

**GOVERNING COUNCIL JUDICIAL BOARD
THE UNIVERSITY OF TORONTO**

IN THE MATTER of charges of academic misconduct made on March 18, 2021

AND IN THE MATTER OF *The University of Toronto Act, 1947*, S.O. 1947, c. 112 and *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 -

X ■■■ C ■■■

REASONS FOR DECISION

Hearing Date: December 19, 2022, via Zoom

Members of the Judicial Board:

Patricia D. S. Jackson, Chair
Douglas McDougall, Faculty Board Member
Susan Froom, Student Board Member

Appearances:

Lily Harmer, Counsel for the University of Toronto
Daniel Goldbloom, Counsel for X ■■■ C ■■■ (the “Graduate”)

Hearing Secretary:

Carmelle Salomon-Labbé, Associate Director, Office of Appeals, Discipline and Faculty Grievances

Introduction

1. This Judicial Board was established by the Executive Committee of the Governing Council, exercising power delegated by the Governing Council, for the purpose of hearing and deciding upon all matters relating to charges against the Graduate. In the same resolution, the Executive Committee gave this Board full authority to hear the case and render final judgment, including with respect to penalty, and to report its decision to the Governing Council for information.

2. In so doing, the Governing Council was delegating (pursuant to section 2(14)(e) of *The University of Toronto Act, 1971*) the authority it has pursuant to section 48 (c) of *The University of Toronto Act, 1947* which provides that the powers and duties of the then Senate (now Governing Council), including the ability to:

(c) provide for the cancellation, recall or suspension of and cancel, recall or suspend the degree, whether heretofore or hereafter granted or conferred, of any graduate of the University heretofore or hereafter ... guilty of any infamous or disgraceful conduct or of conduct unbecoming a graduate of the University, and for erasing the name of such graduate from the roll or register of graduates and for requiring the surrender for cancellation of the diploma, certificate or other instrument evidencing the right of such graduate to the degree for which he shall have been deprived, and for providing the mode of inquiring into and determining as to the guilt of such graduate, and the procedure generally in respect of any such matter, and for the purpose of making such inquiry, the Senate and the committees thereof shall have all the powers which by *The Public Inquiries Act* may be conferred upon commissioners appointed under the provisions of that Act.

The Charges:

3. The charges which this Judicial Board has been authorized to hear and dispose of are charges against the Graduate as follows:

1. On or about March 2, 2020, you were guilty of infamous conduct in that you forged or in any other way altered or falsified an academic record, and/or uttered,

circulated or made use of any such forged, altered or falsified record, and/or attempted to utter, circulate or make use of such forged, altered or falsified record, namely a document purporting to be a transcript of your academic history at the University of Toronto;

2. On or about March 2, 2020, you were guilty of disgraceful conduct in that you forged or in any other way altered or falsified an academic record, and/or uttered, circulated or made use of any such forged, altered or falsified record, and/or attempted to utter, circulate or make use of such forged, altered or falsified record, namely a document purporting to be a transcript of your academic history at the University of Toronto;

3. On or about March 2, 2020, you were guilty of conduct unbecoming a graduate of the University in that you forged or in any other way altered or falsified an academic record, and/or uttered, circulated or made use of any such forged, altered or falsified record, and/or attempted to utter, circulate or make use of such forged, altered or falsified record, namely a document purporting to be a transcript of your academic history at the University of Toronto.

Agreement and Joint Submissions

4. Shortly before the date of the hearing of these matters, the Graduate and the University arrived at an Agreed Statement of Facts and a Joint Submission on Penalty. We set forth both below.

5. As we stated at the hearing, we have accepted the Agreed Statement of Facts and found the Graduate guilty of the third charge above.

6. However, we have concluded that this is one of those rare cases where we should depart from the penalty proposed in the Joint Submission. We have decided that in the unusual circumstances of this case the interests of justice and reasonableness call for a lesser penalty.

7. The facts to which the parties have agreed contain, in relevant part, the following:

4. The Graduate ... pleads guilty to Charge 3.

...

6. The Graduate attended the University of Toronto Scarborough (“UTSC”) as a student from 2007 Fall to 2011 Summer. The Graduate’s Bachelor of Business Administration degree was conferred by the University in November 2011.

