

**THE UNIVERSITY TRIBUNAL
THE UNIVERSITY OF TORONTO**

IN THE MATTER OF charges of academic dishonesty made in October 26, 2005,

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:

THE UNIVERSITY OF TORONTO

- and -

The Student

Members of the panel:

- John A. Keefe, Chair
- Melanie A. Woodin, Faculty Panel Member
- Matto Mildenerberger, Student Panel Member

Appearances:

- Lily Harmer for the University of Toronto
- Jeremy Glick, law student, Downtown Legal Services for The Student
- Chris Burr, law student, Downtown Legal Services for The Student

NOTICE OF HEARING

[1] The Trial Division of the University Tribunal was convened on January 18, 2006 and January 25, 2006 to consider charges under the University of Toronto Code of Behaviour on Academic Matters, 1995 (the “Code”). The Notice of Hearing is dated January 11, 2005. The charges are as follows:

Concoction Charges

- (1) Contrary to Section B.I.1(f) of the *Code of Behaviour on Academic Matters (the “Code”)*, on or about May 31, 2005, you submitted academic work containing a purported statement of fact or reference to a source which had been concocted in your abstract and podium presentation at the International Society for Postural and Gait Research in Marseille France.

Academic Dishonesty Charge

- (2) In the alternative, contrary to Section B.I.3(b) of the *Code*, you knowingly engaged 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 when, on or about May 31, 2005, you submitted academic work containing a purported statement of fact or reference to a source which had been concocted in your abstract and podium presentation at the International Society for Postural and Gait Research in Marseille France.

Pursuant to Section B of the *Code*, you are deemed to have committed the offence “knowingly” if you ought reasonably to have known that you:

- submitted academic work containing a purported statement of fact or reference to a source, which had been concocted;
- engaged in any form of cheating, academic dishonesty or misconduct, fraud or misrepresentation in order to obtain academic credit or academic advantage of any kind.

[2] Particulars of the charges set out in the Notice of Hearing are as follows:

1. At all material times you were a Doctor of Philosophy Student at the Institute of Medical Science, Faculty of Medicine, at the University of Toronto.
2. You were engaged in research at the Institute of Medical Science, under the direction of Brian Maki.
3. On May 31, 2005, you presented the results of a research study you completed in an oral podium presentation at the International Society for Postural and Gait Research in Marseille France. This research was completed at the Institute of Medical Sciences as part of a larger research project.
4. During the course of this research you fabricated, falsified, or misrepresented data by various means including, but not limited to, by:
 - creating fictitious subjects whom you never tested and creating fictitious data purportedly from these fictitious subjects;
 - fabricating kinematic data on the non-fictitious subjects of your study; and
 - falsifying, fabricating and/or misrepresenting gaze data.
5. Prior to delivering this presentation, you prepared and submitted PowerPoint slides regarding this presentation and/or an abstract of this presentation.
6. Your presentation and abstract contained, and/or was based on data you fabricated, falsified, or misrepresented as described above.

BACKGROUND TO THE HEARING

[3] At the outset of the hearing the tribunal was advised that The Student had agreed to plead guilty to the charge of academic dishonesty and not guilty to the concoction charges. The Student and the University entered into an Agreed Statement of Facts upon which the guilty plea was based. A copy of the Agreed Statement of Facts is attached hereto as appendix “A”.

[4] After reviewing the facts set out in the Agreed Statement of Facts, The Student indicated his willingness to plead guilty to the charge of academic dishonesty and the panel agreed to accept the guilty plea. The hearing proceeded over a period of two evenings and, basically, dealt with the appropriate penalty in the circumstances.

[5] The University’s position was that the appropriate penalty was:

1. A recommendation of expulsion;
2. A five-year suspension;
3. A mark of zero in the course RST999Y (the research/thesis)
4. Publication of a notice of the decision of the Tribunal and the sanction imposed with the name of the student withheld.

[6] The Student’s position, through his legal representatives, was that an expulsion was not appropriate. His position was that a suspension for an unspecified period of time, together with a record of the suspension on the student’s academic record would be more appropriate than expulsion.

[7] In the course of the hearing, the panel heard from Dr. Brian Maki, The Student’s academic supervisor. It also heard from Susan Pfeiffer, Dean of the School of Graduate Studies and Vice-Provost and from The Student’s father.

THE TRIBUNAL’S CONSIDERATION OF THE FACTS

[8] The Student is a graduate student at the University of Toronto School of Graduate Studies. He is 25 years old. He was admitted to the Doctor of Philosophy programme at the Institute of Medical Science (IMS) in September 2004. IMS is part of the Faculty of Medicine.

