IN THE MATTER OF THE UNIVERSITY TRIBUNAL
OF THE UNIVERSITY OF TORONTO (APPEAL DIVISION)

IN THE MATTER OF charges of academic dishonesty filed on September 29, 2010;

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

Appellant

and

A[redacted] L[redacted]

Respondent

Date of Hearing: September 18, 2012

Members of the Panel:
Elizabeth Peter, Faculty Panel Member
Chirag Variawa, Student Panel Member
Graeme Norval, Faculty Panel Member
Ronald G. Slaght, Chair

Counsel:
Lily Harmer for the Appellant, Provost of the University of Toronto

Glenroy Bastien for the Respondent, A[redacted] L[redacted]

In Attendance:
A[redacted] L[redacted]
Eleanor Irwin, Dean's Designate, University of Toronto, Scarborough
Natalie Ramtahal, Coordinator, Appeals Discipline and Faculty Grievances

REASONS ON APPEAL

INTRODUCTION

1. This matter comes before the Discipline Appeals Board on Appeal by the Provost from the penalty imposed upon Mr. L[redacted] by a trial panel of the Tribunal at a sanctions hearing held January 17, 2012.

2. At an earlier hearing, on December 5, 2011, Mr. L[redacted] entered a plea of guilty to a series of charges that he knowingly forged, altered and falsified transcripts and resumes in respect of his grades, grade point averages, course content, and accomplishments, and sent these false records on a number of separate occasions to prospective employers, while a student at the University of Toronto at Scarborough.

3. The December hearing proceeded on an Agreed Statement of Facts. Based on the Agreed Statement of Facts and Mr. L[redacted]'s confirmation of his plea, Mr. L[redacted] was convicted of five charges involving his submission of forged transcripts to 5 potential employers, contrary to section B1.3(a) of the *Code of Behaviour on Academic Matters* ("the Code") and 10 charges involving the submission of falsified resumes to ten potential employers, contrary to section B1.1(a) of the Code.

4. The matter was then put over to a sanction hearing in January 2012, where the panel imposed a suspension from the University for a period of five years with a notation to remain on Mr. L[redacted]'s University record for that five year period.

5. The Provost asks this Appeals Board panel to set that penalty aside and in its place recommend to Governing Council that Mr. L[redacted] be expelled from the University.

JURISDICTION AND STANDARD OF REVIEW

6. In appeals arising under the Code, it is important to understand the jurisdiction of the Appeals Board, the standard of review applicable to the decision below and the degree of deference to be shown to the trial panel.

7. As to jurisdiction, the Code provides a right of appeal by the Provost from a sanctions decision of a hearing panel under s. E.4 of the Code.[1]

8. Further, the Code gives the Discipline Appeals Board very broad powers on appeal. The Code provides that:

> The Discipline Appeals Board shall have power,
>
> (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.[2]

9. This expansive language means the Appeals Board need grant little deference to the decision of a trial panel, although certain checks and balances have nonetheless been recognized in decisions over the years.

10. While an appeal is not a trial *de novo* the Appeals Board may allow the introduction of further evidence on appeal which was not adduced at trial, in exceptional circumstances.[3]

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[1] Code, s. E.4

[2] Code, s. E.7

[3] Code, s. E.8

11. In C[redacted], a 1976 decision of the Appeals Board and the leading authority on sentencing, it was held that an Appeals Board panel may vary a sanction if it believes the sanction imposed below was "wrong".[4]

12. In a more recent case, S[redacted], the Appeals Board described its jurisdiction as the right to interfere when there are errors of law, and significant errors of fact.[5]

13. The Appeals Board has frequently described its function as including a supervisory role over the Trial Division, designed to ensure principled and consistent decision-making, that like cases will result in like penalties and that there will be transparency and uniformity in the application of sentencing principles to the particular facts of any given case.

14. An additional feature of appeals, relevant in this matter, is that the Appeals Board, notwithstanding its broad jurisdiction, does give deference to a trial panel over credibility issues, where these arise in a trial setting and where the trial panel of course has the opportunity to observe the witnesses giving evidence and draw conclusions from this first hand exposure to the demeanor and quality of evidence of a witness or witnesses.

