FILE: 1999/00-13
Preliminary Motion: 1999/00-12

THE UNIVERSITY TRIBUNAL
THE UNIVERSITY OF TORONTO

AND IN THE MATTER OF the decision to try Mr. L. on charges of academic dishonesty made on February 10, 1997,

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

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

BETWEEN:

THE GOVERNING COUNCIL OF UNIVERSITY OF TORONTO

Prosecutor (Respondent)

- and -

Mr. L.

Defendant (Applicant)

DECSION ON PENALTY

PANEL

Mr. Raj Anand	Chair
Professor Roland LeHuenen	Dept. of French
Ms. Jinghua Liu	Law

APPEARANCES

Mr. Jerome H. Stanleigh Banister & Solicitor	Counsel for defendant
Ms. Linda Rothstein Gowling, Strathy & Henderson	Counsel for University

INTRODUCTION

On November 8,1999, student Mr. L. pleaded guilty to the following three charges before this Tribunal (several other charges were concurrently withdrawn):

2. ...on or about November 7, 1996, you did knowingly engage in a form of cheating, academic dishonesty or misconduct, fraud or misrepresentation in order to obtain academic credit or other academic advantage of any kind, namely, you re-submitted your Examination 1 in BIOAO3Y which had been altered, contrary to Section B. 1.3(b) of the University of Toronto *Code of Behaviour on Academic Matters,1995*. Pursuant to Section B of the *Code*, you are deemed to have acted knowingly if you ought reasonably to have known that you engaged in cheating, academic dishonesty or misconduct, fraud or misrepresentation in order to obtain academic credit or other academic advantage of any kind.

4. ...on or about September 4, 1996, you did knowingly engage in a form of cheating, academic dishonesty or misconduct, fraud or misrepresentation in order to obtain academic credit or other academic advantage of any kind, namely, you submitted a letter purportedly dated 5/7/96 from Dr. Abe Sasson, in support of a petition for late withdrawal without academic penalty in the 1996 Summer Session course MAT235T, contrary to Section B. 1.3(b) of the University *Code of Behaviour on Academic Matters, 1995*. Pursuant to Section B of the *Code*, you are deemed to have acted knowingly if you ought reasonably to have known that you engaged in cheating, academic dishonesty or misconduct, fraud or misrepresentation in order to obtain academic credit or other academic advantage of any kind.

6. ...on or about October 30, 1996, you did knowingly engage in a form of cheating, academic dishonesty or misconduct, fraud or misrepresentation in order to obtain academic credit or other academic advantage of any kind, namely, you submitted a medical note dated 30/10/96 under the letterhead of Dr. Abe Sasson, contrary to Section B. 1.3(b) of the University of Toronto *Code of Behaviour on Academic Matters, 1995*. Pursuant to Section B of the *Code*, you are deemed to have acted knowingly if you ought reasonably to have known that you engaged in cheating, academic dishonesty or misconduct, fraud or misrepresentation in order to obtain academic credit or other academic advantage of any kind.

Counsel for the University then read in certain facts, which were substantially agreed with by Mr. L.'s counsel. A summary of those facts follows.

Charge #2

Mr. L. was a student in the Faculty of Arts and Science at the time of the offences. In BIOAO3Y, he wrote examination #1 on October 24, 1996. After it was marked, the examination was photocopied (Ex. 3) and then returned to the student on November 5. Two days later, Mr. L. returned the examination (Ex. 5) to one of the professors for re-marking, accompanied by two pages of handwritten notes claiming that it had been improperly marked. It is apparent that before Ex. 5 was handed back for re-marking, numerous alterations were made by Mr. L. to the answers he gave and the marks he was originally given in Ex. 3.

Charge #4

Mr. L. submitted a petition dated September 4, 1996 (Ex. 6) to withdraw from MAT23 5Y without academic penalty. In support of that petition he attached a physician's note. In response to a written inquiry from Vice-Dean Ronald Dengler, the physician listed in Ex. 8 four parts of his note that were not in the doctor's handwriting. They had again been altered by Mr. L. Notably, the date of the note, as well as the dates of the illness, had been changed. Evidently, Mr. L. was not satisfied with his mark in the course and sought to retroactively withdraw without penalty, using the alteration of dates to secure an academic advantage.

Charge #6

Mr. L. submitted a note dated October 30, 1996 (Ex. 7), apparently from the same physician, in support of a request to a senior tutor in CHMB44Y for a make-up exam. When questioned, the physician stated (Ex. 8) that the entire note was not in his handwriting. Again, there was an attempt to secure an academic advantage though the submission of a doctor's note altered by Mr. L.

After deliberation, the Tribunal found the student guilty of the three charges. On consent of the parties, the penalty phase of the hearing was adjourned.

THE PENALTY HEARING

The hearing resumed on January 13, 2000. The University and Mr. L. submitted a number of documents on consent, and counsel for the University began her submissions. In the course of those submissions a factual disagreement arose as to whether the student had denied the alteration of the two medical notes (Charges #4 and #6) when he was first confronted by Prof Dengler on November 25, 1996. Accordingly, Prof. Dengler and Mr. L. both testified before us,

and in the course of cross-examination, Mr. L. was also questioned about some of the documents his counsel had submitted earlier.

