of admission was accepted on June 3, 2015.
41. Students who are admitted to the University as transfer students are required to have their credits from their previous university assessed to determine if they will be given credit at the University for some or all of those courses.
42. Shortly after her admission, on June 29, 2015, the Student met with an academic advisor, Kristina McCutcheon, to inquire about her transfer credits. Ms. McCutcheon informed the Student that no transfer credit assessment application had been completed in the Student's name.
43. On July 15, 2015, the University received an application for a transfer credit assessment in the Student's name. The Student met with another academic advisor, Jessica Olivier, on August 10, 2015 to inquire about her transfer credits. Ms. Olivier informed the Student that the assessment had not been completed as of that date.
44. The Student's transfer credit assessment was completed and sent to her UTOR email on August 25, 2015. The University determined that the Student was entitled to 5.5 transfer credits on the basis of ten SFU courses listed on the SFU Transcript. That same day, on August 25, 2015, the Student attended another meeting with Ms. Olivier.
45. The August 25, 2015 transfer credit assessment was only a partial assessment. The University required the Student to provide detailed course outlines for 14 additional SFU courses on the SFU Transcript, which did not appear in UTM's course equivalency data

- base. The Student began taking classes at UTM in September 2015. By that time, she had not submitted the SFU course outlines that the University had requested.
46. On March 30, 2016, the University sent an email to the Student via her UTOR email account. The University reminded the Student that she needed to provide detailed course outlines to the University for 14 additional SFU courses in order for the University to complete its review of her previous studies and assess her entitlement to transfer credits.
 47. The Student discussed the University's request for SFU course outlines with her then-boyfriend, Yifan Liu. Mr. Liu obtained for the Student seven of the course outlines the University had requested. (He later testified that he obtained those Course Outline from the SFU website.) On April 7, 2016, the SFU Course Outlines were submitted to the UTM Transfer Credit Office via the Student's UTOR email account in support of the Student's application for transfer credits. On May 9, 2016, the Student received an updated transfer credit assessment, which also referred repeatedly to SFU.
 48. In approximately late August 2016, the Student and Mr. Liu ended their relationship. On August 30, 2016, the UTM Transfer Credit Office account received an email from someone purporting to be "lee eva" with the subject line "reporting a serious fraud anonymously". The SFU Course Outlines were attached to this email. The email stated that the Student had not attended SFU, that she had purchased the SFU Transcript, and that the author of the email had obtained the SFU Course Outlines from the SFU website.
 49. There is no dispute that Mr. Liu is the author of the email from "lee eva", as Mr. Liu confirmed his authorship of the e-mail in these proceedings (although the true author of the e-mail was not known to the parties at the time it was sent). The information contained in the email from "lee eva" caused the University to pull the Student's SFU Transcript, together with five other SFU transcripts submitted in respect of five other applications for

admission to the University. The six SFU transcripts contain substantially the same course codes, descriptions, and grades, and many of them list the same student number. SFU has confirmed that none of these six students, including the Student, were ever enrolled at SFU, and that none of the six SFU transcripts were issued by SFU.

B. Assessment of the Evidence

Assessing Credibility

50. As set out above, much of the evidence in this case is not disputed. Some facts, however, were contested. In particular, Mr. Liu and the Student told different versions of the same events.
51. There is no magic formula to assessing credibility, but the courts have offered considerable guidance. In assessing the credibility of a witness, the Tribunal should carefully scrutinize the witness' evidence before the Tribunal in light of what he or she has said on prior occasions. In this regard, the reasoning of Court of Appeal for Ontario is instructive:

Probably the most valuable means of assessing the credibility of a crucial witness is to examine the consistency between what the witness said in the witness box and what the witness has said on other occasions, whether on oath or not. Inconsistencies on minor matters, or matters of detail are normal and are to be expected. They do not generally affect the credibility of the witness. This is particularly true in cases of young persons. But where inconsistency involves a material matter about which an honest witness is unlikely to be mistaken, the inconsistency can demonstrate a carelessness with the truth. The trier of fact is then placed in the dilemma of trying to decide whether or not it can rely upon the testimony of a witness who has demonstrated carelessness with the truth.

R. v. M.G., [1994] O.J. No. 2086 (C.A.), at para. 23

52. In assessing the credibility of Mr. Liu and the Student, we are aided by their prior testimony in a criminal proceeding, which overlapped factually with issues in this matter. Portions of the criminal trial transcript were admitted for the truth of their contents in this proceeding and for the purpose of assessing witnesses' credibility. Their relevance and the

uses to which these criminal trial transcripts could be put were the subject to a prior ruling of this Panel. (See *University of Toronto and S.W.*, Trial Division, December 21, 2018, attached as **Appendix “A”**).

