DISCIPLINE APPEAL BOARD
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;*

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:

UNIVERSITY OF TORONTO

Appellant

- and -

Mr. D.S.

Respondent

Members of the panel:

- Coralie D'Souza
- Professor Clare Beghtol
- Professor Ian McDonald
- Janet E. Minor

Appearances:

- Linda Rothstein; Lily Harmer for the University of Toronto
- Mr. D. S., The Student
- Stewart Thom, Law Student, Downtown Legal Services for the Student

REASONS FOR DECISION

1. The University of Toronto (the "University") appeals the penalty portion of the decision of the trial division (the "Tribunal") relating to charges that Mr. D. S. (the

"Student") contravened the *Code of Behaviour on Academic Matters*[1] (the "Code") under the *University of Toronto Act*[2]. The charges allege plagiarism in three (3) full courses taken by the Student in the 2004-2005 Fall/Winter sessions.

THE HEARING

2. The matter proceeded by way of an Agreed Summary of Facts. The Tribunal accepted the Student's plea of guilty to 11 of the charges:

> (a) nine charges of plagiarism contrary to section B.1.l.(d) of the *Code of Behaviour on Academic Matters* (the "*Code*"), concerning three essays and six reports submitted in POL478, POL440 and POL200; and
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> (b) two charges of concocting sources, contrary to section B.1.l.(f) of the Code, concerning two of the plagiarized essays submitted in POL478 and POL440.

3. The hearing then proceeded on the issue of sanction, the University seeking a five (5) year suspension; notation on the Student's transcript for a period of five (5) years; a mark of zero (0) in POL440Y5Y, POL200Y5Y, and POL478Y5Y; and publication of a notice of the decision of the Tribunal and the sanction imposed with the Student's name withheld. The Student's submission was that an appropriate sanction would be a one (1) year suspension from the period when he was last enrolled (May 2005); a notation on his transcript until his graduation; a mark of zero (0) in the three courses; and publication of a notice of the decision of the Tribunal and the sanction imposed with the Student's name withheld.

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[1] *University of Toronto Code of Behaviour on Academic Matters*, 1995
[2] *University of Toronto Act*, 1971, S.O. 1971, c.56, as amended S.O. 1978, C.88

4. The University called no witnesses on sanction. The Student called four witnesses: the parents of the Student, a friend and employer of the Student, and an administrative assistant for the Department of Political Science at the University of Toronto Mississauga.

5. The Tribunal concluded that the Student should be suspended until the commencement of the 2007 Fall session. It ordered that:

> "
>
> 1. The Student is suspended from the University for a period of 27 months from May 16, 2005.
>
> 2. The record of sanction shall be imposed on the Student's academic record for a period of 39 months from May 16, 2005 or until graduation, whichever is earlier.
>
> 3. There will be a grade of zero assigned to courses No.POL478Y5Y, POL440Y5Y, and POL200Y5Y.
>
> 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."[3]

6. The University appeals from the Tribunal's decision to suspend the Student for a period of twenty-seven (27) months retroactive to May 16, 2005 or until graduation, and its decision to record the sanction for a period of thirty-nine (39) months retroactive to May 16, 2005, or until graduation.

7. The University argues that the Tribunal erred in principle and in law, in imposing an effective period of suspension of sixteen (16) months, and an effective notation

[3] University of Toronto, The University Tribunal Decision, dated June 2006, page. 14, para. 40

of suspension for twenty-eight (28) months. The grounds may be summarized as follows:

(a) the Tribunal did not apply the appropriate principles for sanctions in academic matters;

(b) the Tribunal erred in its findings on evidence and conclusions with respect to potential mitigating circumstances;

(c) the Tribunal improperly relied on decanal level decisions;

(d) the Tribunal mis-assessed the character of the Student, and the likelihood of reoccurrence;

(e) the Tribunal erred in its consideration of the appropriate time period, by concluding that a sanction of longer than a three (3) year suspension should only be granted where there is no possibility of rehabilitation; and

(f) the Tribunal's sanction was inconsistent, and against the weight of Tribunal jurisprudence when it determined the starting date for the suspension retroactively to May 2005.

JURISDICTION OF THE APPEAL PANEL

8. The *Code* provides that the Discipline Appeals Board has authority

(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 case, to affirm, reverse, quash, vary or modify the verdict, penalty or sanction appealed from the substitute any verdict penalty or sanction that could have been given or imposed at trial.[4]

9. Section E of the *Code*[5], confirms that the appeal is not a trial *de novo*, although fresh evidence may be allowed in some circumstances.