We do not need to set out the testimony of the witnesses in any detail. On the question of whether Mr. L. acknowledged guilt when he was first confronted with the doctor's letter denying authorship, in varying degrees, of Exhibits 7 and 8, we accept Professor Dengler's evidence that Mr. L. denied the offences on November 25, 1996. This is clear to us for a number of reasons,

First, Mr. L. did not appear certain of whether he had admitted guilt in 1996; he testified before us that "I thought I acknowledged it." Second, Prof. Dengler's understanding was set out succinctly in his December 10, 1996 letter (Ex. 11) to Mr. L.: "You denied that these two medical notes had been altered, and our meeting ended." This statement, fairly contemporaneous with the event, was not contradicted by Mr. L. at any time before he testified at the Tribunal hearing. Third, all of the actions of the parties are consistent with his denial and inconsistent with an admission. In Exhibit11, Prof. Dengler concluded by saying that since Mr. L. has denied guilt, the allegations were being referred to the Provost. Indeed, this Tribunal proceeding went forward on the basis that the student was pleading not guilty until minutes before the beginning of the hearing on November 8, 1999, when the parties announced that there would be a guilty plea.

SUBMISSIONS OF THE PARTIES

In brief, the positions of the parties were as follows.

The University argued that the student had committed a prior offence that should be considered by the Tribunal. Exhibit 9 showed that just months before the events connected with charges 2, 4 and 6, Prof. Dengler's predecessor had admonished Mr. L. in writing for retrieving his assignment from a secure area and giving it to another student to copy. Mr. L. was given a grade of zero for the assignment and a ten-mark deduction from his final grade in PHYA11S. In addition, the Vice-Dean and Vice-Principal's letter of June 30, 1996 reprimanded Mr. L. for a "disregard for the seriousness...of the educational process" and said that he "gave no evidence that you think that honesty matters". The letter concluded by stating that it would "be consulted if there are any further questions about your academic honesty. You should note that a second academic offence...would be dealt with very severely indeed".

Counsel for the University provided us with a book of cases together with a summary focusing on three classes of cases: re-submitting of altered work for re-marking; falsifying medical records; and multiple offences. The University argued for expulsion in this case, on the basis that the three offences together comprised at least a "second offence", and second offences have generally been dealt with very seriously by prior adjudicators. In the absence of significant mitigating factors, the University argued, expulsion was the standard response for second offences, and indeed was often imposed for first offences such as impersonation and forgery of a

university record. Counsel submitted that the evidence revealed a series of serious academic offences; mitigating circumstances were absent; and so this case merited the most serious penalty available.

Counsel for Mr. L. acknowledged the seriousness of the offences, but characterized them as crimes by his client against himself. He stressed the lifelong impact of expulsion, the rehabilitative role of punishment, and the impressive academic record of the student at the University of Toronto and subsequently at York University. Counsel suggested that a suspension would be sufficient, and it should begin on the day of the offence.

CONCLUSION

This panel has considered carefully the submissions of the parties and wrestled with the principal options of a lengthy suspension or expulsion. Our ultimate decision is to impose a five-year suspension, commencing today, and to order that it be recorded on Mr. L.'s transcript and academic record for the same five-year period. In addition, the Tribunal imposes a grade of zero in the three courses in question. We do not make any order under C. II.(b)3. of the *Code of Behaviour*, since the Provost can publish a notice of this decision, or choose not to publish it, regard1ess of our report to him.

In coming to our conclusion on penalty, we have weighed the competing interests of the University (including the student and teaching communities) and the student who has been charged. The offences are serious, and the integrity of the evaluation system at any academic institution depends on honesty and good faith by all players in abiding by well-established and announced rules of the game. The student in this case manifestly failed to meet this standard when he tried to secure an academic advantage for himself by forging medical notes and his own exam paper. He had been clearly warned by a senior member of administration that his dishonesty in a closely related previous offence was not acceptable. Yet beginning three months later, he committed three separate acts of dishonesty, all premeditated, and he did not admit his guilt until over three years later.

On the other hand, there are mitigating factors. The three offences under consideration were committed within a time span of about two months. Mr. L. has many years in which to pursue further studies and to contribute to society. Indeed, he appears to be a very good student, judging by his grades at this university and at York, and he holds great promise if he can rehabilitate himself. In these circumstances, and since Mr. L. is now at York University, we do not view the risk of recurrence at the University of Toronto as a significant factor. Mr. L. did ultimately plead guilty, saving the University a lengthy and costly hearing.

We do not place weight on the psychiatric opinion that was filed as Exhibit 12, since that opinion was based on incomplete information about the offences Mr. L. committed. Moreover, the psychiatrist ultimately concluded that no mental illness precipitated the conduct in this case; rather, it was family pressures to succeed that motivated Mr. L.'s behaviour. In our view, a large

segment of the student community is subject to family or other pressures to succeed at university, and such pressures provide no justification or excuse for the dishonest achievement of academic success.

We regard a five-year suspension, together with a similar period of recording on Mr. L.'s academic records, as a significant punishment which is bound to hamper him in his quest for further academic studies beyond his present degree. We agree with the University in this connection that other academic institutions ought properly to know what he has done. There should, however, be a time limit beyond which Mr. L. should be allowed to attempt to resuscitate his career and put these events behind him, and we have chosen the figure of five years. A longer period would, in our view, inflict unnecessary pain, and a five year period represents a sufficient vindication of the values of integrity that were undermined by Mr. L.'s conduct in this case.

DATED: March 9, 2000

Raj Anand

RAJ ANAND
for the University Tribunal