DECISION

15. For the reasons we detail below, we have concluded that, with due respect to the trial panel, this appeal must be allowed and the decision on sanction set aside. In its place we recommend to the President that the President in turn recommend to Governing Council that Mr. L[redacted] be expelled from the University.

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[4] C[redacted], Provost Book of Authorities, Tab 2, pg. 3

[5] S[redacted], Provost book of Authorities, Tab 5, para. 10

16. Our primary issue with the imposed penalty was founded in the Appeals Board mandate to ensure uniformity and consistency in sentencing, and our overriding concern about the implications for future cases if this sentence had been allowed to stand. We agree with the expression found in many cases before this one, that the most severe penalty should be reserved for the most serious cases. We have concluded that, in the range of relevant cases, this case ranks at or near the top of the list in that regard. If we were not to impose an expulsion in this case, on the facts as we appreciate them, it would be difficult to imagine any subsequent case, no matter how serious, would ever result in expulsion.

17. There is an additional factor we raise at this point, relevant to our decision to set aside the penalty and substitute a more severe sanction. This panel was not faced with findings of credibility made by the panel below, as Mr. L[redacted] gave no evidence either on the initial hearing, or more importantly, at the sanctions hearing.

18. Mr. L[redacted], as we have said, pleaded guilty on an Agreed Statement of Facts and said nothing in his own defence at that stage, which of course is his privilege.

19. Of more surprise was that at the January hearing Mr. L[redacted] also gave no evidence. The only evidence at that hearing was that of his psychologist, Dr. Vincent Murphy.

20. Mr. L[redacted] could have made application to give evidence before us on this Appeal but no application was made. Although Mr. L[redacted] was in attendance at the appeal, we did not hear directly from him.

21. In these circumstances, we did not have to take into account in reaching our decision to allow this appeal, a certain deference to the trial panel, because that panel did not have the

opportunity to listen to Mr. L[redacted], measure the quality and nature of his evidence and his demeanor.

THE FACTS

22. We intend to lay out the facts in some detail, as our approach is rooted in the serious light in which we view the facts of the case. There is much to be concerned with over the facts that gave rise to these charges, and ultimate plea of guilty, on the one hand, and on the other, there is virtually nothing to which we can look to mitigate the seriousness of those facts or to arrive at ameliorating features or elements of Mr. L[redacted]'s conduct that would permit us to give effect to any extenuating circumstances.

23. Mr. L[redacted] first enrolled in the University in a business administration co-op program in the fall of 2006. As we understand, a year later, in fall of 2007 he transferred into a specialist program in management and life sciences. He continued accumulating credits in that course into the 2009 winter term. [6]

24. In April 2009, Mr. L[redacted] made an application to Deloitte, a major accounting firm, to participate in a leadership conference sponsored by Deloitte. He forwarded an Academic History and a resume. The Academic History was replete with misrepresentations, including that Mr. L[redacted] failed to list courses he had completed, misrepresented grades earned in courses he did take, misrepresented the sessional periods within which he had completed the courses, misrepresented his sessional grade point averages, his annual grade point averages, and his cumulative grade point averages. He misrepresented the number of credits he had earned, and in

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[6] Much of this background is taken from the Agreed Statement of Facts.

the resume, falsely claimed he had received an academic scholarship and a certificate from completion of a Study Skills program.

25. At Deloitte, his application was reviewed by Sou Choi, a graduate of the University of Toronto at Scarborough who noted and became concerned with a number of anomalies in Mr. L[redacted]'s application.

26. Ms. Choi called Mr. L[redacted] on his cell phone. She raised a number of the discrepancies she had noted in the application including that his first year marks appeared to be missing from his history. Mr. L[redacted] told Ms. Choi that the University's information system (ROSI) was at fault for the apparent discrepancies. Ms. Choi asked for a corrected application which Mr. L[redacted] undertook to forward, but he provided nothing more to Deloitte.