[9] Prior to enrolling at the University of Toronto, The Student obtained a M.Sc. from the University of Waterloo.

[10] The Doctor of Philosophy programme at IMS emphasises research work. The research and thesis work was course RST9999Y. The research work for this course was to be under the supervision of Dr. Brian Maki and was to be conducted at the Sunnybrook and Women’s College Health Sciences Centre.

[11] Dr. Maki received a five-year operating grant from the Canadian Institute of Health Research (CIHR) which commenced in the fall of 2004. The research was into age-related changes in visual processing and its impact on the risk of falling by the elderly.

[12] From September 2004 to August 2005, The Student received a \$19,500 stipend. It was funded primarily from Dr. Maki's CIHR operating grant. The Student also received a \$5,000 stipend funded through the University of Toronto Open Fellowship Award.

[13] The International Society of Posture and Gait Research (ISPGR) is a research society of more than 300 members. It was to hold a conference in Marseilles, France from May 29 to June 2, 2005.

[14] The ISPGR issued a call for abstracts. The deadline for submission was January 25, 2005.

[15] The Student, under the supervision of Dr. Maki, submitted an abstract that provided a brief four-paragraph overview of the thesis of the methodology, the results obtained and the discussion and conclusions. The abstract was accepted by the ISPGR for presentation at the Marseille conference. There seems to be an agreement that the abstract itself was not false or misleading.

[16] Prior to the submission of the abstract, The Student performed certain of the research work which was to form the basis of the presentation. It is agreed that portions of the research were fabricated.

[17] When pressed, the only explanation he offered for his actions was that he was under pressure to complete the abstract for the January deadline in order to present in Marseille. Because the equipment necessary to complete the research was not available until December, he believed that he was not able to complete the research within the time frame and he resorted to fabrication.

[18] Prior to the conference in Marseille, France, The Student performed further work in preparation for the conference. There was also fabrication of some of this research data.

[19] At the conference The Student made a podium power point presentation which contained reference to the fabricated, falsified and misrepresented data.

[20] In the Agreed Statement of Facts (Appendix "A"), The Student agreed that the slides and the podium presentation contained fabricated, falsified and misrepresented data. Specifically:

- (a) fabricated data for five subjects whom he never tested (the "Fictitious Subjects");
- (b) fabricated findings related to lateral wrist displacement, onset timing of head and arm motion, and direction of initial arm motion (the "Fabricated Kinematic Data");
- (c) fabricated, falsified and/or misrepresented data related to the onset timing and dwell time of eye movements directed toward the handrail mounted on the motion platform and whether these eye movements occurred after of before the platform motion (the "Fabricated Gaze Data" and all three collectively, the "Fabricated Research Results"); and

- (d) reached and reported conclusion that were based on the Fabricated Research Results.

[21] The presentation in Marseille occurred on May 31, 2005. Some concern was raised about the content of the presentation by Dr. Maki and other members of his research team who were in attendance at the presentation.

[22] On June 17, 2005, Dr. Maki asked The Student to provide him with all of his primary data from the subjects. Dr. Maki's research team examined the data and determined that there were problems with the data.

[23] On July 18, 2005, The Student met with Dr. Maki. The Student was confronted with the discrepancies in the data. This was a without prejudice meeting under the University's Divisional Procedures under the Code. As such, what the student says in such a discussion may not be used or receivable in evidence against the student except with the consent of the student. It is now acknowledged that, at this meeting, The Student admitted to Dr. Maki that he had falsified some of the data that was referenced in his podium presentation.

[24] On July 19, 2005, Dr. Maki sent The Student an e-mail that stated as follows:

I have not yet made a final decision on whether I am going to send a letter to IMS. Regardless of that decision, you should be aware that I will definitely proceed with disciplinary action if there are any further incidents of deliberately falsifying or fabricating data. You are, in effect, on probation.

[25] The letter then went on to state, in some detail, what steps The Student was required to take in order clean up the research data. One of the reasons for cleaning up the data was that there was an upcoming conference in Cleveland in early August. This was a conference of the International Society of Biometrics (ISB) which had accepted the same original abstract for presentation. The concluding paragraph of the e-mail stated as follows:

As you can see, there is a lot of work to do. It may not be necessary to complete all of these tasks prior to doing your ISB presentation; however, the presentation cannot include any data that have not been reanalysed and verified regarding their accuracy. For every trial you plan to include in the analysis for descriptive statistics for your presentation, I also want to see the MPG files as described above. If you feel there is insufficient time to complete the above before ISB, then you should withdraw your presentation.

