

THE UNIVERSITY TRIBUNAL  
THE UNIVERSITY OF TORONTO  
TRIAL DIVISION

**IN THE MATTER OF** charges of academic dishonesty filed on November 8, 2018 and July 11, 2019,

**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:

THE UNIVERSITY OF TORONTO

– AND –

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

REASONS FOR DECISION ON FINDING

**Hearing Date:** February 21, 2020

**Members of the Panel:**

Mr. Dean F. Embry, Barrister and Solicitor, Chair  
Professor Lynne Howarth, Faculty Panel Member  
Ms. Julie Farmer, Student Panel Member

**Appearances:**

Ms. Lily Harmer, Assistant Discipline Counsel, Paliare Roland Rosenberg Rothstein LLP  
Ms. H [REDACTED] W [REDACTED], the Student  
Mr. Denna Jalili, the Student’s Representative, Downtown Legal Services

**Hearing Secretary:**

Mr. Christopher Lang, Director, Office of the Appeals, Discipline and Faculty Grievances

## **I. CHARGES**

1. The Trial Division of the Tribunal held a hearing on February 21, 2020 to address the following charges brought by the University of Toronto (the “University”) against H■■■ W■■■ (the “Student”) under the *Code of Behaviour on Academic Matters* (the “Code”):

### **November 8, 2018 Charges:**

1. On or about April 21, 2017, having an intent to commit the offence of forging or in any other way altering or falsifying an academic record, you did or omitted to do something for the purpose of carrying out that intention, contrary to sections B.I.3(a) and B.II.2 of the *Code*.
2. In the alternative, on or about April 21, 2017, you knowingly engaged 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, contrary to section B.I.3(b) of the *Code*.

### **July 11, 2019 Charges:**

3. On or about December 3, 2018, you knowingly represented as your own an idea or expression of an idea or work of another in an assignment that you submitted in ENG308Y5 (“Course”) entitled “The two contrary state of the Human Soul presented by Blake” (“Essay”), contrary to section B.I.1(d) of the *Code*.
4. In addition or in the alternative, on or about December 3, 2018, you knowingly engaged 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, contrary to section B.I.3(b) of the *Code*, in connection with your Essay.

## **II. SUMMARY OF FACTS**

2. The Panel received an Agreed Statement of Facts (“ASF”), a Joint Book of Documents, and the affidavit of Jacqueline Cummins (exhibits 1, 2 and 3 respectively) which collectively comprised the evidence of the hearing.

3. At the outset, it is important to note that while there were effectively two sets of charges against the Student, but only one, those concerning the April 21, 2017 conduct were contested.
4. The second set of charges concerning conduct that took place on December 3, 2018 were not contested and so can be dealt with quickly. The facts underlying the charges with an offence date of December 3, 2018 are contained in paragraphs 16 through 24 of the ASF. Briefly, it is alleged that in the 2018 Fall and 2019 Winter term the Student was enrolled in ENG308Y5Y, Romantic Poetry and Prose. A requirement of the course was the submission of a term paper worth 20% of the final mark. The Student submitted her term paper and when it was reviewed it was alleged that she had copied portions of her essay from two online sources without attribution.
5. As part of the ASF the Student acknowledges that she included verbatim or nearly verbatim text and ideas in her essay without proper attribution. She further acknowledges that she represented the ideas of another person as her own and in doing so committed plagiarism contrary to section B.I.1(d) of the *Code*.
6. In these circumstances the Panel has no difficulty accepting the facts as set out in the ASF and finding the Student guilty of that charge.
7. As above, the allegation related to April 21, 2107 conduct is contested and so the facts underlying them must be more carefully reviewed.
8. The basic facts underlying this set of charges are found at paragraphs 7 through 15 of the ASF and are augmented by the Affidavit of Jacqueline Cummins.
9. As outlined in the ASF it is agreed that on or about April 21, 2017 the Student placed an online order for two items from getstamps.ca. The first item was a self-inking customized rectangular stamp and the second was a 2 inch diameter seal embosser.
10. Both of these items contained text and design elements similar to the stamps and embosser used by the Office of the Registrar of the University of Toronto Mississauga.
11. The text and layout of the self-inking stamp can be seen at tab 5 of the Joint Book of Documents and reads:

Office of the Registrar  
University of Toronto Mississauga  
Innovation Complex  
3359 Mississauga Road  
Mississauga, ON L5L 1C6