[4] *The Code of Behaviour on Academic Matters*, June 1, 1995, Section E. Appeals, Part E
[5] *Supra*, *The Code*, Section E. Appeals, Part E

10. The Student argues that the Appeal Panel should only reverse or modify an order of the Tribunal when the Tribunal has made a palpable and overriding error, pointing to the test in *Housen*[6], applied by appellate courts on appeal from trial courts. In our view, this case is not totally helpful in the context of administrative proceedings. The imposition of a second review by an administrative panel before a review by the court provides an opportunity for the administrative appeal panel to develop appropriate principles and policies to be applied within this specialized context, to develop its own jurisprudence, and in turn to foster principled and consistent decision making. The appeal panel has broad jurisdiction, and may apply a somewhat less deferential approach than the *Housen*[7] test. The appeal panel has authority to quash or modify a Tribunal decision when there are errors of law, and significant errors of fact.

THE TRIBUNAL DECISION

11. The Tribunal first considered the principles to be applied in determining an appropriate sanction. They set out, and later applied the criteria identified and elaborated by Mr. Sopinka in the *Mr. C.*[8] case:

    (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 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.

[6] *Housen v. Nikolaisen* [2002] S.C.J. No. 31 (SCC)
[7] *supra, Housen*
[8] *In the Matter of the University of Toronto, Code of Behaviour & Mr. C.,* November 5, 1976

12. The Tribunal identified and discussed these criteria as originating as sentencing guidelines in criminal law. It went on to discuss other principles in criminal law sentencing, apparently adopting those principles.

13. However, while the criteria in *Mr. C.*[9] had their origins in criminal law, the general principles and considerations of courts in criminal law matters are different than those in an administrative law context. Most obviously, the liberty of the person being sentenced in a criminal matter is in issue, but in an administrative law context, it is not.

14. The principles to be applied by this Tribunal are those found in administrative law, and particularly, those developed in the University setting. Having said this, it is not clear from the reasons of the Tribunal, how the Tribunal applied the additional criminal law principles or considerations, or how they affected their ultimate determination of sanction. As a result, we would not interfere with the sanction on this ground alone.

THE TRIBUNAL'S CONSIDERATION OF THE CRITERIA

1. Character of Student, and likelihood of repetition

15. The Tribunal described the Student as a first offender, and found there was no evidence that the Student was a chronic cheater. This finding is correct in the sense that the Student had no history of discipline before these charges in 2005.

[9] *supra, Mr. C.*

16. However, the Tribunal reached other conclusions of fact respecting the Student for which we can find no evidentiary support.

17. The Tribunal's consideration of both the Student's character, and mitigating factors were hampered by the Student's choice not to testify. As a result, there was no direct evidence about the Student's perception of his family circumstances, his beliefs about the necessity of assisting his mother, or any direct evidence about any financial strain that he himself was under. Clearly, evidence from the Student himself would have been the best source of evidence on these issues.

18. The Tribunal found that in the winter term 2005, the Student believed he had no alternative but to complete his degree. In fact, it was open to the Student to seek permission to delay or extend his courses. As the Student did not give any evidence either with respect to his personal circumstances, or about what he believed his options were with respect to completion of his degree, there is no basis to support the Tribunal's conclusions respecting the Student's state of mind - particularly that there was no alternative.

19. The evidence from the Student's parents supported the Tribunal's conclusions that the parents were separated; that his father made no direct financial contribution to either the Student or his mother; that the Student provided financial assistance to his mother, and that his mother considered herself in very precarious financial circumstances.

20. The evidence of the Student's mother respecting her financial situation was sketchy. It was clear that she did consider herself to be in financial difficulty, and that she was suffering stress sufficient to require her to take a leave from her employment.

21. Nic Jezdovic, a friend of the Student also gave evidence. He testified that he had been a friend of the Student for approximately 8-10 years and had employed him in 2005, when he believed that the Student needed to earn extra money. He considered the Student to be reliable and of good character.

22. It was clear from all the witnesses that the Student did work long hours, and that he made a financial contribution to his mother. Thus, while the evidence is overstated respecting the student's state of mind, nonetheless, the number of hours worked does explain why the Student would have found his studies difficult. His willingness to work and provide monies to his mother, we accept as some evidence of good character.

23. The Tribunal found that the Student had expressed remorse, and had appreciated the gravity of his misconduct. The Tribunal relied on the fact that the Student pleaded "guilty" to conclude that he recognized the seriousness of the offence, and that there was little likelihood of repetition.

24. In our view, a guilty plea is a mitigating factor, as is an agreed summary of fact. They reflect an acknowledgement that the Student appreciates that he contravened the *Code*[10], and reduce the time and expense of a hearing. However, a guilty plea in and of itself, is not an expression of remorse or an indication of appreciation of the level of gravity of an offence. It does not speak to the likelihood of its repetition.

25. The Tribunal also took into account the Student's conduct at the decanal level respecting one of the essays said to be plagiarized. The Tribunal considered the Student's misleading the Dean's designate, with a fabricated explanation of his

[10] *supra, the Code*

roommate printing a wrong copy, and his submission of a more recently prepared essay as an aggravating factor, rather than a separate charge warranting a separate penalty. We agree with this conclusion. It is not clear from the decision what weight the Tribunal gave to this conduct.