7. On March 2, 2020, the Graduate attended at the UTSC’s Registrar’s Office and spoke with Joe Butkevich. She presented a printed copy of her official University of Toronto transcript, issued January 21, 2020 (the “ROSI Transcript”) [Importantly, the ROSI Transcript copy she presented is a correct copy of the Graduate’s official ROSI Transcript.] ...

8. At the same time, the Graduate also presented a three-page printout called “View Academic History, Academic History”, and said that it was her online academic history. The print-out presented by the Graduate was undated with no student name or student number, for a University of Toronto Scarborough student with a registration history from 2007 Fall to 2011 Summer upon whom a Bachelor of Business Administration was conferred in November 2011 (“Academic History”). She explained that she had printed out the Academic History Transcript at some point after she graduated in 2011. [As set out in the document itself, and in the affidavit of Tracey Rockbrune, which the Graduate agrees is accurate, the Academic History reflected grades that in 21 out of 40 courses were higher than in the ROSI Transcript and grade point averages that in 24 out of 26 cases were higher than those in the ROSI Transcript.] ...

9. The Graduate informed Mr. Butkevich that there were significant discrepancies between the ROSI Transcript and the Academic History. She asked Mr. Butkevich to change the ROSI Transcript to reflect these discrepancies. She explained that she needed these changes to be made because she was applying to graduate school. She told Mr. Butkevich several times that she was thankful that she had taken a

“screenshot” of her online academic history in the form of the Academic History before she graduated.

10. Mr. Butkevich took the Official Transcript and Purported Transcript to Tracey Rockbrune in the Records Department and explained the Graduate’s concerns.

11. The Graduate admits the facts as set out in the affidavit of Tracey Rockbrune [which sets out the discrepancies noted above]

...

14. The Graduate admits that, in order to improve the chances of success for her applications for admission to graduate school, she knew or ought to have known that she:

(a) misrepresented her academic status in the Academic History by altering and falsifying a copy of her official academic record to inflate many of the grades and thus grade point averages earned, in order to significantly enhance the record of her academic achievements;

(b) submitted the altered and falsified Academic History to the Registrar’s office;

(c) attempted to convince the Registrar that the Academic History represented her official academic record, and that the ROSI Transcript was incorrect and needed to be corrected to reflect the false information in the Academic History;

(d) engaged in conduct that is unbecoming a graduate of the University.

15. The Graduate acknowledges that she is signing this ASF freely and voluntarily, knowing of the potential consequences she faces, and does so having had the opportunity to seek the advice of counsel.

16. The Graduate confirms that the Provost has made no assurances to her about what penalty the Judicial Board may impose.

8. As noted, on the basis of these agreed facts, the Board has accepted the Graduate's plea and have found her guilty of the third charge set out above.

9. The penalty which the parties have submitted is appropriate in these circumstances is set forth in the Joint Submission. It reads as follows:

3. The Graduate understands that the University Tribunal [which we take to mean in this case, this Judicial Board] may depart from the recommendations contained in this joint submission on penalty and may impose sanctions against her as set out in the *Acts*. ...

4. The Provost and the Graduate submit that, in all the circumstances of the case, the Judicial Board should impose the following sanctions on the Graduate:

(a) The Bachelor of Business Administration degree conferred by the University of Toronto on the Graduate in November 2011 shall be suspended for five years from the date of this order; and

(b) The fact that the University of Toronto has suspended for five years the Bachelor of Business Administration degree it conferred on the Graduate be recorded permanently on her academic record and transcript.

5. The parties agree that this case may be reported to the Provost for publication of a notice of the Board's decision and the sanction imposed, with the Graduate's name withheld....

6. The Graduate acknowledges that:

(a) the Provost advised the Graduate of her right to obtain legal counsel and that she has obtained that advice; and

(b) the Graduate is signing this JSP freely and voluntarily, knowing of the potential consequences she faces and knowing that the Tribunal is not bound by this JSP and has the discretion to impose a different penalty, including one that is more severe than the JSP recommends.

10. In addition to the Joint Submission, the Board was also provided with a copy of a letter the Graduate sent to the Vice-Provost shortly before the hearing. The University agreed that the letter be placed into evidence, with the proviso that, because no cross-examination of the Graduate was anticipated, the University should not be taken to have accepted the truth of the letter's contents.