12. The text and layout of the stamp can be compared with the Registrar's actual stamp reproduced at tab 9 of the Book of Documents. The text and layout of the embosser ordered can also be seen at tab 6 of the Book of Documents. A reproduction of the official seal of the Registrar can be seen at tab 10 of the Book of Documents. It is admitted that "the content of each of the Stamp and the Seal replicate the official stamp and seal used by the Office of the Registrar at the UTM".
13. The stamp cost \$37.29 before tax and shipping. The embosser cost \$61.05 before tax and shipping for a total cost \$98.34.
14. The Affidavit of Jacqueline Cummins outlines Ms. Cummins' efforts to replicate the steps necessary to order the items in question on getstamps.ca. These efforts were undertaken on February 20, 2020 and are largely in keeping with the familiar process of ordering things online.
15. The Registrar at the UTM uses their stamp and seal to authenticate official documents provided by the Registrar's office. Examples of such official documents are letters of enrolment, eligibility to graduate letters, forms required for a student's graduate school application, out of province funding forms, documents requested to extend student visas or for the Canada Border Services Agency.
16. A representative of Mar King Equipment (the owners of getstamps.ca), apparently concerned with the official appearance of the stamp and seal, contacted the Office of the Registrar to confirm that they had ordered the stamp and seal. It was via this phone call that the Student's order came to the attention of the University.
17. It should also be noted that there was an agreement that at the Dean's meeting the Student provided an explanation as to why she ordered the items and the circumstances surrounding the ordering of them. However, it was also agreed that this information was provided to the Panel on the agreement that it was "not provided for the truth of its contents". The Panel, therefore, has not relied on this information.

### III. ARGUMENT OF THE UNIVERSITY

18. On the basis of the above facts the University sought to show that the Student attempted to forge or falsify an academic record. As helpfully outlined by Ms. Harmer in her submissions there were two main issues in this matter. First, is there sufficient evidence to show that the Student intended to use the stamp and seal to forge or falsify an academic record? Second, insofar as the allegation is one of an attempt, did the Student go beyond “mere preparation” as required to make out an attempt?
19. With regard to the mental element, i.e. was there evidence that the Student intended to forge or falsify a document for material benefit, University counsel candidly admitted that the University’s case rested on the reasonable inferences that could be drawn from the evidence. University counsel pointed to the cost of the stamp and seal, the accuracy with which the items ordered resembled the official versions and the fact that Mar King reached out to the University to alert them of the order to support the inference that the Student intended to use the items to forge or falsify a document.
20. With regard to whether the actions of the Student went beyond “mere preparation” University counsel referred the Panel to a number of cases that outline the principle. The most important and perhaps useful case being *Deutsch v. The Queen* [1986] 2 SCR 2.
21. As a starting point, it is trite to say that an attempt does not require that the complete offence be made out. That said, an accused’s actions must go beyond “mere preparation” to fulfil the *actus reus* requirement of an attempted offence. *Deutsch* attempts to draw the line between “mere preparation” and an actual attempt. The majority notes that “it has been frequently observed that no satisfactory general criterion has been, or can be, formulated for drawing the line between preparation and attempt, and that the application of this distinction to the facts of a particular case must be left to common sense judgment.” (*Deutsch, supra at para 26*).
22. The majority goes on however to find:

“In my opinion the distinction between preparation and attempt is essentially a qualitative one, involving the relationship between the nature and quality of the act in question and the nature of the complete offence, although consideration must necessarily be given, in making that qualitative distinction, to the relative proximity of the act in question to what would have been the completed offence, in terms of time, location and acts under the control of the accused remaining to be accomplished”. (*Deutsch, supra at para 27*).

23. University counsel noted that the principles relied on in the case law was drawn from the Criminal context. In her view a more flexible or in some way lower standard was appropriate in the present context in which there is a lower burden of proof and less severe sanctions at play.
24. Applying the principles that flow from the case law to the present case, University counsel noted the multiple steps that one had to work through on the getstamps.ca website to make an order and noted that the Student would have had to take those steps twice to order the two items. University counsel also noted that steps would have to be taken to ensure that the stamp and seal were as identical as possible to the Office stamp and seal.
25. Finally, University counsel noted that all subsequent steps that would have to be taken to complete the offence were in the control of the Student. Taking all of this into account, she argued, there was clear evidence that the Student had gone beyond mere preparation and completed the *actus reus* needed for an attempt.
26. With both the mental and *actus reus* elements made out, the University argued, a finding of guilt should be made.

#### **IV. ARGUMENT OF THE STUDENT**

27. Counsel on behalf of the Student made several arguments that dealt with the central issues in this matter the thrust of which was that there was simply insufficient evidence to make the findings urged by the University.
28. Generally, he noted, there was a complete lack of direct evidence as to the mental state or intentions of the Student. Any conclusion as to the Student's intention, he argued, would be nothing more than unacceptable conjecture.
29. Specifically, he noted, while it was agreed that the Student ordered the stamp and seal there was no evidence that she wanted to acquire them, use them to forge a document or that she intended to forge a document for a material benefit.
30. Due to the insufficiency of evidence, he argued, were the Panel to accept the submissions of the University the effect would be to erect a presumption of guilt and improperly shift the burden to the Student to rebut that presumption.