C. The Student’s Knowledge or Involvement with Respect to the Forged Documents

53. As set out above in Part VI, it is not necessary that the University prove that the Student personally created or submitted the Forged Documents. It is enough to show that she had *knowledge* of the Forged Documents, and *made use* of them. (See *Code*, s. B.i.1(a).)
54. The Student does not deny that the Forged Documents were falsified documents. Nor does she deny that the Forged Documents were submitted in her name. Nor does she deny that that she benefited from them. Nor does she deny that she would have continued to benefit from them despite knowing they were falsified. The factual issues in this proceeding thus turn on when the Student became aware of the forgeries.
55. On March 30, 2016, Adam Giles, a Transfer Credit Officer at the University, emailed a letter to the Student to reiterate the University’s request for detailed course outlines in respect of 14 of her SFU courses. The Student acknowledges that she received this letter and testified that, on April 6, 2016, she obtained a copy of the SFU Transcript from Mr. Tian.
56. There is therefore no dispute that by April 6, 2016, at the latest, the Student knew that she had been admitted to the University and obtained transfer credits on the basis of a falsified SFU Transcript. The Student also knew that the University was seeking course outlines in respect of SFU courses that she had never taken in support of her request for additional transfer credits.

57. The Student also testified that she did not report to University authorities the fact that she had been admitted under false pretenses. She testified that she knowingly continued to make use of the SFU Transcript until the time that the University discovered the Forged Documents were forgeries.
58. She also testified that she acquiesced to Mr. Liu's offer to obtain and submit SFU course outlines for classes that she did not take from a university she never attended. She also testified that she would have continued to make use and take advantage of the SFU Course Outlines if she had not been caught.
59. These admissions alone are enough to find the student guilty of the misconduct alleged. On her evidence, she knew that she had gotten into the University using the Forged Documents, and knowingly continued to make use of them. These admissions are proof that the student did "knowingly ... *make use of* [a] forged, altered or falsified record", namely the SFU Transcript (Count 1), and that she did "knowingly ... *make use of* [a] forged, altered or falsified document, namely, the course outlines from Simon Fraser University" (Count 3).

D. Whether the Student Knew of or Directed the Submission of the Forged Documents

60. While the Student admits knowledge of the Forged Documents soon after receiving Mr. Giles' letter on March 30, 2016, the University asks that this Tribunal go further and find that the Student knew of the Forged Documents and was a willing participant in submitting the Forged Documents from the outset of her application to the University.
61. The University submits that the Student must have known that her grades at the University of British Columbia were too poor to transfer to her desired programs at the University, and the Student and her parents hired Mr. Tian to ensure that the poor grades did not

impede her transfer application. In so doing, according to the University, the Student and her parents knew that they were paying Mr. Tian to create a forged transcript.

62. This Panel accepts the University's submissions in large part. There is both direct and circumstantial evidence that the Student knew about the forgeries from the outset of her transfer applications.

Mr. Liu's Evidence About the Student's Knowledge of the Forged Documents

63. The direct evidence that supports the University's theory comes from the Student's ex-boyfriend, Mr. Liu. He testified that he and the Student had been dating for two to three months when they celebrated his birthday on August 13, 2015. He testified that she seemed troubled at the time, and that after he pressed her, she explained that she was concerned because she had not yet received her transfer credits from SFU. He was confused, knowing that she had attended UBC. She explained that she had "a guy who made up credits from SFU for her". She told him about paying the guy to buy a fake transcript from SFU, that she or her mother paid 100,000 RMB (or approximately \$20,000 CDN), and that it cost more if one wanted to have more credits transferred. He further testified, that after the Student received the letter from Mr. Giles in March 2016, he assisted the Student in submitting the falsified SFU Course Outlines.
64. Mr. Liu testified in a compelling and straight-forward manner. He did not appear to exaggerate or embellish, and was candid about his own disreputable role in these events. Nevertheless, Mr. Liu's evidence, standing alone, would not be sufficient to find that the Student had knowledge of the fraudulent nature of the Forged Documents from the outset of her transfer application. Like many witnesses in contentious proceedings, Mr. Liu was an imperfect witness because of the presence of a motive to lie as well as other reasons to question his credibility.

