

**THE DISCIPLINE APPEALS BOARD OF THE UNIVERSITY TRIBUNAL
THE UNIVERSITY OF TORONTO**

IN THE MATTER of charges of academic dishonesty made on June 27, 2011

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

B E T W E E N:

M [REDACTED] K [REDACTED]

Appellant

- AND -

THE UNIVERSITY OF TORONTO

Respondent

Hearing Date: October 3, 2012

Members of the Panel:

Patricia D.S. Jackson, Chair
Faye Mishna, Faculty Panel Member
Graeme Norval, Faculty Panel Member
Yuchao Niu, Student Panel Member

Counsel:

Robert A. Centa for the Respondent, Provost of the University of Toronto

REASONS ON APPEAL

Introduction

1. This is an appeal by M [REDACTED] K [REDACTED] ("the Student") to the Discipline Appeals Board of the University Tribunal from the recommendation of a panel of the Tribunal (the "Trial Panel") that the President ask the Governing Council to expel him from the University.

2. In Reasons released December 14, 2011, the Trial Panel found the Student had deliberately falsified research results in his Ph.D. program, contrary to *The Code of Behaviour on Academic Misconduct* (the “Code”). On March 22 of this year, the Trial Panel:
 - (a) assigned the Student a final grade of zero in the research course in issue;
 - (b) immediately suspended the Student from the University for up to five years; and
 - (c) recommended to the President that he ask the Office to expel the Student.
3. The Student has not appealed the finding of academic misconduct, the final grade of zero, or the five year suspension. He has appealed the Trial Panel’s recommendation that he be expelled from the University.
4. For the reasons that follow, we dismiss the appeal.

Appeal Process

5. In connection with this appeal, the Student has sought and obtained a number of indulgences.
6. On April 30th he sought an extension of the time within which to appeal the Trial Panel’s decision. Discipline Counsel consented to that request and an extension to May 22, 2012 was granted.
7. The *Code* provides that an appellant who wishes to refer in the argument of the appeal to the transcript of oral proceedings should order copies of such transcript. By early July the Student had not ordered the transcript, and Discipline Counsel sought a case conference seeking directions and a schedule for the hearing of this appeal.
8. A telephone case conference resulted on July 17, 2012 at which the Student advised that he intended to order the transcript and had been advised he would know by August 7 whether the associated financial assistance he expected to receive would be made available. In the result, a schedule was set for the ordering of transcript, the delivery of

facta, and the hearing of the appeal which was scheduled on a date all parties agreed was available, namely October 3, 2012.

9. The Student did not order the transcript as contemplated by the schedule and a further telephone case conference with Discipline Counsel and the Student was held on September 4, 2012. The Student advised that he had not been able to obtain financial assistance, had not ordered the transcript, and did not anticipate doing so. He advised that he did wish to proceed with his appeal without the transcript. In the result, the balance of the schedule, including today's hearing date, was again confirmed without objection.
10. Subsequently the Student delivered a three-page submission summarized, in part, below.
11. Pursuant to the schedule fixed at the case conferences, on September 28, Discipline Counsel delivered an Appeal Book and Exhibit Book containing the record before the Trial Panel, a Book of Applicable Policies and Case Law, and the Provost's factum.
12. Following delivery of these materials, just after midnight on the following day, the Student sent an email to the Appeals Discipline and Faculty Grievances Office (the "Office") stating simply:

"We are leaving the country this Sunday September 30 we'll be back in December".
13. In contrast to this advice, on October 1, the Student emailed the Office and Discipline Counsel saying:

"We were unable to enter Canada via NY border, we were allowed to Enter Canada, therefore we cannot come for the hearing".
14. Neither the Student nor anyone on his behalf appeared before us at the hearing of this appeal, which took place as it had been scheduled in the case conferences in which the Student participated on July 17 and September 4, 2012. The Student provided no further explanation of his absence, and did not request an adjournment.
15. The hearing of the appeal therefore proceeded in the Student's absence.

