UNIVERSITY OF TORONTO
UNIVERSITY TRIBUNAL

IN THE MATTER OF charges of academic dishonesty made on June 26, 2006;

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

Mr. S.D.

REASONS FOR DECISION

Members of the Panel:

Ronald G. Slaght, Q.C.	Chair
Stéphane Mechoulan	Faculty Panel Member
Adrian Asselin	Student Panel Member

Appearances:

Linda R. Rothstein	
Robert A. Centa	Counsel for the University of Toronto
William M. Trudell	
Mark A. Lapowich	Counsel for the Student

Introduction

[1] The Trial Division of the University Tribunal held a hearing on February 12 and 13, 2007 and March 26, 2007 to consider the following charges brought by the University against the Student:

1. In or about June 2004, you did knowingly forge or in any other way alter or falsify an academic record, and/or did knowingly utter, circulate or make use of any such forged, altered or falsified record, whether the record be in print or electronic form, namely, a Display of Academic History, contrary to Section B.1.3.(a) of the *Code of Behaviour on Academic Matters, 1995 ("Code").*

2. In the alternative, in or about June 2004, you did knowingly engage in a form of cheating, academic dishonesty or misconduct, fraud or misrepresentation not otherwise described in order to obtain academic credit or other academic advantage of any kind contrary to Section B.1.3.(b) of the *Code*.

[2] The matter proceeded on an Agreed Statement of Facts and the Student entered a guilty plea to Charge #1. Following a review of the Agreed Statement of Facts and upon hearing the submissions of counsel, the Tribunal accepted the guilty plea and entered a finding of "guilty" to Charge #1. The University did not proceed with Charge #2.

[3] The Tribunal then proceeded with a contested hearing into the appropriate sanction. An Agreed Statement of Facts Relevant to Sanction was filed, and evidence directed towards penalty was called by the parties.

[4] At the conclusion of the hearing, following submissions and a period of deliberation, the panel advised the parties it was reserving its decision on sanction and would issue its decision and reasons at a later date. These are those reasons, and the panel's decision on sanction.

2005 Events

[5] The events giving rise to Charge #1 occurred in or about June 2004, and concern the Student's admission that he submitted an altered academic record to a major Toronto law firm, representing to the firm that he had obtained a B in three courses where, in truth, his marks had been C+ in each course. The Student was at the firm as a student for the summer of 2004. While there, he was offered and accepted an articling position with that firm. In 2005, as part of a requirement to update his academic record for the law firm, the Student again altered his academic record in the same manner and in the same particulars, and submitted a second false record to the firm.

[6] At the time of the 2005 falsification, the Student had graduated and was not then a student at the University. It was acknowledged before us that although the University Tribunal did not have jurisdiction to convene a hearing into the events of 2005, as the

Student was not then a student at the University, it would have been possible for the University to convene a hearing of its Governing Council which, it was acknowledged by all parties, did have jurisdiction to recall the Student's degree, if, after a hearing, it had determined to do so.

[7] If this avenue had been pursued, then the deliberations over these issues would have extended to two hearings. The University had decided not to take that step.

[8] The panel was advised, however, that the parties had agreed that it could take into account to the extent we considered it appropriate the fact "that he did it again" in 2005.

[9] We were, however, reminded by counsel on a number of occasions as the matter proceeded that this hearing and the penalty to be levied was with respect to the plea to one charge only, for the 2004 altered transcript.

Agreed Facts

[10] The facts of this matter can be briefly stated, in light of the admissions made by the Student and recorded by the parties in the Agreed Statement of Facts.

[11] The Student enrolled at the University of Toronto in a combined Juris Doctor and Master of Business Administration program, which is a four-year program. The Student completed the program and in June 2005 the University conferred the degrees of JD and MBA upon him.

[12] In September 2003, the Student had applied for a position in the 2004 summer student program at a well known law firm with a practice extending to complex business transactions and major litigation. The firm hires numbers of law students to work at the firm during the summer months and often hires these students back to complete their articling requirements.