11. The letter is a lengthy one and describes an extended period of a traumatic disruption in the Graduate's life beginning while she was at University and extending for some period afterwards. She says it transformed what had been the happy family life that she experienced with her parents after they came to Canada when she was 11. Soon after she began her undergraduate studies, her mother became very sick with ovarian cancer. This led to extensive medical treatment, significant financial difficulty, the need for the Graduate to take on part-time work, trips to China to endeavour seeking surgical solutions to what Canadian doctors had described as her mother's inevitable demise, accumulating financial bills, the disappearance of her father together with much of the family's money, countless surgeries, and ultimately the death of her mother in 2018.

12. The Graduate acknowledges her conduct in the following terms:

I am writing to apologize and take responsibility for my actions on March 2, 2020. I went to the Registrar's office that day to talk about my grades from my 2011 Bachelors of Business Administration degree. As you know, I provided a copy of my grades that were different from my official transcript and asked that the discrepancies be rectified. The copy I brought with me that day was not accurate. I now realize that I ought to have known that this was an inaccurate copy, and that I should not have tried to use it to get the grades changed on my official transcript. I let myself down, and I let my alma mater down. I accept that my actions were unbecoming a graduate of the University of Toronto and take full responsibility.

While I do not remember creating this document, there is no way that anyone else could have made it. The file properties on the Word Document say that I created the document on December 14, 2011, at 3:14 p.m. and that the document was last modified that same day at 4:34 p.m. I have forgotten or tried to forget much of what happened in my life at that time. ...

When I finally wound up my mom's estate ... I thought about going back to school instead and trying to apply for graduate programs. I imagined this as being the "normal" life that I could of have if my mom was never sick. ...

When I was looking to apply to graduate school, I found the Word document that I brought to the Registrar's office on March 2, 2020. It was on an old computer of mine. I don't remember creating this document, but I must have done so back in 2011. I don't remember ever using this document for anything other than bringing it to the Registrar's office. The only reason I can think of for creating it is that it was a private fantasy of a "normal life," of what my academic career might have looked like if my mom stayed healthy and my dad stayed with us. I never would have been an "A" student, but maybe I could've been a "B" student. I can't say for sure if that's why I created this document. It's just my best guess.

When I received copies of my official transcript, I did not remember what my undergraduate grades were (from 2007-2011), or that they were so low. When I discovered the Word document on my computer with better grades, I should have known that it was too good to be true. I was desperate for a fresh start, and to finally get some kind of normalcy in my life. For the first time in my adult life, I wanted to do something for me.

I deeply regret my rushed decision to go to the Registrar's office and ask them to fix the discrepancies between these two documents. I never should have made the transcript with the incorrect grades, whatever my reasoning might have been. I should not have asked the Registrar's office to investigate or correct any discrepancies without looking into the document first and realizing the obvious –

that these grades were not my own. This is not the kind of behaviour that I expect from myself, or from any other graduate of U of T.

It has been very difficult to relive these years to go back and explain all of this. I am a very private person. My mom was, too. I am focused on moving forward with my life. But I understand that before I do that, I will have to accept the University's decision in dealing with what I did in the Registrar's office.

The Appropriate Penalty in this Case

13. The Graduate's acknowledgment at the end of the Joint Submission is a correct reflection of the legal principles that govern whether we are obliged to accept a penalty on which the parties have agreed. We are not. We may conclude that the penalty should be greater, or less, than what the parties have agreed.

14. But equally important are the principles that constrain whether we should depart from an agreed penalty. And those principles dictate that such departures should be rare.

15. The Supreme Court of Canada addressed the standards that should apply when a court proposes to depart from an agreed penalty in the context of criminal law in *R. v. Anthony-Cook*, 2016 SCC 43, [2016] 2 SCR 204. The principles set out there have been adopted in professional discipline cases, for example in *Bradley v. Ontario College of Teachers*, 2021 ONSC 2303, and in cases before the University Tribunal's trial division and the Discipline Appeals Board, for example, *University of Toronto v. S.F.* (Case No. 690, August 6, 2013, para 18.) and *University of Toronto v. M. A.*, (Case No. 837, December 22, 2016).