65. First, it is undisputed that Mr. Liu was complicit in the Student's misconduct. Although he was unaware of the forged SFU transcript until August 13, 2015, even on his own evidence, he was an active participant in submitting the SFU Course Outlines. He comes to this Tribunal as someone who has also committed academic misconduct.
66. Second, Mr. Liu has a motive to fabricate. After Mr. Liu and the Student broke up in August 2016, and after learning that Mr. Liu was the tipster who had informed the University of the Forged Documents, the Student made a formal complaint to the police and alleged that Mr. Liu had sexually assaulted her.
67. It is not this Panel's role to opine on whether the student was sexually assaulted by Mr. Liu (although it should be noted that Mr. Liu was acquitted at trial — a fact that is not dispositive of, but certainly consistent with, his avowed innocence). The Panel takes no position on Mr. Liu's guilt or innocence. The criminal trial proceedings, however, are relevant here in assessing the witnesses' credibility in proceedings.
68. Mr. Liu's theory at the criminal trial is that the Student fabricated the sexual assault allegations as revenge for Mr. Liu informing the University on her. If true, he has a significant motive to see her punished in this forum. As the trier of fact, this Panel must be mindful of any motive to lie. A motive to lie is a significant factor in assessing credibility, and juries are routinely instructed to consider whether a motive to lie exists. (See *Watt's Manual of Criminal Jury Instructions* (Toronto: Carswell, 2015), p. 267.)
69. Given his own misconduct and other dishonourable conduct, Mr. Liu is in some ways similar to those who might be described as a *Vetrovec* witness in criminal cases. (See *Vetrovec v. The Queen*, [1982] 1 S.C.R. 811; *R. v. Sauvé*, 2004 CanLII 9054 (ON CA)). A *Vetrovec* witness is a witness whose credibility is compromised because of, *inter alia*, a serious motive to lie, a history of dishonesty, or a history of crimes of moral turpitude.

Where a *Vetrovec* witness provides material evidence, judges must: (1) instruct the jury that the evidence of such witnesses requires special scrutiny; (2) identify the characteristics of the witness that bring his or her evidence into question; (3) caution the jury that although it is entitled to act on the unconfirmed evidence of the *Vetrovec* witness, it would be dangerous to do so; and (4) caution the jury to look for other independent evidence which tends to confirm the material parts of the witness' evidence. (See *Sauvé, supra*, para. 82).

70. In short, where a witness' credibility is significantly compromised in the above-described manner, the trier of fact should be cautious in accepting the testimony of that witness unless that evidence is corroborated by independent evidence. While this Panel does not suggest that *Vetrovec*, a criminal law decision, is binding on this Tribunal, the principles articulated in *Vetrovec* and its progeny are instructive. And further, while we do not suggest that Mr. Liu is analogous to a "jailhouse informant" or the types of *Vetrovec* witnesses encountered in the criminal law, there are enough vulnerabilities in his credibility that it would be imprudent for this Panel to rely on his evidence standing alone.
71. Mr. Liu's evidence, however, is corroborated by significant circumstantial evidence, which shows, on a balance of probabilities, that the Student knew or ought to have known that the records were falsified from the outset of her application to the University.

The Student's Poor Academic Standing at UBC

72. The University submits that it is more likely than not that the Student knew that her academic record at UBC was very poor, and that she had virtually no chance of being admitted to the University on the basis of her actual UBC transcript. This Panel agrees.

73. The Student was aware of the high standards of the University. Her application for admission as a high school student (when her grades were generally high and when she was an Ontario Scholar) was rejected at both the St. George and UTSC campuses (although, in fairness, she was accepted into a UTM program). Granted, she applied for different programs, but she was generally aware of the University's high standards.
74. The Student studied at UBC for two years, where she performed poorly. After her first year at UBC, the Student had failed too many courses to be eligible to advance to Year 2. Over the two-year period, the Student had a cumulative grade average 55.6%, which was only 0.6% above the threshold for being placed on academic probation.
75. The Student acknowledged that her original ambition was to apply to the Sauder School of Business at UBC. She acknowledged that she had no hope of gaining entrance into the Sauder School of Business at UBC because of her poor grades, yet she applied to transfer into competitive business programs at the University. The Student's evidence at trial was that she expected her high school grades to compensate for poor academic performance at UBC. That explanation is not believable, nor is it consistent with her self-awareness that she could not have gotten into the Sauder School of Business. The Student knew that she would have had difficulty gaining entrance into the University with her poor grades at UBC.
76. These facts are relevant because it gives rise to a motive to make use of a falsified transcript. A successful student has no incentive to submit a falsified transcript, but a student who has struggled academically, yet wants to change schools does have such a motive. Motive alone is insufficient to establish guilt, but it is a relevant contextual factor when assessing the cumulative weight of the evidence.

77. The Student's poor grades at UBC are also a relevant contextual factor in assessing the Student's relationship with Mr. Tian. Mr. Tian is an agent who was hired by the Student and her family to assist with the transfer application to the University. He was not called as a witness in these proceedings. The University submits that the real purpose of Mr. Tian's hiring was to provide Ms. W■■■■ with a falsified academic record that was competitive enough to render her eligible for admission.
78. The Student testified that she entered into a contract with Mr. Tian, which was tendered as Exhibit 2, Tab 18 at the hearing, which required, *inter alia*, that the Student deposit 10,000 (unspecified currency) into Mr. Tian's account. According to the contract, the deposit would be refunded if the application was not successful, subject only to a deduction of the Ontario University Application Centre ("OUAC") application fees.
79. The Student testified that no alteration to the contract was made to the amount payable to Mr. Tian but that her mother and Mr. Tian had verbally agreed to defer payment until after the Student received an offer of admission. According to the Student, Mr. Tian would not be paid (and would incur out-of-pocket expenses for application fees) until the transfer application was successful.
80. The Student provided Mr. Tian with various documents relating to the transfer application, including her UBC transcript. The Student testified that the fact that she provided Mr. Tian with her real transcript from UBC means that she intended that Mr. Tian would use the UBC transcript in the application. With respect to the provision of the UBC transcript, this fact is equally consistent with both guilty and non-guilty inferences. A forgerer would want to see a real transcript, for example, to see how the Student's name was spelt on the transcript and to identify what classes had been taken, and also to assess whether a forged transcript was in fact required.