27. In September 2009, Mr. L[redacted] applied to a number of institutions for employment. Among these was an application to Grant Thornton, for a student chartered accountant position.

28. His application to Grant Thornton consisted of a letter, resume, an Academic History and an unofficial transcript. The Grant Thornton materials were virtually identical to those submitted to Deloitte, except that additional misrepresentations were included, arising from courses that Mr. L[redacted] had taken in the intervening period.

29. We pause here to note that, although Mr. L[redacted] ultimately pled guilty to 15 charges, there were really three separate occasions when he engaged in these fraudulent activities. The first is in April 2009, when he sent the Deloitte application, the second, in September 2009, when he sent out multiple applications including to Grant Thornton, and a third, in January 2010, when again, he launched a series of false applications to a number of financial institutions.

30. Unfortunately for Mr. L[redacted], Ms. Choi migrated from her position at Deloitte to join Grant Thornton and in the spring of 2010 she came across and reviewed Mr. L[redacted]'s Grant

Thornton application, which was still on file. She recognized it as virtually identical to the Deloitte application. She again telephoned Mr. L[redacted] to discuss her concerns but this time also contacted the University to report her suspicions that Mr. L[redacted] had submitted false documents and information in applications to Grant Thornton and Deloitte.

31. In the meantime, in January 2010, Mr. L[redacted] had sent out his third series of false applications to financial institutions including to the CPP Investment Board, Genuity Capital Markets and National Bank Financial.

32. Also in this period, two simultaneous events were unfolding. The University, upon receipt of Ms. Choi's concerns, launched an investigation. The University investigated Mr. L[redacted]'s Grant Thornton application and identified many discrepancies and misrepresentations when that application was compared with his official transcript. At the same time, over the spring and summer of 2010, Mr. L[redacted] visited the Academic Advising and Career Center ("AACC") at the University and sought to have removed from that database various of his applications which he had sent out from the AACC.

33. In July 2010, Mr. L[redacted] was called to a meeting with Professor Irwin, the Dean's Designate for Academic Integrity, to discuss the Deloitte and Grant Thornton applications. At that meeting Mr. L[redacted] denied that he had committed any offences, claimed that someone had gained unauthorized access to his email accounts and had submitted the two applications without his knowledge or consent. He denied that the cell phone number listed on his resume and cover letter was his.

34. Following that meeting the University continued to investigate and identified the additional 2009 and 2010 applications that Mr. L[redacted] had made through the AACC. This led to

a second meeting with Professor Irwin, in July 2010, to discuss new allegations arising out of the newly uncovered false applications.

35. On that occasion, Mr. L[redacted] continued to deny ownership of his cell phone number, continued to claim he had made none of the applications and explained that he had asked AACC to remove certain applications because they were not his applications.

36. The University was forced to continue its investigation and eventually was able to match an IP address used for 7 of the applications to a residential IP address that had been used by Mr. L[redacted] to access ROSI on many occasions.

37. Mr. L[redacted] was charged with offences in September 2010. As of that date he had maintained his denial of any involvement whatsoever in any of the matters which formed the subject matter of the charges.

38. As we have said, the hearing proceeded in December 5, 2011, some 14 months after the charges were laid. The Agreed Statement of Facts, where Mr. L[redacted] admitted to much of what he had completely denied before, is also dated December 5, 2011.

39. This Appeals Board panel has no knowledge of the reasons for the long period that elapsed between the charges and the hearing. In our experience there are many reasons these unfortunate delays can occur. Whatever the reasons, the delay in this case is not without significance, as Mr. L[redacted] throughout the period continued his studies and by the date of the hearing, had accumulated sufficient academic credits to obtain his degree but for the outstanding charges. When he submitted his first false application, to Deloitte, Mr. L[redacted] had accumulated 10.5 credits, in September 2009, he had 12.5 credits, 14.5 credits in January, 2010, and by the summer of 2011 he had earned 20.5 credits.