[26] Although there was no commitment made by Dr. Maki, it would be reasonable for The Student to believe that Dr. Maki was extending him some opportunity for a second chance. Included in this e-mail is the following statement by Dr. Maki:

I am hopeful that you have learned your lesson. However, it will take time to re-establish trust.

[27] In an e-mail on July 21, 2005 Dr. Maki invited The Student to "clear the air" with the other members of the team i.e. acknowledge his actions, apologize for disrupting the lab and make a pledge that it will not happen again.

[28] The e-mail also stated as follows:

I also want to let you know the situation regarding IMS. From my conversation with IMS, it appears that it is largely down to me as to whether any formal disciplinary action is taken. My inclination is to give you a second chance. Nonetheless, it is likely that they will want to arrange a meeting involving you, myself and Ori Rotstein. I will keep you posted about this.

[29] On July 25, 2005, Dr. Maki sent an e-mail to other members of the research team, but not to The Student. In this e-mail, Dr. Maki acknowledges that IMS may or may not decide to take formal disciplinary action against The Student, which could range from verbal or written reprimand to suspension or expulsion from the programme. The e-mail went on to say:

In the meantime, I have told [the Student] that I will give him a second chance. He is, in effect, on probation but I am hopeful that he has learned from this experience and that it will not happen again. [The Student] has told me that he will be contacting some of you individually to apologize for his actions and to let you know that it will not happen again...I appreciate that this is a difficult situation, but I am hoping that you will be able to help [the Student] move forward in a positive and constructive way.

[30] On August 4, 2005, The Student made a presentation at the ISB conference in Cleveland. His presentation was based on data that had been checked by Dr. Maki and other team members in order to ensure its accuracy.

[31] On the same day that The Student was at the conference in Cleveland, on August 4, 2005, (after meeting with other members of the research team), Dr. Maki wrote an e-mail to The Student instructing him to take a leave of absence until the matter is resolved officially. The e-mail stated:

In view of the suspicion, resentment and disruption that your continued presence in the lab appears to be causing, IMS has recommended that I instruct you to take a leave of absence i.e. stay away from the lab, until the matter is resolved officially. You will be expected to maintain your university registration but you will not be permitted to come to the lab.

[32] The Student testified that he was devastated upon receipt of this e-mail. The Student's father testified to the same effect.

[33] On August 8, 2005, The Student sent e-mails to Dr. Maki and other members of the research team admitting he fabricated his research data. The apology can only be described as abject. He also apologised for not having sent an apology to the research team earlier.

[34] On August 9, 2005, Dr. Maki e-mailed The Student and stated:

Your apology to the lab was definitely a step in the right direction. However, you could have avoided a lot of ill feeling and suspicion if you had "come clean" much earlier...I must tell you that, until I received your e-mail yesterday, I had pretty much decided that a second chance was no longer warranted, given your failure to admit the full extent of your actions and your attempt to deflect blame and gloss over the situation when talking to other team members. Your e-mail has, in effect, earned you a temporary "reprieve". I

will not make a final decision about this until after we have your meeting at the university.

[35] The Tribunal finds this e-mail somewhat puzzling. The Student had been permitted to make a presentation at the conference in Cleveland on August 4. Prior to this presentation, other members of the team must have been satisfied with the presentation. It seems surprising to the Tribunal that there was such a dramatic change of heart from the time that The Student was permitted to make the presentation in Cleveland and the time when he was notified that he was to take a leave of absence.

[36] There was very little explanation for this apparent change of heart by Dr. Maki. At the hearing, he acknowledged that he was not very familiar with the University's policies with respect to fabricated research and he was doing the best he could to deal with a difficult situation that he had never encountered before. We accept his evidence and cast no blame on him. However, it seems to the Tribunal that Dr. Maki, at least, believed that The Student's behaviour did not warrant the maximum penalty that the University could impose. He seemed to believe that The Student warranted a second chance. He gave The Student that second chance by allowing him to make the presentation in Cleveland. Although this is not conclusive, it is certainly a factor in the deliberations of this Tribunal.

[37] Although The Student did not turn himself in and did not initially come clean, he did so at the meeting on July 18, 2005. After meeting with Dr. Maki on July 18, 2005 it was reasonable for The Student to believe that he was being given a second chance. He worked diligently to earn that second chance. The defects in the initial research must not have been so serious that they could not be corrected in a two or three week time frame. Further, the defects did not warrant a retraction prior to or during the presentation in Cleveland. It also reinforces the point that the abstract itself was not false or fabricated.