81. It is curious that, on the Student's evidence, Mr. Tian agreed to work for free (at a small loss to himself) until the Student was accepted despite the signed written contract to the contrary, which required an initial deposit of 10,000 (unspecified currency).
82. It is also curious that the Student and her mother would have paid a significant fee for an agent to prepare an application that hundreds of students complete on their own every year. The fact that the Student is from China and less familiar with the Canadian university system is a partial explanation but not an explanation for paying a large sum of money.
83. This tension in the Student's evidence is heightened by the fact that the Student has been inconsistent in her evidence regarding the actual amount paid. The contract between Mr. Tian and the Student states that Mr. Tian would receive an initial "deposit" of 10,000. The contract does not specify the unit of currency. Nor does the contract specify the full price beyond the initial deposit of 10,000. At the hearing, the Student and her mother testified that 10,000 referred to 10,000 RMB (approximately \$2,000 CDN) and that this price reflected the total fee to be paid, rather than merely a deposit.
84. According to the Student's testimony and the testimony of her mother, nothing was paid to Mr. Tian until after he secured the Student's admission, and this transaction was completed when the Student and her mother met Mr. Tian at a coffee shop in Toronto and gave him the money in cash. If nothing else, this admission shows that the parties were not strictly adhering to the terms of the contract, which had required that the deposit be paid up front.
85. The Student's evidence on the amount of money paid to Mr. Tan is highly inconsistent. In this proceeding, the Student testified that she paid a total of 10,000 RMB (approximately \$2,000 CDN) in cash. During the Dean's Designate meeting, the Student advised the

Dean's designate, Lucy Gaspini, that Mr. Tian had been paid \$8,000.⁴ According to Mr. Liu, the Student had told him that she had paid \$20,000.00 CDN.

86. It is true that the Student's evidence in this regard was supported by her mother. This Panel would not give any weight to Ms. Zhong's testimony. She testified as though she was there as an advocate for her daughter — not as a witness. When asked about her awareness of her daughter's poor performance at UBC, she stated it was "unimportant" if her daughter had struggled at UBC. When asked about a specific portion of Mr. Liu's evidence, she answered simply that Mr. Liu is a "con man" and that we should not believe anything he says. She also denies that there was anything wrong with the Student taking advantage of and making use of the Forged Documents even when she knew them to be falsified. She states that it is the University's fault for not detecting the forgeries sooner. The Panel also found Ms. Zhong to be evasive during a number of her responses (although some of this apparent evasiveness may be due to the fact that she was testifying through an interpreter). It is of course understandable that a student's parent would want to help their daughter or son. It is also understandable why a parent may dislike their daughter's ex-boyfriend. But the above-noted flaws in Ms. Zhong's testimony make it difficult for the Panel to rely on her evidence.

87. Cumulatively, there is clear and convincing direct and circumstantial evidence that the sum paid was likely significantly more than 10,000 RMB. More importantly, the Student's inconsistency on this subject raises more concerns about the Student's credibility.

The Meeting with Ms. McCutcheon in June 2015 and Ms. Olivier in August 2015

⁴ During oral argument, Mr. Sabsay argued that it was he – not the Student – who made the admission that the Student and her mother had paid \$8,000.00. This is a distinction without a difference. He was participating as counsel and a representative of the Student during an on-the-record discussion.

88. Almost as soon as she arrived in Toronto in June 2015, Ms. W■■ wanted to confirm that she would receive enough transfer credits to permit her to enroll as a second-year student at UTM. She testified that this was very important to her, and that if she did not receive sufficient transfer credits she intended to return to UBC for the Fall term. The Student visited the advisors in the Registrar's office three times during the Summer of 2015 to inquire about her transfer credits.
89. Ms. McCutcheon's contemporaneous notes from their June 29, 2015 meeting stated "[the Student] is transferring from SFU and came in to ask about her transfer credits" (Exhibit 3, Tab 1). During cross-examination, the Student admitted that Ms. McCutcheon referred to her as a transfer student from SFU.
90. Ms. McCutcheon's testimony and the Student's testimony are somewhat inconsistent on certain details of their meeting. Ms. McCutcheon testified that the only way for her to know what university the Student was transferring from would be for the Student to tell her. This is because, at the time, the Student had not yet applied for a transfer credit assessment, so the information about the school from where the Student had come would not have been available to Ms. McCutcheon using the University internal database tools available to her. The Panel appreciates the Student's argument that Ms. McCutcheon could not recall the conversation with the Student and that her contemporaneous notes (Exhibit 3, Tab 1) standing alone, are not evidence of who said what about SFU. But given that Ms. McCutcheon testified that she would not have had any other way of learning the school from which the Student had transferred — unless the Student herself was the source — then, in the absence of an alternative explanation to the contrary, there is compelling circumstantial evidence that the Student told Ms. McCutcheon that she was a transfer student from SFU.