[13] In November 2003, the Student accepted the firm's offer of a position in its 2004 summer student program. The Student's application had been supported by a transcript including marks from his first year at the Faculty of Law and his first year in the MBA program.

[14] The firm's summer students were asked to provide the firm with an updated transcript or academic record and in June 2004 the Student provided the firm with a copy of what was purported to be a display of his academic history. The Student supplied what was purported to be an accurate academic history taken from the University of Toronto's Repository of Student Information ("ROSI"). The record given by the Student to the firm was false. The Student falsely reported grades in three courses he had taken in the Faculty of Law in 2003-2004. He reported a grade of B in each of Administrative Law, Public International Law and Taxation Law, although he had received a grade of C+ in all three courses.

[15] The Student admitted that he had asked a childhood friend, a computer programmer, to effect the alterations. In evidence put before the Tribunal, the Student's friend both admitted his role in falsifying the transcript and explained the means by which this was accomplished. The firm did not detect the 2004 altered record and sometime in the summer of 2004 offered the Student an articling position which he accepted.

[16] The Student completed his joint program and graduated from the University in June 2005. In order to comply with the firm's request that its articling students provide the firm with their final transcript and that the students had obtained a law degree, the Student again requested his friend to alter his academic record and the same alterations were made to that transcript, which the Student then submitted to the firm.

[17] In April 2006 both the Faculty of Law and the firm received a series of anonymous email messages alleging that the Student had "doctored" the grades on his U of T transcripts which he had submitted to the law firm.

[18] When confronted by the firm, the Student admitted that he had falsified his academic record when he provided the 2004 ROSI record and the 2005 record to the firm. The Student admitted before the Tribunal that he had forged, altered and falsified the 2004 and 2005 records because he believed it would improve his chances of being offered an articling position and subsequently a job as an associate lawyer at the firm.

[19] The Student entered a plea of guilty to Charge #1. On the basis of the Agreed Statement of Facts and admissions made by the Student, the Tribunal found the Student guilty of Charge #1.

Sanction

[20] While the panel was greatly assisted by the parties filing an Agreed Statement of Facts Relevant to Sanction, the parties were far apart in their positions on penalty and this phase of the hearing was fully adversarial in nature. Evidence was led and additional documents filed. Lengthy submissions were made by counsel at the conclusion of the hearing.

[21] It was the University's position that if the Student had still been a student, the appropriate sanction in this case would have been expulsion from the University. In the current circumstances, the University argues that the Tribunal should recommend to the Governing Council cancellation and recall of the Student's JD degree (although not his MBA) pursuant to Section C.II.(b).1.(j)(i) of the Sanctions provisions of the *Code*. The Student does not dispute the Tribunal's jurisdiction to order that penalty, but argued that a period of suspension of his degree of one year was appropriate, when taken with the period of limbo the Student has already experienced to date, and the fact that the Student will still need to undergo scrutiny by the Law Society before he may be called to the Bar and practice law.

Agreed Statement of Facts

[22] Much of the Agreed Statement of Facts and other evidence at the sanction hearing centered around the highly publicized incident at the Faculty of Law in Spring 2001, when 17 first-year students in summer job applications submitted statements of grades to prospective employers that did not accord with the results recorded by the University for tests written by the students in December 2000.

[23] This incident garnered much publicity in 2001 and 2002, and was still much in the news when the Student entered law school in September 2001. Indeed, the Student co-authored an article in *Ultra Vires*, the Faculty of Law student newspaper, which discussed one of the student cases that had reached the Divisional Court, *Roxanne Shank v. Daniels et al*. Among other things, the Student wrote in the newspaper: "…while overruling the Dean's decision in the instant case, the Court affirmed the school's power to penalize students for misrepresenting grades to third parties despite the absence of any official record". The article went on to discuss penalties that had been sought by the Faculty in the cases including that the Dean had been seeking long term suspensions or even expulsion in some cases. In writing the article, the Student read the *Shank* decision and the University's press release in which the University quoted from the Divisional Court judgment including the following:

> "It is surely of fundamental importance that students not misrepresent their achievements."

