FILE: 1989/90-06
APPEAL

Trial:
1989/90-03

THE UNIVERSITY TRIBUNAL OF THE
UNIVERSITY OF TORONTO

TRIBUNAL APPEALS BOARD

BETWEEN: University of Toronto

Complainant
(Respondent),

- and -

Ms B.

Accused
(Appellant),

BEFORE: D.S. Affleck, Q.C. (Senior Chair)
Jane Strickler
Principal John Browne

Appeals Board

APPEARANCES: Anthony Rein, for the Appellant

John Laskin, for the Respondent

DATE: June 25, 1990

This is an appeal by Ms B. to the Appeals Board of the University Tribunal from the sanctions imposed by the jury in the Trial Division of the University Tribunal following the jury's unanimous finding that the Appellant had committed an offence under the University of Toronto Code of Behaviour on Academic Matters. The Appellant asks that the sanctions be varied so as to provide for a reduction in suspension from the period April 2, 1989 to April 1, 1993 to the period April 2, 1989 to April 1, 1990.

Ms. B. was charged with two offences:

1. That in or about March of 1989, she did use or possess an unauthorized aid, being as essay ordered from Custom Essay Service, contrary to Section E.1. (a) (i) of the University of

Toronto Code of Behaviour on Academic Matters. The essay was ordered on or about March 9, 1989, and picked up and paid for on or about March 21, 1989, and was used or possessed in connection with an essay entitled "Locke and Hobbes on Property", submitted for credit in POL 200Y in or about March 1989.

2. That in or about March 1989 she did submit for credit in the course POL 200Y an essay entitled "Locke and Hobbes on Property", which essay was purchased by her from Custom Essay Service. She therefore, represented as her work the work of Custom Essay Service, contrary to Section E.1. (a) (ii) of the University of Toronto Code of Behaviour on Academic Matters.

Before the Trial Division, the Appellant pleaded guilty to the first charge and not guilty to the second. After the jury unanimously found her guilty on the second charge, the guilty plea in respect to the first charge was vacated and that charge withdrawn.

The Trial Division jury ordered the following sanctions: a grade of zero in the course POL 200Y; suspension from the University for a period of four years, from April 2, 1989 to April 1, 1993; that the suspension and the reason for it be recorded on the Appellant's academic transcript for the period of the suspension; and that the decision and the sanctions imposed be reported to the Vice-President and Provost of the University of Toronto for publication (name withheld) in the University community newspapers.

The Appellant asks that the sanctions be varied on the following grounds:

1. The sanctions are harsh and excessive.

2. The jury failed to adequately consider that there was no further need for specific deterrence in this case, or alternatively failed to give that consideration sufficient weight.

3. The jury failed to adequately consider evidence from the Dean that there had been no further cases reported since the initial publicity surrounding the seizure at the offices of Custom Essay Service.

4. The jury was allowed to hear and consider evidence that was highly prejudicial in arriving at the sanction imposed.

5. The jury failed to give sufficient weight to the fact that this was a first offence.

6. The jury failed to give sufficient weight to the hardship that Ms. B. had endured in the nearly one year between the time that the grade was withheld and the date of the hearing.

Counsel for the Appellant argued that the period of the suspension was harsh and excessive. He pointed out that Counsel for the University had acknowledged at the trial that Miss B. was deterred and had conceded that she would not be involved in any further academic misconduct. Therefore, a one-year suspension was sufficient for the specific deterrence of this Appellant.

He cited case law to show that general deterrence was "a by-product of the whole system of justice and not necessarily an aim of any particular sentence" (See Regina v. Harrison and Garrison, [1978] 1 W.W.R. 162 (B.C.C.A.)). As well, he submitted that general deterrence had been achieved in this case by the publicity surrounding the police seizure. He argued that at trial the jury had improperly been allowed to consider evidence that over 600 essay order forms had been seized and that the University had no way to control the operations of an entity such as Custom Essay Service that operated outside the jurisdiction of the University. This, he submitted, had invited the jury to draw the inference that they could help put Custom Essay Service out of business by imposing a harsh sanction. The Appellant's counsel also drew attention to three other cases dealing with the same offence that had come before the Tribunal but involving multiple charges and/or second offences. These three students had been given five-year suspensions. He argued that his client had only one charge against her and, according to testimony of the Dean at the trial, had not previously "been alleged to have committed an academic offence of any kind". Under these circumstances, she should not, he argued, have been given such an excessive suspension.

