

█'s July 30, 2020 Tweet

FW said that █ had commenced the Twitter interactions between them when █ posted █'s July 30, 2020 Tweet. FW said that "everything I did after July 30" was in response to what █ was doing, and specifically that FW was "defending" herself against █'s "malicious accusations." FW emphasized that █ had initiated a "campaign" against FW, the purpose of which was to have FW fired from her employment with MRU.

FW said that in █'s July 30, 2020 Tweet, █ retweeted one of FW's tweets, but █ had "separated out" FW's tweet from a "whole chain" of tweets, and the chain would have clarified that FW was responding to a question. FW conveyed that █ thereby misrepresented what FW was communicating in her tweet.

FW noted that █'s July 30, 2020 Tweet was "liked" by six other MRU professors and @MRUEducation. According to FW, in █'s July 30, 2020 Tweet, █ was encouraging student groups to "pursue" FW on campus. FW said that "if anyone should be accused of harassment, it should be [█]."

When asked how FW could then maintain that her Twitter account was unrelated to her work, FW's response was that her activity on Twitter occurred on her "private time" and that MRU did not have a policy regarding employees' use of social media.

July 31, 2020 Tweet

When asked about the meaning of the term “race-hustling,” FW said it was an academic term that was put forth by a “Black academic” named Thomas Sowell. According to FW, “race-hustling” was a phenomenon that often happened in anti-racist activism and was “not related to a particular individual.” FW advised that “race-hustling” was about “extracting rent by inserting oneself into discussions about anti-racism” and had nothing to do with bullying or harassment. FW said that the term “race-hustling” itself was not a racist term. FW said that her use of the term “race-hustling” in the July 31, 2020 Tweet was not “specifically about [REDACTED]” FW advised that she tagged [REDACTED] because [REDACTED] had previously posted tweets demanding that FW be punished by the MRU President.

August 1, 2020 Tweet

FW advised that the August 1, 2020 Tweet was “satirical commentary” and questioned, “Is it love and kindness and bringing people together, to try to get people fired by setting them up, misrepresenting what they do, so you can get their employer to fire them?”

August 18, 2020 Tweet

FW maintained that the August 18, 2020 Tweet was commentary about [REDACTED]'s attempts to mobilize students against FW, and to document the "Faculty mob" that had formed against her. When asked to whom FW was referring when she wrote, "Please Don't Feed the #RaceHustling Crocodiles," FW responded, "That was my academic work" and she was referring to the "phenomenon of race-hustling."

September 6, 2020 and September 28, 2020 Tweets

When asked about the September 6, 2020 and September 28, 2020 Tweets, FW repeated that [REDACTED]'s posts on Twitter were harassing her.

The First November 7, 2020 Tweet

When asked why she posted the First November 7, 2020 Tweet after [REDACTED] had blocked her on Twitter, FW responded in writing as follows:

"[REDACTED]'s blocking anyone is irrelevant to my satirical character's response. Blocking merely means that [REDACTED] does not want to see some people's views and contributions to the discussion, and in this particular case, that she does not want to see my satirical character's response to her baseless defamatory accusations of racism against [FW]. However, [REDACTED]'s tweet continues to exist and my satirical character tagged [REDACTED] because it is FranXs McGrath's satirical response to her baseless accusations (that many people besides [REDACTED] are reading). I should also note that [REDACTED] was involved in retweeting and responding to material posted by FrancXs McGrath after November 7. This means that despite "blocking" FrancXs McGrath, [REDACTED] continued to view and engage with this account (see attached) while preventing her "followers" from seeing my response.

When asked why, in the First November 7, 2020 Tweet, she posted and highlighted GL's tweets that she had posted and highlighted in previous tweets, FW responded in writing as follows:

My answer to your second question is that I was responding, through the use of satire, [to] [REDACTED]'s baseless defamatory accusations about [FW] being racist on the basis of her referring to the book title in defense of Wendy Mesley. The satirical character FrancXs McGrath was also showing that [REDACTED] had encouraged a number of students to make baseless accusations...

FW described what was being satirized in each screenshot that had been included in the First November 7, 2020 Tweet. FW reiterated that, if it is accepted that "twitter is 'work", that is, which I do not", then [REDACTED] was personally harassing FW rather than vice versa.

Credibility

Although the key facts are not in dispute, I have made credibility findings to assist in making determinations on issues concerning FW's use of sarcasm in the Tweets, whether FW called [REDACTED] a "race-hustler" in some of the Tweets, and finally, whether FW was forthright during the Investigation.

For the most part, I found FW to be forthright and honest, with some exceptions as outlined below. During our interview, FW expressed anger, frustration, and a sense of being wronged by both the fact that the Investigation was occurring and the way it was being conducted. However, those emotions did not appear to affect her overall credibility. Rather, I found that FW was not forthright with respect to providing information that was relevant to a determination of whether she had breached the Policies.

FW refused to answer the following two questions during our interview:

- How do the views expressed in your Tweets relate to your actual views?
- Do you use sarcasm when communicating on Twitter?

(the “Two Questions”)

The Two Questions are relevant, as the *Personal Harassment Policy* specifically mentions the use of public sarcasm as an example of inappropriate and unacceptable behaviour.

FW stated that she based her refusal to answer the Two Questions on her belief that they were not relevant to her employment. However, FW also stated that “everything” she did on Twitter after [REDACTED]’s July 30, 2020 Tweet was in response to a “campaign” against her, initiated by [REDACTED], the purpose of which was to have FW fired from her employment with MRU. Therefore, according to FW’s own statements, the Tweets had a fundamental connection to her employment. As a result, I did not accept that FW’s refusal to answer the Two Questions was based on her belief that they were not relevant to her employment.