[24] It was also agreed by the Student that he had participated in a program that the Faculty of Law had initiated following the 2001 incident to expose first year students to issues of ethics and professionalism. Associate Dean Lorne Sossin gave evidence before the Tribunal about the genesis of this "bridge week" program, how it was implemented in specific response to the 2001 incident and that its purpose was to provide an intense experience to the students to emphasize the importance to students that they understand and adhere to standards of conduct. Professor Sossin also gave evidence that individual courses in that following year, including Civil Procedure which Professor Sossin taught to the Student, saw a greater emphasis placed on matters of ethics and professionalism in the classroom.

[25] As Professor Sossin said in his evidence, there is no doubt that this period at the Faculty of Law was a period of intense focus on ensuring students were not only exposed to matters of ethics and integrity but that they participate in these programs both in a workshop setting and in their coursework, and that they come to understand that such behaviour as had been exhibited was unacceptable and would not be tolerated.

[26] Professor Sossin was quite emphatic in his evidence that, with the trauma and its aftermath at the Faculty of Law, had the Faculty learned of the Student's conduct while he was a student, his actions would have been seen as a most serious breach of integrity and honesty and the Faculty would have sought the Student's expulsion from the University.

[27] In June 2002, the Student was not only being educated and reminded of the importance of ethical conduct at the Faculty of Law, but for its part, the Rotman School of Management also required its students to accept a code of integrity. The Student signed the Rotman Code of Conduct and in doing so agreed that he would "…conduct myself with the utmost integrity throughout my time at Rotman" and "…represent myself honestly to members of the Rotman community and to outsiders".

The Paris Exchange

[28] From September to December 2004, the Student attended an academic exchange at the Sorbonne in Paris. He was scheduled to return to study at Rotman and the Faculty of Law in January 2005. Rotman had a policy that required its students to attend the first day of class, or see them dropped from the class list in favour of the waiting list.

[29] On January 2, 2005 the Student sent an email to staff at Rotman in which he said:

> I wanted to let you know that my first semester law exchange carries me through the first 2 weeks of January so Im going to miss the first two weeks of school. I will contact my profs to inform them and make arrangements [sic].

[30] This statement was not true. When he wrote this email, the Student had completed his oral examinations and course work at the Sorbonne, and, in fact, had made arrangements to spend his vacation in Egypt, where he was for the first two weeks of January 2005.

[31] Officials at both Rotman and the Faculty of Law pursued the matter in an effort to learn why the Student was to be detained in France in January 2005, and the Tribunal had before it a number of email exchanges in which the truth eventually emerged – that the Student had made his vacation and travel plans some months before and chose simply to mislead the institutions. A fair reading of the email exchanges supports a conclusion that, at the very least, the Student showed little insight into his actions even after the truth emerged.

[32] The panel heard some evidence, much of it hearsay and uncorroborated, about the circumstances surrounding the anonymous emails that led to the firm confronting the Student with the transcripts submitted by him to the firm. Although we make no finding on the point, it may well be that the author of these emails had no actual knowledge of what the Student had done. In any event, when confronted with the allegation, the Student immediately acknowledged his guilt. He was discharged from the firm shortly thereafter. Subsequently, Mr. V., the managing partner of the firm, wrote a positive letter about the Student which was put before us, in which Mr. V., in describing the Student's time at the firm, wrote that he "…showed significant promise, that he was engaged, intelligent and conscientious, well liked by the lawyers and made a noticeable contribution to the firm."

[33] The Student gave evidence at the hearing and was cross-examined at length by counsel for the University. The Student, who is now 28, was born and grew up in British Columbia. He attended high school in Burnaby, British Columbia and went to UBC where he attained a B.Sc. in biology and psychology. He was admitted to the Faculty of Law at the University of Toronto and appears to have had an active student life. In addition to his work at *Ultra Vires* he was involved in mooting, and was active on the executive of the joint law and MBA program. He played law school and intramural sports.