31. Counsel for the Student argued that a finding that merely ordering the stamp and seal amounted to an attempt to forge or falsify documents would lead to absurd consequences such as someone who used official looking University stamps and seals as a joke being charged and, possibly, conviction.
32. Counsel for the Student argued that the Panel risked falling afoul of the rule of law. There is nothing in the *Code* that prohibits students from ordering stamps, embossers or similar instruments that resemble those used by the University. If this Panel were to find that doing so in and of itself constitutes an offence then the Panel would essentially be creating a new offence – one of ordering stamps, etc. Doing so, the argument goes, would offend the rule of law requirement of prior notice as to what is forbidden.
33. Questions from the Panel returned a number of times to the drawing of inferences and Counsel for the Student was asked what other inferences regarding intent were available on the admitted facts. He noted that perhaps the Student had ordered the items for a joke. Alternatively, it was possible that they were ordered as a memento of the Student's time at the University of Toronto. Finally, it was possible that they were ordered as some sort of security test with no real expectation that they would ever be delivered.
34. The lack of necessary evidence, he submitted, meant that no finding of guilt could be made.

## V. ANALYSIS

35. The Panel is unanimous in finding that both the mental element and *actus reus* are made out in this matter such that a finding of guilt must be made.
36. First, with regard to the *actus reus* necessary to make out an offence, while the Panel has doubts that a lower standard than that found in the Criminal case law ought to be applied, it finds that that standard has been met.
37. The actions of the student clearly went beyond mere preparation. Two factors strike the Panel as particularly important when coming to this conclusion. First is the cost of the items ordered. Spending over \$90 to order the items cannot be construed as "mere preparation". Second and perhaps more important is the accuracy of the stamp and seal ordered. Ordering the stamp and seal was not the first step in a process that could culminate in the creation of a forged or falsified document. Careful steps of acquiring, studying and replicating the stamp and seal would have to be taken before ordering the stamps online.

38. The ordering of the stamp and seal did not appear to be overly complex but it was clearly a deliberate action taken to acquire the items. Once the items were received there were very few remaining steps to be taken in order to complete the offence and, as noted by Counsel for the University, all of the remaining steps remained within control of the Student. We therefore find that the Student's actions went beyond mere preparation and constituted an attempt.
39. With regard to the mental element, the panel finds that, at the time she ordered these items, the Student intended to use them to commit the offence she is charged with.
40. In coming to this finding the Panel notes that this is the overwhelmingly most likely inference to be drawn by the facts. The Panel does not accept the contention that although the Student ordered the items she did not intend to receive them. To make such a finding the Panel would have to accept that after ordering and paying for the items the Student would then be shocked when they arrived in her mailbox.
41. With regard to the use she intended to make of the items once received, as above the Panel accepts that the most likely use to be made would be to forge or falsify documents for some sort of material gain.
42. It is important to note that when applying a balance of probability standard it is not enough that there be another reasonable inference available. The reasonable inferences available must effectively outweigh the inference that the items were intended to be used to commit an offence.
43. As above, there was much discussion about what, if any, other inferences were available. Any competing inferences did not have to be led directly in evidence but would have to arise from the evidence received by the Panel. As above, a number of alternative inferences were raised. Some of these inferences, such as the items being ordered to serve as mementoes are extremely unlikely. The strongest of the alternative inferences raised is that the items were ordered as part of a prank or joke. However, even this inference is a weak one, especially in light of the extreme accuracy of the items ordered. As just one example, the Panel fails to see how reproducing the exact postal code as found on the University's stamp would advance any possible prank or joke.
44. Weighing the inferences against one another the Panel finds that the inference that the items were going to be used in an offence is much more likely than all other inferences



when put together. The Panel also notes that no insignificant effort was made attempting to come up with other alternative inferences that could outweigh the one supporting a finding of guilt. The Panel was unable to come up with such inferences.

45. Finally, as to the “rule of law” argument. In our view this argument fails for two reasons. First, it fails to take into account the nature of codified offences which are, by necessity, general in nature. It is unrealistic and unnecessary to specifically outlaw each possible instance of a general offence. The rule of law makes no such demand. Second, it is a mischaracterization of what is at issue and what the Panel is tasked to consider. Whereas it is true that it would be improper to ground a finding of an academic offence in the mere ordering of stamps, etc. as outlined above, what is at issue is whether or not the Student did so with the intention of committing an academic offence and in circumstances where the actions taken went beyond mere preparation. The fact that the Panel is asked to rely on reasonable inferences to consider the issue does not result in the Panel inventing a prohibition. It is merely an instance of drawing inferences from proven facts to come to a conclusion.
46. As above the conclusion the Panel has come to is that a finding of guilt must be made.

**VI. CONCLUSION ON CHARGES**

47. Following deliberation and based on the evidence before it the Panel concludes that all charges have been proven.

DATED at Toronto, May 27, 2020



Dean F. Embry