[38] On September 23, 2005, The Student sent an e-mail to other members of the research team once again apologising for his actions. There is no question that the apology is abject, demonstrating complete remorse and an understanding of the significance and seriousness of his actions.

[39] On September 30, 2005, The Student appeared at a meeting with the Dean of Graduate Studies. This is a formal step under the Code. The Student admitted to academic misconduct and apologised to Dr. Maki for his actions. The Student openly acknowledged his wrongdoing before the Dean.

[40] In the Meeting Notes of the meeting with the Dean, the following is stated:

The Dean stated that she was unsure whether The Student should receive a second chance in his programme, given the high standards at the University of Toronto and the absence of apparent remorse. Referring the case to the Provost would prolong the process, it is not an action that is considered without serious cause. The Dean stated that she would refer the case to the Provost.

[41] At the hearing before the Tribunal, the Dean testified that the absence of apparent remorse referred to in the Meeting Notes was the delay in openly apologising to other members of the research team.

[42] The Meeting Notes of the meeting with the Dean also state:

The Dean indicated that, from his file, she could not find any indication of The Student feeling guilty. The Dean stated that The Student's file exhibits the absence of ethical thinking and a presence of serious ethical misconduct.

[43] The Tribunal's reading of the file, if it is the same file that was presented to the Dean, does not support the conclusion that there was no indication of The Student feeling guilty. On the contrary, we believe that the apologies to his fellow researchers were genuine and showed real remorse; not the "absence of apparent remorse". The Meeting Notes with the Dean make no reference to the fact that The Student had been advised by Dr. Maki that he believed that The Student was entitled to a second chance. There is no reference to The Student being permitted to make the presentation in Cleveland based on the same abstract.

THE UNIVERSITIES POLICIES ON RESEARCH ETHICS

[44] The University's Policy on Ethical Conduct in Research states:

University expects its members (which include faculty, students and anyone holding a University post or any office that has University status, such as that of a fellow or research associate), the highest standards of ethical conduct at every aspect of research including applications, proposals, the research itself, reports and publications. Term "research" is broadly defined and is intended to include both scientific and non-scientific research and research that is not grant supported.

[45] The Faculty of Medicine's Principles and Responsibilities regarding Conduct of Research in section 4.4 provides as follows:

The students, post-doctoral fellows, research associates, and research support staff, have a responsibility for the ethical conduct of research by becoming knowledgeable about the norms of good science and by acting in accordance with them. These norms should be understood as applied to research in the basic, clinical sciences, and community health. In addition, the ethical considerations of research involving human and animal subjects are areas that need to be addressed. In particular, students, post-doctoral Follows, research associates, and research support staff must be familiar with relevant ethical codes and guidelines governing medical research (e.g. University guidelines *Tri-Council Policy Statement: Ethical Conduct for Research Involving Humans...*).

[46] The Tri-Council Policy Statement of Ethical Conduct for Research Involving Humans provides in part as follows:

However, researchers and institutions also recognise that with freedom comes responsibility, including the responsibility to ensure that research involving human subjects meets high scientific and ethical standards. The researchers commitment to the advancement of knowledge also applies duties of honesty and thoughtful enquiry, rigorous analysis, and accountability for the use of professional standards.

[47] The University of Toronto has its own policy titled Research Involving Human Subjects – School of Graduates Studies Student Guide on Ethical Conduct, which provides as follows:

Every researcher conducting research involving human subjects has the obligation to be familiar with the Tri-Council policy statement as well as the University of Toronto policies on research. Researchers are encouraged to take the TCPS on-line tutorial found at <http://www.pre.ethics.gc.ca/English/tutorial/>. Graduate students engaged in human subjects research are responsible for the ethical conduct of the projects, as are their supervisors. It is vital that both parties are aware of what these responsibilities entail.

THE TRIBUNAL'S CONCLUSION AS TO THE APPROPRIATE PENALTY

[48] The Student's conduct violated all of the University's policies and guidelines with respect to ethical research. The Tribunal considers the violation of these policies to be serious and warrants a serious sanction in order to maintain the integrity of the reputation of the University. We consider The Student's conduct to be at the more serious end of the scale of academic offences.