[34] He explained the process by which he applied to the firm for a summer position. He appears to have functioned well at the firm and, as a result, was asked to article at the firm. He described the circumstances of his discharge and that when faced with the email, which contained a number of different allegations, he admitted that his marks submitted to the firm were not accurate. He was discharged the next morning. When asked by his counsel to explain why this had happened and why he had conducted himself this way he conceded that it was an entirely selfish act, difficult to explain, selfish and thoughtless and that all he could say was that he didn't see the forest for the trees or the implications of his act and that he had become overly concerned with symbols and status and wanted to hide that he had obtained these grades, which, at least in his view, would disqualify him from opportunities at the firm.

[35] He readily admitted in direct evidence and in cross-examination to misleading the Rotman School in January 2005.

[36] Some days following his discharge, the Student wrote a letter of apology to the firm which was before the panel in which he took responsibility for his actions and offered no excuses for his conduct. The Student also self reported himself to the Law Society, where he still faces scrutiny from that body.

[37] Fortunately for the Student, following his discharge from the firm, he was referred by a friend to Mr. P. S. Mr. S. is a senior barrister, well known in litigation circles in Toronto where he has been practicing civil litigation at a high level of competence and integrity for over thirty years.

[38] Mr. S. wrote letters in support of the Student and also gave evidence at the hearing.

[39] Mr. S. employed the Student in order that the Student could complete his articles and continues to employ the Student pursuant to some agreement that has been made with the Law Society for that purpose.

[40] The Student told the panel he has benefitted greatly from his association with Mr. S., who taught him to face up to his shortcomings and his failures; that he recognizes his conduct was both unacceptable and severe and that he simply wants at some point to be able to practice and live up to the faith that his family, his partner and Mr. S. and others have shown in him.

[41] He has been working with Habitat for Humanity and has found that work both rewarding and an opportunity to gain further perspective into his actions as well as make a contribution to others.

[42] The panel found the Student to be forthright in his cross-examination, which was unsparing. He admitted to some youthful indiscretions which he had apparently volunteered in documents which were not put before us. He agreed that he had learned nothing from the 2001 student incident and that what he had done was worse both because of the earlier precedent and that his actions were more calculated than those of the earlier students, in misrepresenting his actual final marks, and that he had taken advantage of a friend. He admitted that a C+ would not have deprived him of an articling job somewhere and all he thought about was his own advantages and that he then waited a whole year and proceeded with the same dishonest act all over again.

[43] He admitted that his email to the Rotman School was a misrepresentation and that when challenged he had not come clean even then.

[44] He agreed with these suggestions but told the panel that, while he would not defend his actions, he now had insight and had learned the importance of trust and integrity as necessary ingredients in life and in the law.

[45] In his evidence, Mr. S. described how he had agreed to take the Student on so that his articles could be completed, which he had understood would be a twelve-week commitment.

[46] He described his discussions with the Student, the expectations that he had of the Student and the level of scrutiny that he has brought to this relationship.

[47] Following the completion of the articles, Mr. S. has continued to employ the Student, who is unable to advance towards the Bar so long as these charges remain outstanding and he has continued to be impressed with the Student. His description of the Student was of a person who had blundered horribly but whom, on his assessment, is an upright person and an ethical man who has a future in the legal profession. He sees no attempts to manipulate or take advantage. The Student works hard and shows promise.

[48] In cross-examination and in argument it was suggested that Mr. S. was not the most objective witness, and that his evidence should be approached with some caution.

Submissions on Penalty

[49] The University made it clear that based on these facts and like cases, the Tribunal should recommend the cancellation or recall of the Student's JD and that a notation be placed on his record permanently that his law degree has been cancelled. The University was not seeking cancellation of the MBA degree and not seeking cancellation of the Student's earned academic credits.