Counsel for the Appellant requested this Board to permit him to call his client to give testimony concerning a private family matter. This Board held that there was nothing before the Board to satisfy the onus set out in Section L.2. (2) of the Code of Behaviour to permit the introduction of new evidence

in the appeal, that is, that the circumstances were exceptional. Accordingly, the Board dismissed the application of the Appellant to adduce viva voce evidence.

Counsel for the Respondent presented to the Board a written submission. He noted that the jury had had evidence at trial as to the seriousness of the offence. He stated that the purchase of the essay was a cash transaction and as such was pre-meditated. This went directly against the academic process and he believed that it was the most serious type of plagiarism that could be imagined. An offence of this type was hard to detect unless there was a police seizure or a student confession. He reminded the Board that there had been no character evidence called at trial or reasons given by the student for committing the offence. He pointed out that the members of the jury were also members of the University. As such they had a present and viable interest in the standards and integrity of the University. The Appeals Board should give weight to the jury's decision for this reason and also because the Code of Behaviour gave them the right to determine sanction. He said that it was his submission that the function of the Appeals Board was not to "fine tune" penalties but to interfere only when warranted. He noted that there had to be strong reasons for the Appeals Board to vary the sanctions imposed by the jury at trial.

Reasons for Decision of the Tribunal Appeals Board (Delivered orally by D.S. Affleck):

We would like to thank both counsel for their submissions. We have considered those submissions carefully.

We are of the view that the Tribunal Appeals Board cannot be put in the position, in this case in particular, of substituting its view of the appropriate sentence for that of the jury at the Trial Division. Having said that, however, we consider that the sentence that was meted out to the student,

Ms. B. , was harsh and excessive in light of administrative delay that occured in this case. We urge the University to proceed expeditiously in cases of this nature, or in cases where there are serious allegations. We can only speculate on the ramifications to a student who was acquitted after a delay of a year.

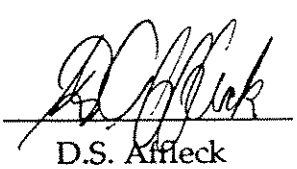
Having considered all the submissions, and the fact that we do consider there to be harshness and excessiveness in this instance, we have decided to reduce the suspension from the period April 2, 1989 to April 1, 1993 to the period April 2, 1989 to April 1, 1992. We would not alter the balance of the jury's verdict, except of course, that the notation on the academic transcript would only remain until April 1, 1992. With the suspension terminating on April 1, 1992, we fully expect that Ms. B. could, if she so desired, complete the remaining course requirement in order to receive her degree in the late fall of 1992. In other words, she could take the course POL 200Y in the summer session of 1992 at this University or could take a similar course, acceptable to the University of Toronto, at another university.

Reasons delivered orally by Jane Strickler:

I wanted to state for the record that given what Miss B. has undoubtedly endured over the past year, and I am not alone, of course, in my sympathy for what she must have gone through, I could have wished for something of a greater remission. But I am substantially in agreement with my colleague's decision.

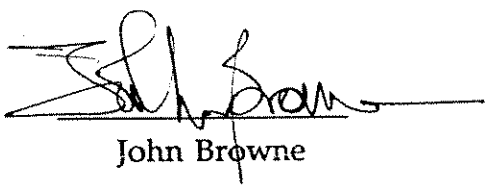
Note: After delivery of the forgoing Reasons, Mr. Rein asked that his client's name be withheld in the report of this case to the Academic Board. This Board held that except for the period of suspension and the notation thereof

on the academic transcript as modified in accordance with the forgoing Reasons, "the balance of the penalty imposed by the jury would not change".



D.S. Affleck

Jane Strickler



John Browne