

**THE UNIVERSITY TRIBUNAL
OF THE UNIVERSITY OF TORONTO**

IN THE MATTER OF charges of academic dishonesty filed on September 29, 2010;

AND IN THE MATTER OF the University of Toronto *Code of Behaviour on Academic Matters, 1995*;

AND IN THE MATTER OF the *University of Toronto Act, 1971*, S.O. 1971, c. 56 as amended S.O. 1978, c. 88

BETWEEN:

THE UNIVERSITY OF TORONTO

- and -

A █ L █

Dates of Hearing: December 5, 2011 and January 17, 2012

Members of the Panel:

- Mr. Clifford Lax, Q.C., Barrister and Solicitor, Chair
- Professor Miriam Diamond, Department of Geography and Planning, Faculty Panel Member
- Mr. Chris Feng, Student Panel Member

Appearances:

- Ms. Lily Harmer, Assistant Discipline Counsel for the University, Paliare Roland Barristers
- Mr. Glenroy Bastien, Counsel for the Student, Bastien's Professional Corporation
- Dr. Eleanor Irwin, Dean's Designate, University of Toronto, Scarborough
- Dr. Vincent Murphy, Psychologist

In Attendance:

- Mr. A █ L █, the Student
- Ms. Deepshika Dutt, Articling Student, Bastien's Professional Corporation
- Ms. Natalie Ramtahal, Coordinator, Appeals, Discipline and Faculty Grievances

REASONS FOR DECISION

1. Mr. L [REDACTED] admits that he knowingly forged, altered and falsified a university academic record, namely a transcript, that purported to be his academic history and unofficial transcript from the University of Toronto. He then submitted the forged transcript to 10 potential employers along with a resumé which also did not truly represent his academic record. He claimed to have received the University of Toronto entrance scholarship based on academic excellence (which in fact he had not) and to have received a study skills success certificate, when he had not.
2. Five of the employment applications were submitted between April and September, 2009 and the remaining five were submitted to employers between January and May, 2010.
3. This Tribunal found Mr. L [REDACTED] guilty of five counts of forgery, altering and falsification of an academic record and making use of such falsified records, contrary to Section B1.3(a) of the *Code of Behaviour on Academic Matters* (the "Code").
4. The sole issue for determination on this hearing is the appropriate sanction for such unacceptable conduct.

Consideration of the Appropriate Sanction

5. Mr. L [REDACTED] displayed a complete disregard of his obligations as a member of the University community. The offences to which he pled guilty, namely, forgery and fraud, are amongst the most serious breaches of the Code, which a student can commit. Counsel for the University forcefully argued that such improper conduct required the imposition of the most serious sanction contemplated by the Code, namely, Mr. L [REDACTED]'s expulsion from the University.
6. For the reasons that follow, this Panel concludes that a five year suspension sufficiently expresses the University's condemnation of the student's conduct.
7. Mr. L [REDACTED] sought to partially justify his conduct by adducing evidence that he suffers from a learning disability and that he met the diagnostic criteria for attention-deficit/hyperactivity disorder (ADHD). This Panel rejected any suggestion that Mr. L [REDACTED]'s conduct could be partially justified, excused, or explained away by a learning disability or by an attention-deficit disorder. The impugned conduct was willful and deliberate, well planned and methodically carried out and displayed none of the traits said to be associated with ADHD or a learning disability.
8. Counsel for the University when urging the Panel to impose the most serious sanction (expulsion) for these most serious offences, offered two supporting rationales for the sanction, namely:
 - (1) that the deterrent effect of expulsion is greater than the deterrent effect of a lengthy suspension; and

(2) that in most (but not all prior decisions of this Tribunal), forgery and fraud of an academic record have resulted in the expulsion of the student from the University.

The Deterrent Effect of Expulsion

9. Prior decisions of this Tribunal and of the Appeals Board refer to the expected deterrent effect of expulsion. The anticipated deterrent effect acquires a measure of credibility, merely through frequent repetition, but without any supporting factual evidence. While it might be inferred that in some cases expulsion could deter other potential student wrong-doing, that inference is not based on any scientific analysis or empirical study. Simply repeating the claim that the most serious offence calls for the most serious sanction, does not establish a factual underpinning for the alleged result of expulsion.
10. The deterrent effect of any sanction requires both analysis and support. In a different but relevant context, scientific evidence cast doubt on the perceived wisdom that capital punishment acted as an effective deterrent for serious criminal offences involving human death.
11. Indeed, if deterrence is the prime justification for a recommendation to expel the wrongdoer, then serious sanctions (including expulsion and suspension) should result in orders from Governing Council, which actually name the guilty student, rather than continuing the current practice of granting the guilty student anonymity. The use of initials to shield the identity of the guilty student, undercuts the effectiveness of the sanction as a deterrent to others.
12. In the matter of *H* [REDACTED] *Z* [REDACTED] (Case 572; January 5, 2010), the Tribunal noted its concern over the existing provision of the Code, granting a disciplined student anonymity. Now two years later this Tribunal respectfully repeats its request to the Provost and to the Governing Council that at least those students expelled or suspended from the University, are no longer entitled to anonymity. They are being expelled or suspended from the University community and upon conviction have lost any rights to anonymity accorded to them by the Code.
13. Furthermore, while there can be no argument that expulsion results in a final and lasting impact on the student's life, can it not be equally said that a lengthy suspension (in this case five years) brings with it a serious condemnation of the student's unacceptable behavior? Mr. L [REDACTED] had earned enough academic credits to graduate. His graduation will of necessity be delayed for five years. Any perceptive person subsequently reviewing his transcript will seek an explanation for this gap between the end of his studies and his graduation. Mr. L [REDACTED] must explain to family members and to friends why his graduation from the University was delayed for five years. The embarrassment that will accompany such an explanation forms a necessary element of the deterrent factor of the sanction imposed.
14. Even though Mr. L [REDACTED] initially denied his guilt and attempted to mislead the University as to how and what he had done, he ultimately did plead guilty. He belatedly exhibited some measure of remorse. We note however that it is typical for a guilty plea to be