91. The Student insists that it was Ms. McCutcheon who brought up the fact that the Student was a transfer student to SFU, and that although she was surprised when Ms. McCutcheon raised it, she said nothing and did nothing about it except to call Mr. Tian. According to the Student, Mr. Tian told her not to worry about it and that either Ms. McCutcheon misspoke or the Student misheard.
92. On its face, the Student's evidence does not seem plausible — especially when situated in the context of the entirety of the evidence. The Student's explanation appears yet even more unlikely when considered in light of the August 25, 2015 meeting between the Student and Ms. Olivier. That meeting occurred on the same day on which the Student received a letter from Mr. Giles regarding her transfer credits from SFU (which clearly shows that the Student received 5.50 transfer credits from SFU).
93. The Student had been waiting for the information contained in the August 25, 2015 Credit Assessment. She had made two visits to academic advisors in anticipation of its receipt. She attended at the Registrar's Office to meet with Ms. Olivier on the very day that the Credit Assessment was released.
94. Yet, despite the importance of its contents, the Student denies having received the Credit Assessment or even that she ever saw it. She states that she only received a phone call from Mr. Tian saying she received 5 credits. This is not believable: the Student had been anxiously awaiting this information; the information was sent to her UTOR email; and she rushed to see the counsellor regarding her transfer credits on the same day it was received.
95. Further, Ms. Olivier's evidence was that, if the Student did not have a copy of the transfer credit letter with her, she would have provided a copy or at least showed her the contents on her computer screen because the very purpose of that meeting was to discuss the subject matter of that letter.

96. The timing of the Student's discussions with Ms. McCutcheon and Ms. Olivier is consistent with Mr. Liu's testimony about when he first learned about the Student's difficulties with her transfer credits. Mr. Liu testified that he first learned about the Student's difficulties during his birthday celebration on August 13, 2015. During that meeting, she told him about her difficulties obtaining her transfer credits from SFU. As noted above, this Panel would not have accepted Mr. Liu's testimony standing alone, but given its consistency with the other evidence presented at the hearing, it is compelling.

The Request for Outlines on March 30, 2016 and the Student's Request for Mr. Liu's Help

97. On March 30, 2016, Mr. Giles emailed a letter to the Student to reiterate the University's request for detailed course outlines in respect of 14 of her SFU courses. The Student acknowledges that she received this letter and that, on April 6, 2016, she obtained a copy of the SFU Transcript from Mr. Tian.

98. Mr. Liu testified that the Student, upon receiving Mr. Giles' letter, asked Mr. Liu to help her respond to the University's request for course outlines from SFU, which he then found on the SFU website. Mr. Liu stated that he put the course outlines into a PDF and sent them to the Student. This aspect of Mr. Liu's testimony is corroborated by what the Student herself says, but the details vary.

99. The Student testified that Mr. Liu volunteered to take care of the issue for her because he was desperate for her not to move back to UBC. She claimed to have left it entirely to him and to have merely gone along with Mr. Liu's plan.

100. This was the first time that the Student had given this evidence. At the criminal trial, the Student testified that when she received Mr. Giles email, she did not know what it was about until she contacted Mr. Tian, and that Mr. Tian then must have submitted the

outlines. During the Dean's Designate meeting, she also stated that Mr. Tian had provided the course outlines to the University on the Student's behalf. This is a significant inconsistency in the Student's evidence.

101. Nevertheless, it does not greatly assist the Student even if the Panel were to accept the version told at trial. On both Mr. Liu's and the Student's evidence, they have both committed academic misconduct.

The Student's Admitted Dishonest Conduct

102. The Student has admitted engaging in academic misconduct. She conceded at the hearing that she knew about the Forged Documents in April 2016, and that she fully intended to continue to take advantage of the Forged Documents if she had not been caught. It is difficult for the Student to take the position that she had engaged in academic misconduct and intended to continue to do so, but then ask that the Panel draw an innocent inference in her favour when it comes to assessing the extent of the misconduct.
103. Cumulatively, the weight of the circumstantial evidence of the Student's knowledge of the Forged Documents from the time of her application to the University is significant. The circumstantial evidence corroborates Mr. Liu's evidence. Even without Mr. Liu's evidence, however, the other evidence alone shows that the Student, at a minimum, ought to have known the Forged Documents were forgeries at the time she, or Mr. Tian, submitted the transfer application on her behalf, which is sufficient to prove the charges alleged. On a balance of probabilities, this Panel finds that the Student did in fact know that the SFU Transcript was a forgery at or around the time that her transfer application was submitted to the University.

