

FILE: 1995/96-02

Trial: 1994/95-11

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

TRIBUNAL APPEALS BOARD

BETWEEN: University of Toronto Complainant
(Respondent),

- and -

BETWEEN: Ms D. Accused
(appellant),

BEFORE: D.S. Affleck, Q.C. (Senior Chair)
Mark Goldenberg
Alfred Miller

Appeals Board

APPEARANCES: Steve Sansom, for the Appellant
John Monger, for the Respondent

DATE: September 19, 1995

This was an appeal by Ms D. to the Appeals Board of the University Tribunal from the sanctions imposed by the jury in the Trial Division of the University Tribunal on June 12, 1995 immediately following the jury's unanimous finding that the appellant had committed offences under the University of Toronto Code of Behaviour on Academic Matters, 1991, as amended. The appellant was charged with the following offence:

THAT on November 10, 1994, she intentionally used or possessed an unauthorized aid or obtained unauthorized assistance in a term test, contrary to Section B.I.1.(b) of the University of Toronto Code of Behaviour on Academic Matters.

In particular, in the fall of 1994, Ms D. was a student in FOR 305F. On November 1, 1994, she was unable to write the mid-term test, and was granted permission to write

the test on Thursday, November 10, 1994. The mid-term test was a closed book examination. Ms D. brought with her to the test on November 10, 1994, two pages of material, apparently taken from the course laboratory book, both of which were discovered by the teaching assistant between two pages of her mid-term test. She was observed by the teaching assistant to be in possession of, and utilizing these pages during the writing of the mid-term test.

The jury accepted her guilty plea and unanimously agreed to impose the following sanctions:

- a grade of '0' in FOR 305F
- suspension from the University for two years, effective immediately
- notation of the sanctions be recorded on her transcript for a period of two years, effective immediately.

and that

- the case be reported to the Vice-President and Provost for publication in the University newspapers.

Relevant Background

1. At the time of the offence, the appellant had completed three years of the Forestry program and was on academic suspension. She was granted special permission to take two Forestry courses while on suspension because these courses would no longer be offered after the 1994-95 session. One of these courses was FOR 305F, the course in which the offence was committed. This was Ms D.'s second offence, the first occurring in 1993-94.

2. Because the undergraduate program in the Faculty of Forestry was being phased out, FOR 305F would no longer be offered, and fourth year courses would be offered for the last time in 1995-96

3. Ms D. appealed the sanctions levied by the Trial Division on the grounds that they were unduly harsh, in light of her personal circumstances and the unusual status of the program in which she was enrolled.

REMEDY SOUGHT:

The appellant sought to have her suspension delayed for one year so that she could take her remaining Forestry courses before they were discontinued. Following any suspension, Ms D. would then need to complete her elective requirements before being eligible to graduate. In addition, the appellant sought to have the penalty of '0' in the course FOR 305F converted to an assignment of '0' in the term test in which the offence was committed. This would enable her to receive a passing grade in the course.

Argument of Counsel for the Appellant

Counsel for the appellant argued that the imposition of a two year suspension and a grade of zero in the course FOR 305F effectively precluded Ms D. from ever completing her Forestry degree at the University of Toronto. In his submission, the suspension was tantamount to an expulsion from the University in terms of its effect on the appellant's academic career. He argued that the Tribunal typically reserved expulsion for the most serious cases, and that his client's case did not fall into that category. While the possibility of Ms D. completing her degree at another university with a forestry program had been raised at the hearing, Counsel for the appellant submitted that this was not feasible because of her family responsibilities. The appellant was a new mother and wife and obliged to provide financial support to her mother. It was not possible for her to relocate in order to complete her degree. In addition, Counsel for the appellant was doubtful that this University would recognize as equivalent Forestry courses taken at another institution.

Counsel for the appellant submitted that the purpose of a suspension was to provide an opportunity for students to reflect on their academic progress and goals. In the case of his client, he argued that a suspension had the effect of forcing her to abandon studies in her chosen field.

Counsel for the appellant's principal argument was that the jury did not give sufficient weight to the personal circumstances of the appellant, and the relevance of substantial mitigating circumstances. He summarized the series of crises experienced by his client in the period surrounding the two offences and emphasized their causal role in her misconduct. On November 18, 1993, the appellant's fiancé was killed in a shooting incident, five days before she was scheduled to write an examination. In the appellant's submission, this tragedy precipitated Ms D.'s decision to bring unauthorized notes into the examination, an offence which resulted in her first penalty under the Code of Behaviour on Academic Matters. In January of 1994, she became pregnant. He advised the Board of the appellant's unresolved grief for her fiancé and of the pressures she was experiencing in coping with an unwanted pregnancy.

The second incident of academic misconduct occurred three weeks after the birth of her child. The Board learned that the period following her child's birth was exceptionally difficult for the appellant. As a consequence, the appellant had difficulty preparing for the test, and, according to her Counsel, in a moment of panic decided to take a portion of her study notes into the test site. The Board was advised that the appellant was deeply remorseful for her conduct, and believed it was a product of the extreme stress she was facing. He argued that, under normal - and less stressful - circumstances, the appellant would not have committed academic misconduct. In his submission, the appellant had acted irrationally, with little, if any, forethought, or regard for the wider possible consequences of her act.