[49] We were presented with numerous cases before other panels of the University Tribunal and cases that considered the appropriate sentencing guidelines in matters of academic offences. The most comprehensive decision is the decision in the matter of the appeal by Mr. C., November 5, 1976. This case sets out the following sentencing criteria:

- (a) the character of the person charged;
- (b) the likelihood of a repetition of the offence;
- (c) the nature of the offence committed;
- (d) any extenuating circumstances surrounding the commission of the offence;
- (e) the detriment to the university occasioned by the offence;
- (f) the need to deter others from committing a similar offence.

[50] Counsel for the University acknowledged that no one criteria outweighs the others. We believe that the principles of general deterrence are the most important consideration when dealing with falsified research because of the obvious impact that this conduct has on the reputation of the University, particularly as a centre for research.

[51] If we were dealing with the criterion of general deterrence in isolation, there is no question that the circumstances of this case would warrant the most serious sanction available to the University, which is expulsion. However, in the circumstances of this particular case, we do not believe that expulsion is the most appropriate sanction. We believe that there are mitigating circumstances that would make it unfair and inappropriate to impose the most serious sanction of expulsion as this would, in effect, deny The Student the opportunity to pursue studies at any time in the future. Under the Code, an expulsion would be recorded on The Student's academic record permanently.

[52] We have reviewed the other cases where the sanction of expulsion was imposed and, usually, there is a serious offence such as this (often a second or third offence) combined with evidence of a complete lack of remorse leading to the inescapable conclusion that there is a

likelihood of a repetition of the offence and no possibility of rehabilitation of the offender. We do not believe that this is such a case.

[53] The Tribunal considered, in particular, the following facts:

1. The falsified data was not published in a peer-reviewed journal or thesis in which case there would be a greater risk of harm to the research community.
2. The Student is a first time offender.
3. The Student showed genuine remorse.
4. The Student understands the seriousness of his conduct. He did not attempt to minimize the seriousness of his conduct.
5. The Student pleaded guilty at the hearing.
6. The Student openly acknowledged his conduct.
7. The Student made a sincere attempt to remedy the situation and comply with the Tribunal process.
8. The Student did not offer any excuses for his conduct.
9. We do not believe that there is any possibility of repetition of an offence such as this by The Student.
10. The Student acknowledged his guilt at an early stage, namely, the first meeting with Dr. Maki. Although he did not come forward and acknowledge his guilt, he did acknowledge his guilt at a very early stage.
11. The Student believed, based on Dr. Maki's discussions with him and Dr. Maki's e-mails, that he was being given a second chance.
12. On July 25, 2005, Dr. Maki acknowledged to the other researchers in the lab that he had told The Student that he had given him a second chance and that he was hopeful that The Student had learned from this experience.
13. The Student was, in effect, put on probation and instructed to perform very specific tasks in order to clean up the research for the purposes of a subsequent presentation in Cleveland based on the same abstract.
14. On August 4, 2005 he was permitted to attend and make a presentation in Cleveland to a reputable international organization based on the same abstract.
15. On the same day that he was making that presentation he was advised by Dr. Maki that he was being put on a leave of absence. He has been effectively suspended since that date.

16. Although his apology to his colleagues and fellow researchers came after that presentation and after he was put on a leave of absence, his apology was genuine and abject. He acknowledged his remorse and demonstrated that he understands the seriousness of his actions. He was under no compulsion to apologise as he did.
17. The Student openly acknowledged his wrongdoing when he met with the Dean of Graduate Studies.
18. The Dean's conclusion that the matter should be referred to the Provost for disciplinary action was based, in part, on her conclusion that she "did not find any indication of The Student feeling guilty". Further she was unsure whether The Student should receive a second chance given "the absence of apparent remorse". We believe that the Dean correctly concluded that the absence of apparent remorse is an aggravating factor which would militate against a second chance. However, we have concluded there is clear evidence of remorse and a recognition of the seriousness of his conduct.

CONCLUSION

[54] We believe that the appropriate penalty is one that balances the seriousness of the offence with the opportunity for The Student to be given a second chance. We believe that the most serious penalty of expulsion should be reserved for the most serious cases where there is no possibility of rehabilitation and a real likelihood of repetition of the offence. This is not such a case.

[55] Accordingly we would make the following order:

1. The Student is suspended from the University for a period of five years from August 4, 2005.
2. The record of the sanction shall be imposed on the student's academic record for a period of five year from August 4, 2005.
3. There will be a grade of zero assigned to course No. RST9999Y.
4. This matter should be reported to the Provost to be published and the notice of decision and the sanctions imposed in the University's newspaper with the name of the student withheld.

DATED at Toronto

February 22, 2006

Chair