VIII. CONCLUSION ON CHARGES

104. Following deliberation and based on the evidence presented in these proceedings, the Panel concluded that charges 1 and 3 had been proven.

105. At the outset of the hearing, the University indicated that if there were findings of guilt on charges 1 and 3, the alternative charges (charges 2 and 4) would be withdrawn.

106. The Panel will re-convene to consider the appropriate sanction.

IX. ORDER OF THE PANEL

107. The Panel makes the following order:

- a. the Student is guilty of two counts of knowingly altering or falsifying an academic record, or uttering, circulating or making use of such forged, altered or falsified record, contrary to section B.i.3(a) of the *Code*;

DATED at Toronto, August 23, 2019.



Nader Hasan, Chair, on Behalf of the Panel

APPENDIX "A"

Case No.: 948

THE UNIVERSITY TRIBUNAL THE UNIVERSITY OF TORONTO

IN THE MATTER OF charges of academic dishonesty file on September 14, 2017, and revised on June 29, 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 amended S.O. 1978, c. 88*

B E T W E E N :

UNIVERSITY OF TORONTO

- and -

S [REDACTED] W [REDACTED]

INTERIM DECISION

Hearing Date: September 12, 2018

Members of the Panel:

Mr. Nader R. Hasan, Co-Chair
Professor Pascal van Lieshout, Faculty Panel Member
Ms. Yusra Qasi, Student Panel Member

Appearances:

Ms. Lily Harmer, Assistant Discipline Counsel, Paliare Roland
Ms. Lauren Pearce, Assistant Discipline Counsel, Paliare Roland
Mr. Lorne Sabsay, Counsel for Ms. S [REDACTED] W [REDACTED], the Student
Ms. Jennifer Jackson, Assistant to Mr. Lorne Sabsay, Counsel for the Student
Ms. S [REDACTED] W [REDACTED] the Student (via Skype)

Hearing Secretary:

Ms. Krista Osbourne, Administrative Clerk & Hearing Secretary, Appeals, Discipline and Faculty Grievances, University of Toronto

[1] This is an academic discipline matter in which the Student, S [REDACTED] [REDACTED] [REDACTED] (“the Student”), has been charged with academic misconduct. The charges were filed by the Provost of the University of Toronto (“the University”) against the Student under the University’s *Code of Behaviour on Academic Matters, 1995* (“the Code”) on September 14, 2017. At the crux of the charges is the allegation that the Student submitted fraudulent transcripts to support her transfer application to the University. The Student vigorously denies those allegations. There is no dispute among the parties that fraudulent transcripts *were submitted* on the Student’s behalf. The only dispute is whether the Student *was aware* of the fraudulent nature of the transcripts.

[2] These are the decisions in relation to motions brought at the hearing held on September 12, 2018.

[3] The September 12, 2018 motions dealt with:

- (a) The Student’s motion to preclude the Provost’s witness, Mr. Yifan Liu, from testifying in these proceedings;
- (b) The Provost’s motions seeking an order declaring that:
 - (i) the Judgment in Mr. Liu’s criminal trial, per Maxwell J., is admissible in the hearing on the merits of the charges against the Student;
 - (ii) portions of the transcripts from Mr. Liu’s criminal trial, attached to the Provost’s Notice of Motion as Appendix “A” (the “Transcripts”) are admissible in the hearing on the merits of the charges against the Student; and
 - (iii) the Transcripts are admissible for the purpose of impeaching Mr. Liu or the Student during their respective cross-examinations.

[4] Oral reasons dismissing the Student's motion were delivered on September 12, 2018. I advised the parties at that time that I may edit or supplement those reasons in writing.

[5] I reserved on the Provost's motions after reviewing the facts, motion records and hearing oral submissions from counsel for the parties.¹

(A) The Motion to Preclude Mr. Liu from Testifying

[6] The Provost intends to call as a witness Mr. Yifan Liu, the ex-boyfriend of the Student. Mr. Liu is expected to testify about the extent of the Student's knowledge about the fraudulent transcripts. Mr. Sabsay, counsel to the Student, asserts that it would be a violation of the Student's rights under the *Canadian Charter of Rights and Freedoms* (the "*Charter*") to have Mr. Liu testify. He also submits it would violate her rights under the *Ontario Human Rights Code*. He asserts not only that a portion of Mr. Liu's evidence should be excluded but that the Provost should be precluded from calling him altogether. He submits that allowing him to testify would amount to a violation of the Student's *Charter* rights.