Counsel for the appellant argued that it would be appropriate for the Board to allow the appellant to receive a passing grade in FOR 305F, citing the discontinuance of the course as grounds for supporting his position. He suggested that it was not uncommon for the University to grant students special privileges, such as supplemental examinations, in courses which were to be discontinued.

Respondent's submissions

Counsel for the University noted that a number of accommodations had been made by the Faculty in its treatment of the appellant prior to the misconduct in FOR 305F. She had been allowed to enrol in courses while under suspension. She

had been granted permission to postpone writing her test in FOR 305F and to write at a special sitting.

Three months before committing her second offence, the appellant had been penalized for a previous - and very similar - offence. In a letter sent to her with regard to the first offence, the appellant was explicitly warned that if she ever committed a similar transgression, she would face serious consequences. Furthermore, the appellant was aware when she cheated in FOR 305F, that this was the last time the course would be offered.

Counsel for the University submitted that there was no evidence to support the appellant's position that the jury did not properly weigh the mitigating circumstances in this case. He referred to pages 40 - 44 of the transcript, where counsel for the appellant, in his submissions to the jury, had emphasized the unusual circumstances of his client's case, specifically, the stress in her life, as well as the unfortunate role of forces beyond her control, such as the closure of the Faculty of Forestry. In addition, counsel for the appellant had asked the jury to give these factors great weight, urging them to allow the appellant to have a delayed suspension.

The Board's Judgment

The Board notes that the unusual circumstances of Ms D.'s case, that is, the closure of her program, and the mitigating circumstances, had been fully presented to the jury. There is no basis for presuming that they were not duly considered or that these issues did not inform their deliberations. In point of fact, the foreperson of the jury stated:

"the jury recognizes the unusual circumstances resulting from the closure of the Forestry program and the stress this event must certainly have caused for Ms D.."

Earlier in the proceedings, a juror asked a series of questions concerning the possibility of the appellant concluding her studies elsewhere. The juror then remarked:

"It seems to be a rather important factor, the Faculty or Department of Forestry is going to cease offering these courses or cease to exist at the end of '96. It's a very important point."

Mr. Monger: It's an important factor for your consideration, no question."

Notwithstanding its evaluation and obvious appreciation of the relevant personal factors and other issues of the case, the jury determined that a delayed suspension was not an appropriate penalty in the appellant's case. In making this decision, the jury had the full range of evidence that was presented to the Board, and was fully informed of principles of sentencing, and instructed by both counsel on the relevance of these factors to the appellant's case. The Board can find no evidence to support the appellant's claim that the jury overlooked or inadequately weighed relevant facts, or did not properly consider the mitigating factors as part of its deliberations.

In turning to the appropriateness of the penalty, the Board cannot agree with the appellant's position that the sanction imposed is equivalent to an expulsion. Expulsion involves permanent disbarment from the University, and carries with it a permanent notation of academic misconduct on the student's transcript. In the appellant's case, there will be an opportunity for her to resume her studies at this University, in 1997, and to graduate with an unblemished record. (Although, admittedly, it will be much more difficult for her to graduate with a forestry degree.) As regards the severity of the sanction in relation to similar offences, the Board believes it is consistent. This was a second offence, committed just three months after the appellant had been penalized for a similar offence and admonished by the Associate Dean of the Faculty of Arts and Science that any subsequent offence would be severely penalized. In the Board's view, the remedy proposed by counsel for the appellant is not supported by the case law of the Tribunal, where penalties for second offences normally entail a suspension and an imposition of a mark of '0' in the course. While counsel provided one case from 1979 in which a '0' was imposed in the term work alone, there is nothing to indicate in the record of the case that it involved a second offence, nor the weighting of the term work. In the case of this appellant, a penalty of '0' in the term test in which the offence was committed would lower her mark, at most, by 15%. Such a minimal reduction in the grade is inconsistent

with past decisions of the Tribunal and would ignore the seriousness of the facts of this case.

The Board is sympathetic to the personal stress experienced by the appellant. At the same, it realizes that all students confront varying degrees and types of stress throughout their programs. However, in the overwhelming majority of cases this stress does not become the justification for academic misconduct. To accept the argument that there is a causal link between stress and misconduct implies that, if sufficiently stressed, any student could be expected to cheat. The Board, like the jury, is prepared to accept the appellant's stress as a mitigating factor in this case, but believes it has been fully taken into account in the jury's decision. The Board shares the jury's stated concerns that it is the responsibility of the University to preserve the integrity of its degrees and to graduate students who obtain their degrees through honest and diligent work, and not through acts of dishonesty.

The appeal is dismissed.

"Donald Affleck"
Donald Affleck

"Mark Goldenberg"
Mark Goldenberg

"Alfred Miller"
Alfred Miller