[50] The University suggested that if the Student were still a student, the University would have asked for expulsion, and expulsion is the most common penalty when an offence of this nature is committed, and here, the offence had been committed not once but twice. Ms. Rothstein suggested that like cases should be treated alike and if the Student had been a student he would have neither a JD nor an MBA, but rather would have been expelled, in accordance with the usual penalty for such conduct, indeed, as in two cases decided by the Tribunal in the previous two weeks where that penalty had been meted out.

[51] In the course of submissions of counsel for the University and for the Student the panel was referred to many previous decisions of the Tribunal, in detail, including two very recent cases, Mr. L. and Mr. Y, both decisions of the Tribunal released in March 2007, in which cases students had falsified academic records. In Mr. L., upon a joint submission following a plea, a recommendation was made to Governing Council that it cancel and recall Mr. L's degree. In Mr. Y, a similar decision was made – that Mr. Y's degree be cancelled and recalled. In that case, Mr. Y. did not appear at the hearing.

[52] As stated, the panel had the benefit from counsel of an exhaustive review of previous decisions of the Tribunal. Some of these cases were decided by jury under an earlier discipline regime, some were decisions on appeal from penalties imposed by juries and some were decisions of this Tribunal in the so-called modern era. There are then the two very recent decisions to which we have referred.

[53] We approached the jury decisions and older cases with some caution and have placed little emphasis on them. The reports of the cases are often quite cryptic, lacking in detail and penalties appear to have been imposed in some cases without much consideration of principle. The cases from the modern era are much more complete and do give this panel a good understanding of the reasons for the penalties imposed in those cases.

[54] What can be said overall is that this Tribunal and its predecessors have, by and large, treated the falsification of an academic record as a most serious offence, striking directly at the core values of the University, and demonstrating a fundamental failure to act with the integrity and the necessary shared values of honesty and standards which members of the University community must display and adhere to. Expulsion from the University or recall of the degree has more often than not been the penalty imposed for falsified reporting. One sees in the cases some emphasis on the deception of third parties as particularly offensive conduct and of course this is present in this case. Acts of falsification and deception like these are intentional and purposeful and, as here, there is no room for any suggestion of mere negligence or even recklessness as mitigating features.

[55] Notwithstanding all of this and the instructive value to be gained form previous cases, it must be said that each case did turn and of course must turn on its individual features and facts, and on the response of the accused to the charges. Some were cases where the student did not attend the hearing. Some are cases where a plea of guilty was entered and a joint submission on penalty proposed that expulsion was to be imposed. In other cases

there was no evidence of mitigation put before the Tribunal and, as this panel considers particularly important, there was no evidence before some Tribunals of post incident conduct, of character or other evidence of mitigation, all of which are present in this case.

Sanction

[56] At the end of the day this panel approached the issue of the penalty, as the Tribunal often does, by adverting to the principles articulated by John Sopinka, Q.C., as he then was, sitting as a member of the University Tribunal in Chelin. In our view, a proper statement of the basis upon which we are to address penalty in this case is not that like cases must result in like penalties but rather that any penalty imposed must reflect the Tribunal's application of the principles which govern all cases.

[57] We did have the benefit of counsels' submissions on the Chelin principles and we have considered the submissions of counsel on those principles in reaching our decision.

[58] The relevant principles in this matter include consideration of the character of the person charged, the nature of the offence committed, the detriment to the University resulting from the offence, deterrence, and any extenuating circumstances. Applying these principles permits us to place this conduct in an overall context for our ultimate decision on penalty.

[59] There can be no doubt about the detriment to the University from the Student's egregious conduct. Not only was the Student a sophisticated and senior student, enrolled in a law school, but he was fully aware of both the traumatic effect of the 2001 incident upon the Faculty and he had been exposed to both academic teaching and practical instruction, if any were needed, underlying the requirement for ethical behaviour not just within the University community but also, as has been the case with the 2001 incidents, in contact towards third parties specifically with respect to grades and representations to outsiders. He signed and committed himself to uphold the highest standards of integrity at the Rotman School, and he had been caught making misrepresentations in January 2005 (after he had submitted his falsified transcript to the firm) to responsible University officials.