accompanied by a statement of remorse and therefore, while we believe that Mr. L█████ has learned his lesson, his expression of remorse would have been a larger factor in our deliberations if it had come at a much earlier stage of the University's investigation.

15. In deciding that the appropriate sanction for Mr. L█████ is a suspension of five years, rather than expulsion from the University, the Panel took a number of factors into consideration including:
 - (1) Mr. L█████ had not committed any prior offences;
 - (2) While Mr. L█████ submitted forged transcripts to ten potential employers, it could be said that all ten instances were actually part of one continuing offence;
 - (3) Mr. L█████ had in fact completed sufficient academic credits to earn a degree; and,
 - (4) There was credible expert evidence that Mr. L█████ felt significant remorse for his actions and was motivated to learn from his mistake.

Prior Decisions on the Appropriate Sanction

16. The decision by the Discipline Appeals Board of the University Tribunal in S█████ C█████, N█████ H█████ and M█████ K█████¹, issued November 23, 2011 was considered with great interest. In that appeal, the students were caught cheating by purchasing essays. Each of the students had committed two prior academic offences. At the University Tribunal level, the Panel had split 2 to 1 in favour of a five year suspension, rather than expulsion. The Provost appealed the decision solely on the issue of sanction. The Discipline Appeals Board overruled the Tribunal decision and recommended that the students be expelled from the University.
17. In the Appeal Decision, the Chair, Mr. R.G. Slaght comprehensively reviewed a number of earlier decisions which considered the appropriate sanction for the most serious academic offence. Mr. Slaght's analysis suggests the following conclusions:
 1. Where the students have no prior convictions (see decisions in S█████ P█████ and K█████ H████²), the Tribunal could reasonably reject a sanction of expulsion and opt to suspend the students for a five year suspension.
 2. In cases of cheating involving purchased essays, (another serious offence), Mr. Slaght accepted the evidence that 14 prior cases of similar cheating had resulted in 4 expulsions, 8 five year suspensions (including the three in the case before him), 1 three year suspension and 1 two year suspension. In other words, suspension, not

¹ See Book of Authorities, Tab 1.

² See Book of Authorities, Tab 1, paras. 77-79.

³ See Book of Authorities, Tab 1, paras. 80-85.

expulsion, was considered to be the most appropriate sanction, even for serious cases of academic wrongdoing.⁴

3. Prior academic offences could justify expulsion, where it was clear that the student had learned nothing from the prior convictions and that their apologies and expressions of remorse, were simply repetitions of similar statements made on the earlier convictions.
4. It should be noted that the Provost's Guidelines on Sanctions provides that even a student previously convicted under the Code and found guilty of another offence should face a recommended sanction that falls between two years' suspension and expulsion from the University.⁵
5. Both the Provost and Mr. Slaght's reasons recognize the wide latitude available to the Panel in choosing the appropriate sanction. Each case must be judged on its own facts and every student is entitled to have their personal circumstances considered. As the Provost's Guidelines explicitly contemplate, the Panel is entitled to impose a penalty within a reasonable range of sanctions.
6. There is no absolute rule regarding the appropriate sanction. An analysis and an understanding of the facts of each particular case are the prime factors. Mr. Slaght posits these questions for consideration of an appropriate sanction:
 - a. Under what circumstances did the impugned behavior take place?
 - b. What degree of intent and deliberation was involved?
 - c. Did the student recognize that the conduct was grave and wrong?
 - d. Was anyone else involved?
 - e. Were there influences that can legitimately affect the penalty?
 - f. Did the student admit guilt?
 - g. Is there anything particularly egregious or saving about the case or are there other facts that might ameliorate conduct that would otherwise be condemned?
 - h. Has the student learned anything from the conviction?
 - i. Are there true expressions of remorse and regret?