40. On the hearing date, as we have said, based on the Agreed Statement of Facts and Mr. L[redacted]'s plea of guilty, the panel found him guilty of the charges laid in September 2010. No witness gave evidence on that occasion, and the matter was put over for the penalty phase which came on on January 17, 2012. We note that a guilty plea in its own terms is neutral or irrelevant in all respects other than the accused has admitted guilt. It does not speak to any explanation for the acts, any remorse for the acts, or anything other than an admission that the many acts which Mr. L[redacted] had denied for many years, were now admitted to be true.

41. At the sanction hearing, the only evidence called was that of Vincent Murphy, a psychologist whom Mr. L[redacted] had seen on two occasions. Mr. L[redacted] gave no evidence and called no evidence of others to speak to his character, family circumstances, or anything else.

42. Dr. Murphy saw Mr. L[redacted] on two occasions. The first, in January 2011 was to rule in or out Attention Deficit Hyperactivity Disorder (ADHD) or some other factor that might be contributing to academic underachievement. Upon Dr. Murphy's assessment, he concluded that Mr. L[redacted] did suffer from ADHD and a reading learning disability. Mr. L[redacted] did not disclose to Dr. Murphy on that occasion that he was facing charges of academic misconduct.

43. Dr. Murphy saw Mr. L[redacted] for a second time in August 2011, with respect to the upcoming hearing. In that meeting Mr. L[redacted] told Dr. Murphy that in the winter of 2010 he had falsified information on a resume and doctored a University transcript which he had then sent out to several employers.

44. This limited disclosure caused Dr. Murphy to conclude in his report[7] that this conduct "does not appear to be chronic behaviour, but a moment of serious misjudgment". Dr. Murphy recorded his opinion that Mr. L[redacted] regrets his action and has shown remorse.

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[7] Appeal Book, Tab F, Tab 3, pg. 3

45. Mr. L[redacted] made no personal expression of remorse or any other explanation for his conduct in making false representations to various prospective employers upon three different occasions in about a two year period, nor did he explain why he continued to fabricate excuses and failed to acknowledge his conduct throughout the University investigation. No character evidence was led or filed. The panel below, as is this Appeals Board, was left completely in the dark without any explanation for Mr. L[redacted]'s behaviour and conduct on the original actions, the subsequent denials, and the future prospects for Mr. L[redacted].

THE DECISION BELOW

46. The hearing panel recognized that Mr. L[redacted]'s offences were among the most serious breaches of the Code a student can commit, and that Mr. L[redacted] had displayed a complete disregard of his obligations as a member of the University Community.[8]

47. The panel found that Mr. L[redacted]'s conduct was wilful and deliberate, well planned and methodically carried out. The Tribunal rejected Mr. L[redacted]'s argument that his conduct could be at least partially justified, excused or explained away by a learning disability or by ADHD.[9]

48. The panel below expressed some skepticism about the real deterrent effects of expulsion, in the absence of scientific or other supporting factual evidence, particularly in Tribunal cases, because publication of penalties under the Code is anonymous.[10]

49. The panel also appeared to conclude that in any event there was little material difference between the deterrent effect of an expulsion compared to a five year suspension, particularly in

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[8] Tribunal Reasons, para. 5

[9] Tribunal Reasons, para. 7

[10] Tribunal Reasons, paras. 9-12

the absence of a supporting factual foundation, and this had an influence on the panel's choice of suspension as its penalty.[11]

50. The panel took a number of other factors into consideration including that Mr. L had committed no prior offences, that the 10 forged transcripts to 10 potential employers should be seen actually as one continuing offence, that Mr. L had completed sufficient academic credits to earn a degree and that there was credible expert evidence that Mr. L felt significant remorse for his actions.

51. The panel also reviewed a number of cases and placed considerable reliance on the case of G where, in similar facts, a joint submission of the University and Mr. G resulted in a five year suspension.[12]

POSITION OF THE PROVOST

52. The Provost maintains that, both on the facts of this case and when considering the weight and balance of relevant Tribunal decisions, the hearing panel imposed a sentence that did not adequately address the nature and seriousness of the offences in this case.