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Further, I did not accept FW’s statement that there was no connection in the July 31, 2020 Tweet between her use of the term “race-hustling” and [REDACTED]. This assertion seemed disingenuous, given the following:

- By FW’s own account, the July 31, 2020 Tweet was written in response to [REDACTED]’s July 30, 2020 Tweet; and
- FW wrote “*#RaceHustling*” directly after “@[REDACTED].”

Finally, with respect to the August 18, 2020 Tweet, I did not accept that FW was referring solely to the “phenomenon” of “race-hustling” when she wrote, *“Please Don’t Feed the #RaceHustling Crocodiles.”* FW stated that the August 18, 2020 Tweet was a commentary about [REDACTED]’s attempts to mobilize students

against FW. Therefore, I find it more likely that FW was referring, at least in part, to [REDACTED] when she wrote, *“#RaceHustling Crocodiles.”*

- The initial engagement between [REDACTED] and FW on Twitter was commenced by [REDACTED] in [REDACTED]'s July 30, 2020 Tweet.
- From July 30, 2020 to September 2020, [REDACTED] posted tweets that were critical of FW and her views and, in some of her tweets, encouraged other Twitter users who were connected to MRU to speak out against FW's continued expression of those views as an employee at MRU.
- FW posted the Tweets Mentioning [REDACTED] in response to tweets by [REDACTED] that were critical of FW and her views.
- FW intended for [REDACTED] and at times other MRU employees, to read the Tweets Mentioning [REDACTED].
- FW used sarcasm, public reprimand, and ridicule in most of the Tweets Mentioning [REDACTED].
- FW indirectly stated that [REDACTED] engaged in "race-hustling" in the July 31, 2020 Tweet and the August 18, 2020 Tweet.
- In the First November 7, 2020 Tweet, FW posted about [REDACTED] and tagged [REDACTED] on Twitter after [REDACTED] had blocked her, and with the knowledge that [REDACTED] had blocked her.

I find that the Allegations concerning the Tweets Mentioning [REDACTED] have been substantiated. By posting the Tweets Mentioning [REDACTED], FW breached both the *Personal Harassment Policy* and the *Code of Conduct - Employees*. Although FW strongly asserted in our interview that her communications on Twitter were not work-related, the caselaw is clear that where there is a nexus between social media posts and the workplace, the courts do not consider the conduct on social media to be "off-duty." If there is an intention for social media posts to be read by other employees, that is sufficient to establish that nexus. There is no legal requirement that the employer have a specific policy about employees' use of social media. FW clearly indicated her intention for [REDACTED] to read the tweets in which FW had tagged [REDACTED]. In our interview, FW provided evidence of an additional connection between the Tweets Mentioning [REDACTED] and her workplace when she stated that, in the Tweets Mentioning [REDACTED], she was responding to tweets by [REDACTED] that she considered to be threatening to her work.

I have found that [REDACTED] initiated the interactions between herself and FW on Twitter, and that [REDACTED]'s tweets were critical of FW and her views. However, in determining whether FW's conduct breached the Policies and the law, [REDACTED]'s conduct provides only context and is not determinative in my assessment. Although [REDACTED] may have also behaved in ways that fell below the standards of conduct as outlined in the Policies and the law, I have been tasked with examining only FW's behaviour.

My assessment is based on an analysis of the manner in which FW communicated. As mentioned above, the caselaw on academic freedom is clear that courts and tribunals should be restrained in intervening when what is at issue is the expression of controversial or provocative views in university settings. In this case, what is at issue is not FW's expression of controversial or provocative views, but the way in which FW communicated in the Tweets Mentioning [REDACTED].

The *Personal Harassment Policy* and the *Code of Conduct – Employees* set limits to academic freedom. In the *Personal Harassment Policy*, under the definition of “academic freedom”, it is stated, “*In exercising the freedom to comment and criticize, academic staff members have a corresponding obligation to use academic freedom in a responsible manner.*” [Emphasis added] Section 23.2 of the *Code of Conduct – Employees* provides that “*Academic freedom does not confer legal immunity nor does it diminish the obligation to meet employment duties and responsibilities.*” [Emphasis added] These policies allow for a balancing between the freedom to express one's views and a corresponding obligation to express those views in a responsible manner, while adhering to one's employment duties and responsibilities.

I have found that, in the Tweets Mentioning [REDACTED], FW was responding to tweets by [REDACTED] that were critical of both herself and views relating to her work. However, in doing so, FW used sarcasm, public reprimand and ridicule. In the Tweets Mentioning [REDACTED] FW repeatedly communicated in ways that, under the *Personal Harassment Policy* were both inappropriate and unacceptable. As well, in posting the Tweets Mentioning [REDACTED], FW breached Section 2.11 of the *Code of Conduct – Employees*, as her interactions with [REDACTED] were not conducted in a “mutually respectful manner, respecting the personal dignity of all...”

Further, given that FW posted the First November 7, 2020 Tweet after she knew that [REDACTED] had blocked FW on Twitter, and FW included in the First November 7, 2020 Tweet screenshots of tweets by [REDACTED] that FW had previously posted, the First November 7, 2020 Tweet was particularly inappropriate and unacceptable, and was behaviour which “ought reasonably to be known as unwelcome” as outlined in the *Personal Harassment Policy*.