⁴ See Book of Authorities, Tab 1, para. 99.

⁵ See Provost's Guideline on Sanctions, Offences and Suggested Penalties, Appendix "C" to *Code of Behaviour on Academic Matters*.

- j. Are there prior academic offences?⁶
18. Mr. Slaght acknowledges that in cases without a previous academic offence and with an otherwise positive record, expulsion is not the only justifiable result⁷, but he goes on to point out that in a case of serious wrongdoing where expulsion is not the imposed sanction, it would be rare for a suspension of less than five years to be imposed.⁸
19. Counsel for the University also relied upon a number of prior decisions in which the parties made a joint submission on sanction. Because the joint submission necessarily indicates the student's agreement to the sanction (expulsion), we did not consider these cases to be useful precedents.⁹ The student's decision to accept expulsion could be a highly individual choice, made for any number of possible reasons.
20. The Panel considered the principles outlined by Mr. John Sopinka, as he then was, in his reasons for decision in the *University of Toronto and Mr. C.*, issued November 5, 1976. These factors include:
- i) the character of the person changed;
 - ii) the likelihood of repetition of the offence;
 - iii) the nature of the offence committed;
 - iv) any extenuating circumstances surrounding the commission of the offence;
 - v) the detriment to the University caused by the offence; and,
 - vi) the need to deter others from committing a similar offence.
21. We placed significant importance on the decision of a Judicial Board in the matter of *A. G.*¹⁰. Mr. G. admitted that he had forged and falsified his academic record (his transcript) and submitted the falsified transcript to prospective employers. Thus his offence was precisely the same as that committed by Mr. L. However, Mr. G.'s fraudulent conduct was not discovered until after he had received his degree from the University.
22. In such a circumstance, one would have expected the University to have sought the revocation of the degree it had granted. After the fact revocation, would have been a sanction equivalent to expulsion, prior to graduation.
23. Mr. G. declined to attend the hearing either in person or by video conference. Therefore the Judicial Board was unable to make any assessment of the genuineness of his remorse or the prospects for his rehabilitation.
24. Notwithstanding the evidentiary shortcomings, the Judicial Board accepted the submission of University Counsel that the appropriate sanction was to suspend Mr.

⁶ See Book of Authorities, Tab 1, paras. 136-141.

⁷ See Book of Authorities, Tab 1, para. 139.

⁸ See Book of Authorities, Tab 1, para. 143.

⁹ See *H.*, Book of Authorities, Tab 3; *J. M.*, Book of Authorities, Tab 5; *R. W.*, Book of Authorities, Tab 13; *M. S.*, Book of Authorities, Tab 14.

¹⁰ See Book of Authorities, Tab 9.

G [REDACTED]'s degree for five years and to enter a permanent notation of the suspension on his record.

Application of the Principles of Sanction to this Case

25. The student did not testify. However, we heard evidence from an experienced psychologist Dr. Vincent Murphy, who assessed Mr. L [REDACTED]. Dr. Murphy reported that Mr. L [REDACTED] described his behavior as a "significant lapse in judgment", which he deeply regrets. Dr. Murphy had absolutely no doubt about Mr. L [REDACTED]'s sincerity in this regard.¹¹
26. Dr. Murphy explained that these charges acted "as a huge wake-up call" and that Mr. L [REDACTED] had learned from his mistake. The misconduct did not appear to be part of a chronic behavior pattern.¹²
27. The Panel is somewhat heartened by Dr. Murphy's opinions and believe that Mr. L [REDACTED] deserves another chance to prove himself worthy of being a graduate of the University, but only after he has completed a lengthy term of suspension reflecting the seriousness of his misconduct.
28. If a five year suspension was the appropriate sanction for the G [REDACTED] case, we are unable to conclude that a more severe sanction is justified in the present case. The offence was the same and the fact that Mr. G [REDACTED] did not attend the hearing (while Mr. L [REDACTED] did) and therefore deprived the Judicial Board of an opportunity to assess the sincerity of his expression of regrets, all suggest that Mr. L [REDACTED] should not be treated any more harshly than Mr. G [REDACTED]. Finally, this Panel accepts the psychological evidence that the charges have acted as a "wake-up" call and that Mr. L [REDACTED] acknowledged the need to change his ways.
29. For all of the above reasons, we find that Mr. L [REDACTED] should be suspended from the University for a period of five years commencing January 17, 2012. Further, that the suspension be recorded on Mr. L [REDACTED]'s academic record and transcript for a period of five years commencing January 17, 2012, to the effect that he was sanctioned for academic misconduct. Finally, that this case shall be reported to the Provost for publication of a notice of the decision of the Tribunal and the sanction imposed. For reasons previously stated, it is hoped that the name of the student shall *not* be withheld.

Dated at Toronto, this 14th day of February, 2012.



Mr. Clifford Lax, Q.C., Chair

¹¹ Exhibit 4, Student's Book of Documents, Tab 3.

¹² IBID, Tab 3, page 3.