16. The Supreme Court of Canada identified multiple reasons why courts and tribunals should be hesitant to depart from a jointly agreed-upon penalty and should do so only in circumstances where the administration of justice effectively demands it. As the Court pointed out, those who are charged with offences will not give up their right to a hearing on the merits, with all of the procedural safeguards involved, unless they have some reasonable assurance that the agreement they enter into will, in most instances, be adopted by the court or tribunal, even where it is not the sentence that the court or tribunal would itself have imposed. The court should take comfort from

the fact that the agreement comes from the parties, who know their case best. And the result saves the justice system precious time, resources, and expense which can be more productively channeled into other matters.

17. At the same time, the Court recognized and adopted the view of the Court of Appeal of Ontario that "certainty of outcome is not 'the ultimate goal of the sentencing process. Certainty must yield where the harm caused by accepting the joint submission is beyond the value gained by promoting certainty of result'".

18. The Supreme Court concluded, however, that a joint submission should only be disregarded in those rare circumstances where to do otherwise would bring the administration of justice into disrepute, or would otherwise be contrary to the public interest. This would occur where the proposed sentence "is so unhinged from the circumstances of the offence, and the offender that its acceptance would lead reasonable and informed persons aware of all the circumstances, including the importance of promoting certainty in resolution discussions, to believe that the proper functioning of the justice system had broken down."

19. These principles and the resulting standard have been regularly employed in the consideration of jointly submitted penalties before the University Tribunal's trial division and the Discipline Appeals Board. In our view, they apply equally to a hearing before a Judicial Board.

20. However, after much consideration, we have concluded that this is one of those exceptional cases where such a departure is warranted.

21. As noted, the Joint Submission asks us to impose a penalty of a five-year suspension of the Graduate's degree, and a permanent notation on her academic record and transcript.

22. The University provided us with a chart of cases dealing with students or graduates found to have engaged in forging transcripts or other academic records.

23. In virtually all the cases, where the conduct was engaged in by a graduate, the graduate's degree was recalled, or where the conduct was by an existing student, the student was expelled.

24. However, in virtually all of the cases referred to by the University, and in all of the cases in which a degree was revoked or a student expelled, the forged transcript/record was provided to one or more third parties in the expectation that they would rely upon it. The University confirmed that it was not aware of any case similar to this one, namely, one in which a student or graduate simultaneously provided an accurate copy of the official record of their transcript results (i.e., the ROSI Transcript), let alone a case in which records were provided not to a third party for their reliance, but to the custodian of the official University record for the purposes of record correction.

25. The University confirmed that, but for the Graduate's agreement to the facts and the appropriate penalty, the University would have sought a recall of the Graduate's degree in this case.

26. However, in light of the Graduate's cooperation in resolving the case, the University was prepared to agree that the lesser penalty contained in the Joint Submission was appropriate.

27. Forgery, as reflected in the cases cited by the University, is indeed a serious offence. The reasons were recently summarized in the *University of Toronto v. Y.Y.* (Case No. 1259, July 14, 2022, para 41) quoting earlier caselaw:

The reasons why forgery is deserving of the most serious of sanctions are succinctly outlined in *S.W.* ... forgery, or falsification of academic records, is among the most serious academic offences. ... Such misconduct undermines the integrity of the University's academic mission. It misrepresents a student's accomplishments. If undetected, it may result in a student obtaining a benefit which he or she does not deserve, deprive another more deserving student of that benefit, and tarnish the reputation of the University, and by extension, that of other students, alumni and faculty... Second, forgery may be difficult to detect... Third by its nature, forgery is only rarely an offence that can occur through a student's inadvertence, or even mere negligence. It is usually the product of planning and knowing participation, not a moment of weakness or poor judgment.

28. The Graduate's counsel observed that this is one of those rare cases where the factors referred to in support of the seriousness of the forgery offence are not in play. We agree.

29. Consistent with our acceptance of the Graduate's guilty plea, we consider that she should have known that the second academic record she took to the Registrar's office was false and that she should not have taken it or suggested that it was or might be accurate. But we cannot reasonably conclude that a student who gave any serious consideration or planning to her actions and who went to the custodian of the University's official records with a correct copy of her official transcript and a falsified additional document could be said to have reasonably expected that the University would ignore its own records or the ROSI transcript she provided, or that the University, let alone any third-party, would thereby be deceived. Nor can we conclude that the falsification of the academic history that accompanied the official transcript (which the custodian also possessed) would be difficult to detect.