26. In addition, the Tribunal should have noted that at a meeting on May 6, 2005, respecting the Student's submission of a paper on *Hobbes* in POL200, he told Professor Beck that he did not knowingly hand in plagiarized work, and that the meat of the essay was quotes from *Hobbes*. The Student admitted in the agreed summary of fact, that he was not being truthful with Professor Beck.

27. The panel should have also taken into account the fact that the Student was a senior Student, in fourth year, and admittedly well informed about the nature of, and prohibition against plagiarism.

28. The Tribunal's errors outlined above resulted in their characterizing the Student more positively than the evidence permitted.

2.Character of the Offence

29. The Tribunal correctly characterized plagiarism as a serious breach of the University's *Code*[11]. However, the Tribunal erred when it found the offences should be treated as one continuous act.

30. The charges relate to plagiarized work in three (3) courses submitted between January 27 and April 1st, 2005:

[11] *supra, Code*

(a) in POL478, six short papers, each worth 1.43% of the final mark, and one longer paper worth 50% of the final mark,

(b) in POL 440, one paper worth 30% of the final mark, and

(c) in POL200, a paper worth 30% of the final mark

31. Other than the fact that all incidents of plagiarism occurred during the winter term, and the plagiarism relied on Internet sources, the Tribunal offered no analysis or support from other cases as to why these separate events should be considered one continuous act. It is clear that the Tribunal considered a less severe sanction should be imposed when the offence was one continuous act.

32. Even accepting that the six short papers were worth small portions of the final mark, and were returned together at the end of the course, the Tribunal erred in considering plagiarism in three courses as one continuous act.

33. We also find that the Tribunal did not appear to take into account or give sufficient weight to the fact that the work submitted was plagiarized in its entirety. The Student admitted he had contributed no meaningful work. In some cases, he had made minor word changes, deletions, and additions to disguise his actions.

34. These factors would point towards a more severe sanction.

3.Extenuating or mitigating circumstances

35. The Tribunal was correct in its finding that the Student was engaged in full-time work, at the same time that he was a full-time Student. As we noted earlier, there is no evidence at all, of the Student's own perception of his mother's financial problems, nor on the effect of those perceived problems on the Student. However,

it is clear he did provide financial support to his mother, and we agree that this effort demonstrates some measure of character, although it does not excuse his academic dishonesty. We found no evidence of other possibly mitigating circumstances, such as language or cultural barriers.

4. Detriment to the University and deterrence

36. The Tribunal noted that plagiarism was a serious matter, and that there was a need for personal and general deterrence. In this context, the Tribunal discussed its view of the impact of a five-year suspension, concluding that a five-year suspension would effectively end the Student's career, and that a suspension of this period should be imposed only when a Student should have no entitlement to a second chance, and where there is no opportunity for rehabilitation.

37. The Tribunal's view that a five-year suspension would effectively end the Student's academic career is not supported by any evidence in this case. The general conclusions about the effect of a five-year suspension and the view that it should be reserved for cases where there is no opportunity for rehabilitation, find no support either in evidence, or in the jurisprudence of the University Tribunal.

38. We consider this analysis of the five-year suspension to be a very serious error. The *Code's*[12] provision of a suspension of up to five years ensures that students may enroll and complete their degrees, if they so wish, and are otherwise entitled. A suspension provides a second chance for a student who has engaged in misconduct. A long suspension is not founded on any assumption that there is no

[12] *supra, the Code*

hope of rehabilitation. To the contrary, expulsion, the most severe sanction, denies a Student any such opportunity.

39. The Tribunal recognized that plagiarism, especially plagiarism using the Internet, is a significant and increasing problem for the University. Plagiarism strikes at the core of academic integrity, so important to a University. The sanction must also act as a general deterrent. In our view, the sanction imposed by the Tribunal is insufficient to convey to others the seriousness of this misconduct.

5. Consistency of sanction with other decisions

(a) Decanal level

40. Mr. Thom, on behalf of the Student, argued that the sanction imposed by the Tribunal was appropriate when comparing it to sanctions imposed for plagiarism at the divisional level.

41. The *Code*[13] establishes procedures wherein *Code* issues are initially dealt with at the Divisional level. These are set out in Part C of the *Code*[14]. Issues are first dealt with at the instructor level, and if unresolved are referred to the Dean of the division or his designate.

42. The provisions permit Deans to impose sanctions up to a one (1) year suspension, to those Students who admit their misconduct. If a Dean does not consider a one (1) year suspension sufficient, or if the Student does not admit misconduct, the Dean

[13] *supra, the Code*
[14] *supra, the Code*

may refer the matter to the Provost. In this case, the Dean had no choice but to refer the matters to Provost, because there was no admission of misconduct.