[7] This motion presented a threshold issue of whether the *Charter* applies to university discipline proceedings. The Provost vigorously contests the application of the *Charter* to these proceedings. As I indicated in my oral reasons, it is not necessary to decide that issue because even if the *Charter* did apply, generally, the Student's motion must be dismissed.

[8] The Student's motion is novel in almost every respect, which Mr. Sabsay appears to concede. There is no reasonable dispute that Mr. Liu's evidence would be relevant, as his proposed evidence goes to the heart of the issues: whether the Student had knowledge of the fraudulent nature of the transcripts.

[9] Mr. Sabsay provided no authority for the proposition that the Tribunal has the power to preclude a witness with relevant evidence from testifying because of the

¹ Although these motions were argued before a full panel, the decision was made by the Chair alone, as these motions involve questions of law.

emotional impact that her or his testimony may have on another party. Nor am I aware of any such authority.

[10] I note also that while Mr. Sabsay asserts that the Student would be traumatized by having Mr. Liu testify, Mr. Sabsay has not tendered any evidence in that regard (i.e., affidavit or viva voce evidence from a physician, from the Student or from any other person that would support the proposition that she would be traumatized).

[11] Without an evidentiary foundation, it is difficult to contemplate how such extraordinary relief could be granted, or what measures might properly mitigate or limit the amount of emotion duress that the Student would face. Yet even if one were to assume that having Mr. Liu testify would be difficult or even traumatic for the Student, the Panel is not persuaded that having him testify would amount to a *Charter* rights violation or a *Human Rights Code* violation. At least not one that could not be accommodated in some way.

[12] After the conclusion of my oral reasons, I invited Mr. Sabsay to seek alternative relief in the form of accommodation of the Student to deal with the anticipated emotional duress. Following the hearing, I was advised that the parties had agreed that the Student could be accommodated. Since the Student is appearing in these proceedings by way of Skype, the parties agree that Mr. Liu should testify immediately below the screen upon which the Student appears. Given the position of the camera, neither of Mr. Liu nor the Student would be able to see each other. This is a sensible approach.

(B) Admissibility of the Judgment from Mr. Liu's Criminal Trial

[13] The Provost seeks admission of the Judgment from Mr. Liu's criminal trial. The Provost is not asking the Tribunal to adopt Maxwell J.'s findings or analysis in relation to the Student's credibility. Instead, the Provost is tendering the Judgment to provide the Tribunal with "contextual information that is relevant to these Tribunal Proceedings".

[14] The Provost relies principally on the Supreme Court of Canada's decision in *British Columbia (Attorney General) v. Malik*,² and on s. 15(1) of the *Statutory Powers and Procedure Act* ("SPPA").

[15] The Provost cites *Malik* for the proposition that a judgment in a prior civil or criminal case *may* be admissible as evidence in a subsequent proceeding, including administrative or disciplinary proceedings, as proof of its findings and conclusions.

[16] *Malik* is of limited applicability. The primary finding and conclusion of Maxwell J.'s Judgment is that the Crown had not proven its case against Mr. Liu beyond a reasonable doubt and that Mr. Liu must be acquitted. Nobody disputes that this was the result of the criminal proceeding. (If that does become a contested issue of fact, then the Judgment can be admitted for that limited purpose.)

[17] It is true that, in the context of rendering the Judgment, Maxwell J. did make adverse findings of credibility against the Student (and, to some extent, Mr. Liu). Generally, one trier of fact's assessment of a witness' credibility in one proceeding is not relevant to another tribunal's assessment of that witness' credibility in a subsequent proceeding.³ It is for this Tribunal to independently assess and come to its own conclusions with respect to the Student's credibility — a fact that the Provost appears to acknowledge.⁴

[18] The Provost states that it does not seek to rely on the Judgment for the findings on the Student's credibility, but rather for "context". Upon reviewing the Provost's submissions and during oral argument, it was not clear to me what the Provost could mean by "context". As the Supreme Court notes in *Malik*, to the extent that a party seeks to rely on a previous judgment, it must specify the purpose for which it is tendered, and that purpose must be a permissible one.

² *British Columbia (Attorney General) v. Malik*, 2011 SCC 18.

³ *R. v. Ghorvei*, 1999 CanLII 2475 at para. 31 (ON CA).

⁴ Factum of the Provost, para. 20.

Tendering a judgment for “context” lacks the specificity to allow this Tribunal to make an informed decision as to whether the purported purpose is a permissible one.

[19] I must also consider subsection 15(1) of the SPPA. That section provides in relevant part:

15. (1) Subject to subsections (2) and (3), a tribunal may admit as evidence at a hearing, whether or not given or proven under oath or affirmation or admissible as evidence in a court,

(a) any oral testimony; and

(b) any document or other thing,

relevant to the subject-matter of the proceeding and may act on such evidence, but the tribunal may exclude anything unduly repetitious.