30. The Graduate's conduct seems to us to have been an ill-considered and irrational act which was destined to be unsuccessful. While it was misconduct that should be sanctioned, we think it is unreasonable and unjust to impose a penalty that should reflect those imposed for serious offences involving the planned provision of knowingly falsified records to third parties for their reliance. We think an independent informed observer would come to the same conclusion.

31. We questioned counsel as to whether there might be other caselaw that more closely paralleled the circumstances of this case and it appears there is none.

32. Although we were advised that the Graduate is a very private person who did not wish to be part of a contested hearing, we do not otherwise know the reasons that led to the agreement to propose the penalty that is before us. In response to questions about those reasons, her counsel quite properly advised us that the answer was subject to confidential settlement privilege.

33. However, there is one fact that is known to us that we consider must have weighed heavily in the decision by the Graduate to agree to the Joint Submission. That is the University's expressed intention that, if the hearing were contested and the Graduate found guilty of the charge it would seek the revocation of the Graduate's degree.

34. Thus, the University made it clear that the price of failure might be the loss of the Graduate's degree. It is hard to imagine a more disastrous outcome for the Graduate. We are concerned that that fact may have weighed very heavily on the decision to agree to the Joint Submission, and may

well have led to an agreement to a proposed penalty that the Graduate and her counsel otherwise thought unfair. If it did, that would be entirely understandable.

35. We certainly do not suggest that the University or its Counsel, who, as always, discharged her responsibilities in an excellent and entirely professional fashion, would seek a penalty that was considered inappropriate for the purposes of extracting a settlement.

36. But it will be apparent from these reasons that we consider the revocation of the Graduate's degree an excessive penalty for the conduct with which she was charged, and this causes us to accord less weight than we otherwise might to the Graduate's agreement to the Joint Submission.

37. This leaves the question of what we consider would be an appropriate penalty for the Graduate's conduct.

38. There does not appear to be any line of authority that would apply to the determination of the appropriate penalty in the unusual circumstances of this case. So we turn to the well-established sentencing factors set out in the 1976 *Chelin* case.

- a. The character of the Graduate: We know of nothing other than the offence in question to suggest that her character is other than blameless, and her expressed acknowledgement and remorse reinforce that impression.
- b. The likelihood of repetition of the offence: There is nothing to suggest that there is any likelihood of repetition of this or any comparable offence and what evidence there is suggests the opposite.
- c. The nature of the offence: While we think it is a result of failure to exercise reasonable judgement rather than an intention to harm or mislead, the creation and presentation of a false academic record is nonetheless a significant offence deserving of sanction.
- d. The detriment to the University: Given that the University was the only recipient of the falsified record, and that the corrected record was both presented at the same

time and also in the University's possession, we think that any detriment would have seemed to be unlikely and was in fact non-existent.

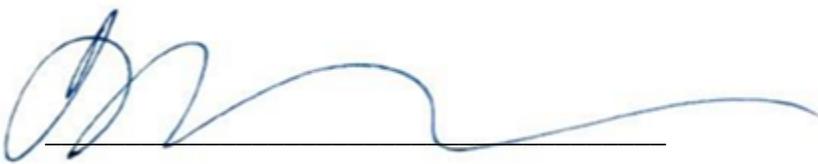
- e. The need to deter others from committing a similar offence: While it is important that the University be seen to penalize the falsification of academic records, we do not think the unique circumstances of this case are likely to be repeated by others.

39. In the result, we conclude that a significant penalty, but not one at the high end of the scale, is called for. We therefore impose:

- a. a suspension of the Graduate's degree for a period of 3 years;
- b. a notation to that effect on the Graduate's transcript for a period of 3 years;
- c. a report to the Provost for publication of a notice of this Board's decision, including the facts on which it was based and the sanction imposed, with the Graduate's name withheld.

40. We close by recording our gratitude to both counsel for their invaluable assistance in the circumstances of this unusual case.

All of which is hereby ordered this 3rd of March 2023



Patricia D.S. Jackson

On behalf of the Judicial Board Panel