53. The Provost conducted a comprehensive review of similar cases and argues that of 34 cases surveyed since 1979 involving forged transcripts or falsified Academic Histories, 28 resulted in expulsion and only 6 did not. Moreover the Provost argues that the conduct engaged in by Mr. L meets all the hallmarks previously and consistently considered across the cases by the Tribunal, and warrants expulsion. Here, Mr. L committed offences on multiple occasions, the forgeries were extensive and deliberate, he denied his involvement throughout,

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[11] Tribunal Reasons, para. 13

[12] Tribunal Reasons, paras. 21-28; Provost Authorities, Tab 10

misled the University and continued to do so until shortly before the hearing and then he presented no extenuating circumstances that could ameliorate the penalty.

POSITION OF MR. L[redacted]

54. For Mr. L[redacted], Mr. Bastien argues forcefully that there are a minority of cases where expulsion is not called for and the panel's decision that this case fits within that minority, can be supported on the findings of the panel and should be given deference.

55. He argues that while this case may be on the outskirts, and this Appeals panel might have decided the case differently, letting the decision stand would not have a detrimental effect on future cases.

ANALYSIS

DETERRENCE

56. We sympathize with the sentiments expressed by the panel below, that the deterrent effect of Tribunal decisions may be blunted to some extent by their anonymity. This is a requirement of the Code, and would require a Code amendment to change. There are also University and legislative privacy issues that would have to be addressed. In our view however the most serious penalty, in the most serious cases, is a real deterrent and this remains an important element in setting penalties in serious cases.

57. Moreover, the fact of anonymity in an expulsion case or even a five year suspension case does not have the same meaning as it might in a less serious case where the student remains at the University or is suspended for a shorter period of time, and may experience daily shame and notoriety in the community. Here, the message conveyed to others, that falsifying transcripts generally means expulsion, is an important one, even if the offender is not named. In comparative terms, if it were known that falsifying transcripts, particularly without ameliorating circumstances, will likely generally result in expulsion, not just suspension, then that too is a

message which, when distributed and publicized throughout the academic community, even anonymously, accomplishes one of the legitimate purposes of sentencing - deterrence.

58. Moreover, in this case, we are simply unable to give effect to anything in the facts that leads us to a lesser sentence. In other cases, there often are extenuating circumstances - mitigation, remorse, prospects of rehabilitation, or other such ameliorating condition. There is none here.

59. Our concern remains therefore that if expulsion is not the result in this case, then it will be difficult to justify expulsion in any case.

60. We will deal briefly with the elements of the decision below. The first of these was that Mr. L[redacted] had committed no prior offence.

61. The issue of prior offences or not, is a factor that should be taken into account in sentencing. It is however an element that has to be seen in combination with others, for example, has the student shown remorse for a first offence, what is the nature and gravity of the offence, what were the circumstances of the first offence, are there other extenuating circumstances that in combination can lead to a lighter penalty for a first offender. As we have repeatedly stated there is nothing in this case to which we can direct ourselves to put any context around this first offence by Mr. L[redacted], in a mitigating sense.

62. We also think it significant that, although this was a first offence in that this is the first time Mr. L[redacted] was caught out, nonetheless he engaged in deliberate and escalating fraudulent conduct on at least three separate occasions over a two year period, and of particular importance to us, after Ms. Choi first recognized errors and anomalies in his application and brought these to his attention, thus providing him with fair warning and a chance to do the right thing, he ignored the opportunity to step back and police his own conduct. Instead, he proceeded to expand and

disseminate widely additional false records, not just on one more occasion but on two, until finally exposed after a major investigation.

63. To us this is a more significant feature of the matter than is the fact that the University's investigation eventually resulted in charges, all wrapped into one series, after denials and cover-ups in which Mr. L[redacted] engaged.