The Trial Panel's Decisions

16. The Student was, at the material times, a PhD student in the department of Immunology. He was charged with knowingly submitting concocted research results, contrary to Section B.I. 1(f) of the *Code*.
17. The charges stemmed from three presentations the Student made during the fall of 2010 and the winter of 2011 describing his research findings in an important and extended research project. Before he knew of the problems described below, the Student's supervisor included the Student's report of his findings as part of a grant proposal to the Canadian Institute of Health Research.
18. The particular focus of the charges was seven slides referred to by the Trial Panel as "Problem Slides". Dr. Ratcliffe, the Senior Chair at the Sunnybrook Research Institute testified that the Problem Slides contained images that purported to be of multiple experiments, or multiple different mice on different days, but were in fact the same image, incorrectly labeled, with different exposures. The Student should have had a complete set of lab notes for these experiments but did not provide any lab notes or raw data to support the Problem Slides, and Dr. Ratcliffe was not satisfied with any of the explanations offered by the Student for those discrepancies. Nor was the Trial Panel.
19. In rejecting the many and sometimes differing explanations given by this Student for the Problem Slides, the Trial Panel made the following findings:
 - with respect to certain of the slides the Student's explanation was "fabricated, given that there is no mention whatsoever of other mice in the experiment and the images clearly lead one to believe that there were only 4 original mice, 2 of which died over time";
 - with respect to other slides: "the Student could not provide the Panel with any cogent or apparent explanation as to how the 'copy and paste' error occurred in any rational sense. The Panel was very concerned about how lackadaisical the Student was about the fact that there were differing labels between the 2 Problem

Slides and the purported source slide and that there was, therefore, no way to know which label accurately described the slide presented”;

- that it was “particularly concerned about the Student’s ever shifting explanations when pressed on inconsistencies in his evidence”;
- that the Student’s credibility was further undermined by his correspondence with Discipline counsel which was “designed to mislead” regarding his ability to attend the hearing and that both his correspondence and his explanation at the hearing were “misleading and untrue”;
- that the Student’s attempt to downplay the significance of the issue by characterizing his research results as “negative” was an “ex-post rationalization...without credible foundation”.

20. The Trial Panel concluded: “After considering the evidence as a whole and given our conclusions about the Student’s credibility, the Panel finds that the Student knowingly submitted the concocted Problem Slides”.

21. The Trial Panel then invited submissions on penalty. The position of the Provost was that, based on the evidence tendered at the hearing, the appropriate sanction was a final grade of zero in the research course, and immediate suspension, and a recommendation for expulsion.

22. In reply, the Student filed a three page submission. That submission contained a litany of unsupported allegations that failed to accept the findings of the Trial Panel or reflect any insight or remorse with respect to his actions. Amongst other things, the Student asserted:

- “I never intended to misrepresent my **own data**”.
- “[The Student’s supervisor] had told me if I leave he will lose his grant since his grant was on my project, he used to intimidate me if I leave he will case against me using data from 2008”.

- “The case they brought against me, was not on academic merit, but personal”.
- “I had 3 heart attack due to the intimidation by [his supervisor], my only witness to this case is medical report which does not lie, and the student who are under [the supervisor’s] at this moment.”
- “If University provides enough assurance many of [the supervisors] current and former students will come forward and testify against him.”

23. The Trial Panel decided that the Student should receive a final grade of zero in the research course, an immediate suspension, and recommended that he be expelled. It explained its reasons, in part, as follows:

We agree with the University that the deliberate falsification of research results by the Student in a PhD program is a serious and inexcusable offence. We further agree that the Student lacks insight into his actions and their effect on the University’s reputation and status.

In addition, although the Student has made written submissions which are presumed to provide mitigating circumstances to consider in determining Penalty, the Panel is concerned that the Student raises, for the first time, serious allegations of intimidation by his supervisor.

We have found that the Student’s credibility is more than questionable and his claim of such a serious allegation (intimidation) against the faculty member at this time (when no response can be made) is an aggravating factor.