[20] Section 15(1) thus provides for the relaxation of the rules of evidence and gives greater scope to the admission of evidence by a tribunal.

[21] The section is permissive; it affords a tribunal latitude in admitting evidence that may not be admissible in a criminal or civil proceeding.

[22] While section 15(1) enlarges the ambit of admissible evidence, it is not without limitation. The evidence must be relevant to the proceeding. It must also not lead to unfairness.⁵

[23] In determining whether admission of the evidence could lead to unfairness, I can be guided by those rules of evidence that are aimed at ensuring fairness in legal proceedings. Under the rules of evidence, even where evidence is otherwise admissible, it can be excluded where its probative value is outweighed by its prejudicial effect.⁶

[24] The risk of prejudice here is significant. The criminal courts are expert in the evaluation of credibility of witnesses. Maxwell J. assessed and made

⁵ *Bartashunas v. Psychology Examiners*, [1992] O.J. No. 1845 (Ont. Div. Cut.).

⁶ *R. v. Seaboyer*, [1991] 2 S.C.R. 577.

negative credibility findings with respect to the Student. This Tribunal will be asked to perform a similar exercise. But Maxwell J.'s findings have the potential to overwhelm this Tribunal. Although the members of the Tribunal would no doubt direct themselves to not be unduly influenced by Maxwell J.'s findings, given the overlap between the issues, the risk of prejudice is high.

[25] On the other side of the ledger, I must consider probative value. As noted above, one trier's of fact's assessment of a witness' credibility is not relevant to a subsequent tribunal's assessment of that witness' credibility. It is for this Tribunal to independently assess and come to its own conclusions with respect to the Student's credibility.

[26] Given its slight probative value and its high potential for prejudice, the Judgment is inadmissible.

(C) Admissibility of the Transcripts from Mr. Liu's Criminal Trial

[27] Different considerations apply with respect to the Provost's motion to tender the Transcripts from Mr. Liu's criminal trial. Although the Transcripts are hearsay for purposes of these proceedings, the Provost submits that they satisfy the "party admissions" and "statements against interest" exceptions to the rule against hearsay. I agree. It is established law that an out-of-court statement made by a party to a proceeding that is adverse to her or his interest in that proceeding may be tendered by an opposing party to prove the truth of the facts contained in the statement.

[28] Even if I am wrong in the regard, I would admit the Transcripts under s. 15(1) of the SPPA. In my view, the balancing of probative value and prejudicial effect with respect to the Transcripts is different from the Judgment. The probative value of admitting the Transcripts thus outweigh its prejudicial effects.

[29] Although Transcripts are hearsay statements, they contain the hallmarks of reliability.⁷ The Transcripts are the testimony from taken under oath and subject to cross-examination. The Transcripts therefore have the indicia of reliability. They are reliable evidence of what the witnesses did in fact say about matters that are directly relevant to these proceedings.

[30] Further, as counsel for the Provost points out, the Student is not a compellable witness in these proceedings. She may or may not testify. If she chooses not to testify, then the Transcripts from Mr. Liu's criminal trial would be the only evidence in these proceedings of what the Student has said about the nature and genesis of the fraudulent academic transcripts — a key issue in these proceedings.

[31] In light of the foregoing, the risk that the admission of the Transcripts would result in unfairness is attenuated, and I may exercise my discretion under s. 15(1) to admit those statements.

(D) Use of Transcripts for Impeachment Purposes

[32] The Provost seeks an order that the Transcripts can be used for the purposes of impeaching the Student should she choose to testify.

[33] It is well-established at common law and under the Ontario *Evidence Act*,⁸ that parties may be cross-examined on their prior statements. A witness, including a respondent charged with misconduct (or even a criminal accused), can be cross-examined on prior statements. Cross-examination on a prior inconsistent statement may be used to impeach the credibility of the witness, or in an attempt to have the witness adopt the prior statement as true.⁹

⁷ See *R. v. Bradshaw*, 2017 SCC 35 at paras. 26-58 (for discussion of factors to consider in determining whether out-of-court statements are sufficiently reliable to overcome hearsay dangers).

⁸ *Evidence Act*, R.S.O. 1990, c. E.23, s. 21.

⁹ *R. v. Hill*, [2015] O.J. No. 4758 at para. 43 (C.A.).

[34] There is no basis here for interfering with these long-established principles and none has been put forward.

(E) Decision and Order

[35] Ms. W [REDACTED] motion to preclude Mr. Liu from testifying is dismissed.

[36] The Provost's motion is allowed in part:

- a. The Judgment is inadmissible.
- b. The Transcripts are admissible in the hearing on the merits of the charges against the Student.
- c. The Transcripts may be used for the purpose of cross-examination.

Dated at Toronto, this 21st day of December, 2018



Nader R. Hasan, Chair