64. The panel below commented, as a mitigating factor, that while the University charged Mr. L[redacted] with 10 offences (it was actually 15) these could be seen as one continuing offence. We agree that concentrating on the 15 separate charges does not add materially to an understanding of Mr. L[redacted]'s conduct. At the same time, as we have said, Mr. L[redacted] on three separate deliberately chosen occasions sent numerous false records into the business community. These are 3 separate events, and to us, this is the material point.

65. In that respect the weight of Tribunal cases considers repeated or continued acts of forgery and falsification to be aggravating conduct, supporting a more harsh penalty. These cases reject the idea that because the act itself is the same on each occasion, they should be considered all as one.[13]

66. Thirdly, the panel below placed some emphasis on Dr. Murphy's evidence that Mr. L[redacted] showed remorse for his actions, in his opinion, in the one meeting they held in which Mr. L[redacted] partially disclosed what he had done. We have read Dr. Murphy's reports and considered his evidence. Not surprisingly, Dr. Murphy was doing the best he could to help Mr. L[redacted] but it is difficult to place much weight on Dr. Murphy's opinions about Mr. L[redacted]'s state of mind, in the absence of any direct evidence from Mr. L[redacted] himself. Moreover, Dr. Murphy's opinion,

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[13] *S*[redacted], Provost Authorities, Tab 5; *N.L.* Case 468, Provost Authorities, Tab 18; *J.S.* Case, 576, Provost Authorities, Tab 22

as he conceded in cross-examination, was based upon assumptions about the facts which were simply not accurate but which had come directly from Mr. L[redacted].

67. The trial panel also considered that Mr. L[redacted] had accumulated sufficient credits to graduate as a factor in imposing a suspension, albeit a lengthy one, at the conclusion of which Mr. L[redacted] could obtain his degree. We agree this is a difficult issue, not helped by the fact that Mr. L[redacted] was able to continue on after he was charged in September 2010 and accumulate sufficient credits over the following year to be eligible to graduate. We can't however escape conclusions to be drawn from the fact that Mr. L[redacted] committed these offences over a period of years while he was a student at the University, undeterred by Ms. Choi, and accompanied by outright denials of his conduct, while he continued on gaining credits. To us, giving effect to this factor would be the wrong thing to do, conveying the message to the University community at large, that it will lighten the penalty if a student continues to cover up and deny, until sufficient credits are obtained.

68. Finally, we comment briefly on the panel's reference to G[redacted]. Our emphasis in these Reasons, that expulsion should be the penalty in this case, comes primarily from our analysis of the facts of the offence in the absence of any mitigating features whatsoever. We are not so concerned with a case by case analysis, although the vast majority of offences involving forged transcripts and academic records do result in expulsion. Nonetheless, in looking at the G[redacted] case there are some distinctions to be made. Firstly Mr. G[redacted] had already earned a degree and then, after that, on one occasion, submitted a false record to one recipient, and then immediately admitted what he had done. Quite a different set of circumstances than the present case. Further, while Mr. G[redacted] was not in the country, and did not attend a hearing, he did submit a letter to

the Tribunal in which he expressed his remorse, which the Tribunal took at face value. Here of course Mr. L[redacted] did attend the hearing and the appeal but we heard nothing from him.

69. We fully recognize, as we have emphasized in this case, that to some extent cases turn on their own facts and those facts are considered within the applicable sentencing principles and give rise to a penalty.

CONCLUSION

70. In our judgment, the two most important sentencing principles in a serious case such as this, taken from *C*[redacted], are the deterrent effect of the penalty and the harm occasioned to the University by the nature of the offence.

71. Unfortunately, for whatever reason, in our judgment there is nothing in Mr. L[redacted]'s case that can blunt or ameliorate the facts of the case or the need for consistency and uniformity in sentencing principles, in order not to skew future cases.

72. It is for these reasons that we allow this appeal, set aside the penalty below and impose a sanction in this case of a recommendation that Mr. L[redacted] be expelled from the University.

October 10, 2012

Ronald G. Slaght, Q.C., Chair,
on behalf of the Appeals Board Panel