The Student’s Appeal

24. The Student’s three-page appeal submission makes clear that he does not dispute the finding of liability nor that in the circumstances “a serious penalty is warranted”. He then submits that he has made every effort to address the mistakes that have been identified “with candor throughout the discipline process”, and that the sanction of expulsion is overly punitive in view of the fact that his actions “while inappropriate, were not done intentionally or for the purpose of deceiving anyone”.
25. His submissions continue with fifteen paragraphs of assertions of matters that he says

were missing from the Trial Panel's decision. The assertions are unsubstantiated allegations that were not in evidence before the Trial Panel and in many respects are similar to the allegations criticized by the Trial Panel as noted in paragraph 23 above. He asserts that the prosecution was motivated by the supervisor's concern that if he left, the supervisor would lose grant funding, and that he was insulted and intimidated by his supervisor who, he says, was aware of all of the problems with the Problem Slides.

26. We agree with the submissions of Discipline Counsel that this attempt to introduce additional evidence into these proceedings does not meet any of the criteria for the admission of fresh evidence. Moreover, the allegations are entirely contrary to the express factual findings made by the Trial Panel, which heard evidence from both the Student and his supervisor, and on the basis of that evidence made the findings of liability which the student does not dispute on this appeal.

Our Decision On The Appeal

27. The *Code* provides wide powers to modify a sanction imposed by a Tribunal Panel:

E.7. The Discipline Appeals Board shall have power,

- (a) to dismiss an appeal summarily and without formal hearing if it determines that the appeal is frivolous, vexatious or without foundation;
- (b) in circumstances which the Tribunal members hearing the appeal consider to be exceptional, to order a new hearing; and
- (c) in any other case, to affirm, reverse, quash, vary or modify the verdict, penalty or sanction appealed from and substitute any verdict, penalty or sanction that could have been given or imposed at trial.

28. Notwithstanding these broad powers, Appeals Board cases have generally analyzed decisions under appeal to examine whether the Tribunal panel made an error in: the application of general administrative law; the interpretation and application of the large body of University Tribunal and Appeals Board cases; or fact finding, particularly where the findings are unsupported by any evidence.

29. In the result, as noted in the recent case of *University of Toronto v. C [redacted] K [redacted] and H [redacted]*,

Appeals Boards have been reluctant to embrace the very broad powers authorized by the *Code*, but rather have made determinations based on the principles noted above rather than by simply asking whether they would have decided the case differently themselves.

30. This deference to the findings of a Tribunal panel is particularly appropriate in cases, such as this, where credibility is at the heart of the panel's decision. The Trial Panel had had the benefit of seeing the witnesses give their evidence and was in a much better position to make findings of credibility as a result. Such deference is further emphasized in this case by the fact that the Appellant has not ordered the transcript of the evidence.
31. This is not to say that if we were to ask ourselves whether we would have decided this case differently that the answer would be "yes". Even if we were to ask ourselves that question, for reasons elaborated below, we would come to the same conclusion as the Trial Panel.
32. The Student's proposition that expulsion is overly punitive in view of "the fact that my actions, while inappropriate, were not done intentionally or for the purpose of deceiving anyone" must be rejected in light of the Trial Panel's express conclusion that he "knowingly submitted the concocted material".
33. Moreover, the sanction is not overly punitive in light of the well-recognized factors to be considered in determining an appropriate sanction.¹
34. *The Nature of the Offence* The Trial Panel found that "the deliberate falsification of research results by the Student in a Ph.D. program is a serious and inexcusable offence." We agree.
35. The importance of the highest standards of ethical conduct in every aspect of research, including the accurate presentation and interpretation of experimental data, is emphasized in the University's Policy on Ethical Conduct in Research. A blatant violation of those standards such as that found by the Trial Panel in this case is all the more problematic when it occurs in the work of a Ph.D. student in a research intensive program.