43. We do not find a review of letters sent at the decanal level helpful to the determination of sanction in this case. Lack of detail in the letters makes it difficult to assess and characterize them in a way in which any reliable general principles could be extracted. However, more importantly, even if such characterization were possible, decanal sanctions must be viewed differently, than sanctions of the Tribunal. Procedures at the decanal level are designed to foster early resolution of the issues, where possible, through a relatively informal and speedy process. We agree that this is right in principle and that this policy should be preserved. The potential for a lenient sanction, at that stage, encourages this resolution. Such a sanction, however, can only be imposed where a Student admits misconduct.

44. We agree with the University submission that a Student should not be penalized for not admitting his misconduct at the decanal level. However, sanctions at the decanal level must be viewed as lenient in the context of promoting early resolution. Tribunal sanctions should be reviewed for consistency with other Tribunal sanctions.

(b) Tribunal Decisions

45. Tribunals must fashion the appropriate sanction based on the individual circumstances of each case. There is no matrix, formula, or chart, in which a Tribunal can determine that one particular act, must receive one particular sanction.

46. At the same time, it is important that students are treated fairly and equitably when receiving a sanction, and that there is general consistency in the approach of Tribunals in imposing them.

47. *Provost's Guidelines on Sanction, Offences and Suggested Penalties for Students* (Appendix 'C' to the *Code)*[15], provides some assistance in this respect, but are suggestions only, and state they are subject to the particular circumstances of each case.

48. We have reviewed the cases referred to us by the Student and the University. We have concluded that the sanction imposed in this case is materially inconsistent with the weight of other Tribunal and appeal decisions.

49. We observe that students who are first offenders committing one act of plagiarism, generally have received sanctions in a range of one to two (1-2) years. Mitigating or aggravating factors have decreased or increased this range. The approach taken by the Tribunal in more serious cases is typified in *Baksh*[16] where a fourth year student committed serious acts of plagiarism in one major essay, and in a series of short papers. She had committed another act of plagiarism in a previous year. The plagiarism was compounded by further dishonesty in an attempt to graduate. There were no mitigating circumstances found by the Tribunal. The sanction was expulsion.

50. The misconduct of the Student in this case, the character of the offences which occurred on a number of occasions, and the other factors previously discussed, are

[15] *supra, the Code*
[16] *In the matter of the University of Toronto and Baksh*, February 15, 2007

not substantially similar to those who received a range of suspension from 1-2 years.

51. At the same time, the conduct of the Student, while extremely serious, falls short of deserving expulsion.

52. In our view, the appropriate period of suspension, taking into account all the factors discussed above, is four years.

6. Commencement date for sanction

53. In general, sanctions should commence from the date the sanction is imposed by the Tribunal.

54. It is possible, in exceptional circumstances, for the commencement of a sanction to date back earlier. However, some principled reason must be given for doing so; to do otherwise would result in a wide disparity among sanctions. In this case, the Tribunal determined that its sanction should run from the Student's first meeting with the Dean on May 16, 2005,

55. Although the Tribunal panel considered that a penalty of more than two (2) years was appropriate in these circumstances because of multiple offences and the attempt to mislead the Dean, at the same time, and in our view inconsistently, the Tribunal wished the Student to be able to register for courses in September 2007.

56. Accordingly, the Tribunal concluded the suspension should include the period when the Student had voluntarily removed himself from the University community, by not enrolling in further courses. This backdating effectively shaved eleven months

from the period of suspension and thus undermined their conclusions that more than a two (2) year penalty was appropriate.

57. There was no evidence why the Student had not registered, or analysis of why his voluntary absence from the University community should be considered the equivalent of a sanction of a one (1) year suspension.

58. We also find surprising the choice of May 16, 2005, as the date for commencement, as this was the date on which the Student denied his misconduct in POL478Y5Y, fabricated a story about the wrong essay being printed, and submitted a new essay to Professor Beck. More importantly, at that date there had not yet been a decanal meeting with regard to the offences committed in POL200Y5Y and POL440Y5Y; these were not addressed until two meetings on July 6, 2005.

59. In our view, the sanction imposed on the Student should commence April 13, 2006, the date of the Tribunal order.

CONCLUSION

60. As a result, we allow the appeal, and order:

    (a) a four-year suspension, commencing April 13, 2006;

    (b) an assignment of a grade of zero (0) in courses: POL478Y5Y, POL440Y5Y, POL200Y5Y

    (c) that the record of the sanction be noted on the Student's academic record for a period of five (5) years from April 13, 2006, or until graduation, whichever is earlier.

(d) that the matter be reported to the Provost, who may publish a notice of the decision and sanctions in the University's newspapers, with the name of the Student withheld.