[60] His acts were deliberate, and he involved a long-time friend in his misconduct.

[61] Moreover, of course, the University did suffer from the commission of this offence, as this incident, demonstrated by the internet commentary which we reviewed, was widely publicized as yet another failure at the Faculty of Law.

[62] Not only is that which the Student did in this case to be strongly condemned but we do recognize the concern of the University for a penalty that will act as a deterrent, having regard to the publicity that this matter has generated and the fact that in a sense, "the whole world is watching".

[63] There was much debate in the submissions, and, for that matter, in the evidence over what conclusions this Tribunal should reach in assessing the Student's character. Firstly in our judgment, this issue is highly relevant to the disposition we make in this case, although we recognize the exercise is not a personality contest.

[64] The University suggests that there is good reason to doubt the Student's character, taking the evidence as a whole and assessing the earlier transgressions to which he admitted: the Sorbonne incident and the deliberate and intentional nature of the acts in question.

[65] And yet it is this feature of this case which has given the panel much anxious deliberation. For, unlike in so many cases, we did have the benefit of an opportunity to observe the Student deal not only with the facts surrounding the incident itself but also his post incident conduct, and his current circumstances. And we had the benefit of a body of opinion from others, including Mr. S., Mr. V., representing the firm, and other evidence of character that was presented to us. Ultimately, it was our judgment in this case, taking all the factors into account, the appropriate penalty is not to cancel or recall the Student's law degree and with it any chance that he could practice law, but something less.

[66] In reaching this conclusion the panel makes it as plain as it can that the University was fully justified in seeking the penalty that it did, for the reasons that it did. The Student committed the ultimate act of deception and dishonesty in a university setting and perpetrated a fraud and deception upon a third party. He did all this as a law student and then a law graduate in breach of trust with a Faculty that had, to his certain knowledge, done everything possible to bring home to him what ought to have been intuitively understood by him in the first place.

[67] For this, the Student should be punished, and severely punished, and it is only because this panel has concluded, on all the evidence, and based on our assessment of him as he answered questions and we observed his demeanour in the witness box, that the Student may yet be fully rehabilitated, and he should be given the opportunity to continue on towards an eventual call to the Bar, should he ultimately persuade the Law Society to permit that.

[68] In applying the principles laid down in Chelin we also must take into account, as John Sopinka stated, that punishment must serve a useful function. In addition to the need for deterrence and protection of the public, a goal of enlightened punishment includes reformation. In this case we are persuaded on the evidence before us that the Student should not suffer the ultimate penalty for his transgressions.

[69] Mr. Trudell in his submissions suggested that a period of suspension of the Student's degree for a one year period would be appropriate. We strongly disagree. In this case, our conclusion is that the Student should be severely punished, but not destroyed as we are satisfied would be the result should we cancel his law degree. Nonetheless, we want there to be no doubt that this panel condemns the Student's conduct in the strongest possible terms, and while we were persuaded he should be permitted an opportunity to

prove whether our assessment, that there is a genuine reformation underway, is illusory or real (and that will now be for the Law Society to decide) our concern is to impose a meaningful sanction for this behaviour.

[70] In our judgment, taking all factors into account and exercising our discretion as best we can, the appropriate penalty in this case is a three year suspension of the Student's degree, commencing from the date of this decision. We make that recommendation to the Governing Council and that this penalty be recorded permanently on the Student's academic record and that, as usual, there be publication of this matter and these sanctions with the Student's name withheld.

Date: May 1, 2007

Ronald G. Slaght, Q.C.
Ronald G. Slaght, Q.C., Chair

Stéphane Mechoulan
Stéphane Mechoulan, Faculty Panel Member

Adrian Asselin
Adrian Asselin, Student Panel Member