¹ The "C [REDACTED] factors" from an appeal in that name decided by the University Tribunal in 1976.

36. The seriousness of the offence clearly supports the sanction imposed by the Trial Panel.
37. ***The Detriment to the University Occasioned by the Offence*** Academic integrity is essential to the University community and to the pursuit and transmission of knowledge in the University. Falsification of academic endeavour undermines the role and reputation of the University in a fundamental way. This is particularly the case when the dishonesty in question is, as it was here, at the highest level of research in a research intensive department. As noted in the 2007 decision on fabrication of research data in *University of Toronto and J.D.*:
- “Actions of this kind undermine the integrity, reputation and credibility of the University, its academic staff and students, and its academic mission, as well as the public need to presume that a degree from the University is honestly earned. A serious penalty is warranted in order to vindicate the interests of both specific and general deterrents.”
38. In this case the detriment to the University was exacerbated – foreseeably – by the inclusion of these fabricated research data in a grant proposal from the University.
39. ***Extenuating Circumstances*** Extenuating circumstances can be mitigating circumstances or aggravating circumstances.
40. In this case, the Student has not demonstrated any mitigating factors. We do not consider that he has not demonstrated any remorse or insight. He has offered no prospect of rehabilitation of the relationship such that he should be permitted to return to study at the University in the future.
41. The submission he now makes that he deeply regrets his mistakes and has made every effort to deal with them with candor through the discipline process, is entirely inconsistent with the Trial Panel’s findings referred to in paragraph 19 above. It is inconsistent with the unsupported allegations concerning the conduct of others made in his penalty submissions before the Trial Panel and on this appeal. The suggestion of insight and remorse found in his appeal submissions is entirely inconsistent with the fifteen numbered paragraphs contained in the middle of those submissions. Finally, it is difficult to view the actions he has taken in connection with this appeal process,

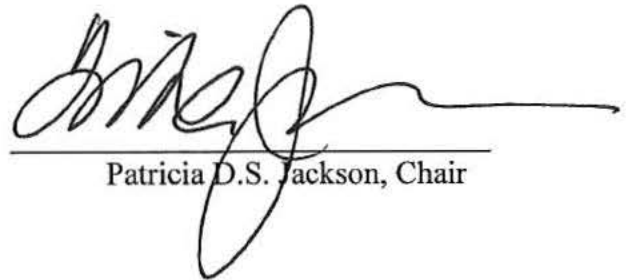
summarized at paragraphs 5 to 15 above, as suggesting anything other than that he is not prepared to meaningfully engage with the discipline process nor to acknowledge the seriousness of the conduct that has engaged that process, but is prepared to engage the appellate process to delay the result.

42. ***The Likelihood of a Repetition of the Offence*** The Trial Panel noted that an academic journal had previously expressed concern about data fabrication or falsification in one of the Student's submitted manuscripts. The Student was exonerated of the charge of fabrication on that occasion, but was clearly warned in detail about the need: to ensure that there was no data duplication or irregularity; for diligence to ensure that reproducibility and robustness of data truly supported the interpretations and conclusions in a manuscript; and for redundancy in terms of who knows and understands the data, to promote accountability among authors which is missing if only the Student alone has access to the data.
43. The findings of the Trial Panel indicate that the Student has disregarded every element of this clear and specific advice. There is no basis in which one could dismiss a significant risk of the commission of similar acts of academic misconduct should the student return to the University.
44. ***The Character of the Person Charged*** The evidence on this point suggests a student who has misled the participants in the discipline process, shifted and fabricated evidence, and has attempted to blame others, especially at a time when they cannot respond. This is not evidence of good character.
45. ***General Deterrence*** This is a research intensive University and the Student was studying at a high level in a research intensive department. Deterring the misrepresentation of research results, particularly in this context, must be a significant priority.
46. We consider it appropriate to leave no doubt that cases such as this will be treated very seriously.

Conclusion

47. We dismiss the appeal.

October 4, 2012



Patricia D.S. Jackson, Chair