THE UNIVERSITY TRIBUNAL
THE UNIVERSITY OF TORONTO TRIBUNAL

IN THE MATTER OF charges of academic dishonesty made on April 5, 2007,

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 -

N.B.

REASONS FOR DECISION

Members of the Panel:

Janet E. Minor, Chair

Professor James Rini, Faculty Panel Member

Sara Ageorlo, Student Panel Member

Appearances:

Lily Harner for the University of Toronto

Nick Shkordoff and Mike Hamilton of Downtown Legal Services for N.B. for a portion of the hearing.

On March 11, 2008, the Panel commenced the hearing of three charges under the *Code of Behaviour on Academic Matters*, 1995 ("the Code") laid against N.B. ("the student") and provided to her by letter of April 5, 2007 from the Vice Provost Academic, Professor Edith Hillan.

The charges are as follows:

1. On or about November 3, 2006, you knowingly forged or in any other way altered or falsified a document or evidence required by the University of Toronto, or uttered, circulated or made use of any such forged, altered or falsified document, namely a midterm test for the course CLA203H which you submitted for re-grading, contrary to Section B.I.1(a) of the Code.
2. On or about November 3, 2006, you knowingly forged or in any other way altered or falsified an academic record, and/or uttered, circulated or made use of such forged, altered or falsified record, namely, a midterm test for the course CLA203H which you submitted for re-grading, contrary to Section B.I.3(a) of the Code.
3. In the alternative, on or about November 3, 2006, you knowingly engaged in a form of cheating, academic dishonesty or misconduct, fraud or misrepresentation not otherwise described in order to obtain academic credit or other academic advantage of any kind, namely, by submitting for re-grading an altered midterm test for the course CLA203H, contrary to Section B.I.3(b) of the Code.

The charges all related to one incident: the provision of a midterm test given in October 2006 in Classics 203, The Science of Antiquity, for review by Professor Jones.

It was agreed that the student amended the test paper by adding portions to various answers, and resubmitted it to Professor Jones' T.A., Jackie Feke. The position of the student was that she had not requested a remark, only a discussion of her paper and that she had included a loose piece of 8½" x 11" paper, which identified the later additions so that they would not be considered part of the original paper.

The position of the University was that the request for review was a request for a re-grade and that these additions had been made in an attempt to obtain a higher mark. No loose paper or any other acknowledgement was provided to the teaching assistant when the paper was resubmitted.

At the outset of the hearing, the student was represented by Nick Shkordoff and Mike Hamilton from Downtown Legal Services.

Ms. Harmer, on behalf of the University requested that the University's witness, Professor Alexander Jones be heard by video conferencing because he was required to be in New York City that evening. The student's legal representative consented and the Panel granted permission to proceed in this fashion.

Professor Jones testified that his teaching assistant, Ms. Jackie Feke, marked the test papers, save for one or two late ones. Professor Jones himself marked several papers and made notes on them with respect to the type of answer he would have expected to get a good grade in order to provide a guide for Ms. Feke. He provided these papers to her prior to her marking those remaining. He received the graded papers from Ms. Feke and reviewed a few random ones as "spot checking". He made no changes to her marking.

The student's paper received a grade of 30/50. The papers were returned to the class on November 1, 2006. That day, the student sent an email to Professor Jones requesting a meeting with him to discuss her midterm test. She indicated, "I am very confused about my mark, and would very much appreciate if you could go over it again with me. I feel as though my test was not marked fairly, and would love the chance to sit down with you and discuss it". Professor Jones referred the student to Ms. Feke.

Ms. Feke gave evidence that she received an email on November 1, 2006 from the student requesting a meeting with her. The email stated, "When I received it today I was puzzled about my mark, and I would very much appreciate if you can look at it again". Ms. Feke responded, "I don't have any free time tomorrow until the late afternoon. If you would like a re-grade, what you can do is bring your exam to lecture (I'm giving the guest lecture tomorrow) and I can look at it again over the weekend. Otherwise you'll have to wait until next week to meet". The student replied that she would hand the test to Ms. Feke after class.

Ms. Feke testified that the student approached her after class, explained she was the student who had emailed her about the re-grade, and handed her the paper. She took it home and reviewed it two days later.

After that review, Ms. Feke contacted Professor Jones and advised him that she believed additions had been made after she marked the paper. She testified that the only materials she received was the test paper. She noted on remarking the paper that there were particular questions that contained information that would have resulted in a mark higher than the mark that she had originally assigned. She did not believe she would have missed that information the first time she marked it.

A Decanal meeting was convened on November 8, 2006 with the Dean's designate Professor Betty Roots to discuss the paper. The student advised that she had added the additional information for study purposes and intended to discuss the paper to see if those amendments would have given her a higher mark. She also stated that she had included a 8½" x 11" paper which listed the numbers of questions where information had been added and indicated that Ms. Feke should not grade after a particular sentence.

Both Professor Jones and Ms. Feke were cross-examined by the student's representative. Ms. Feke indicated that she had done a thorough search after being advised by the student that she had included a loose paper. She found no paper as described in her possession.

N.B. testified that she was disappointed in the mark she received on the test. She added the additional information to her paper for study purposes and inserted a loose leaf paper in the test book when she returned it to alert Ms. Feke to the additions. She thought she would meet with Ms. Feke, who would see the loose leaf paper, and that they would sit and talk.

On cross-examination, she acknowledged that she did not tell Ms. Feke that there was an added sheet of paper when she left the test book for her. She emphasized that she had wanted to discuss the additions with Ms. Feke to determine if the amended answers would have received full marks, and that she was not asking for a re-grade. She testified that the additions she made were based on reviewing a friend's paper which had received an "A", and also on her class notes.

Following the close of evidence, the hearing adjourned. The student advised that she would be unavailable that summer as she would be out of the country. During the adjournment, Downtown Legal Services advised the Judicial Affairs Office that they were no longer representing N.B.

The Panel reconvened on September 18, 2008 to hear submissions on the merits. The student was self-represented. After counsel for the University completed her submissions, the student commenced her response. In the course of her submission, she indicated that she had a witness to corroborate her evidence about preparing the extra sheet of paper that she said she had inserted into the test paper.

The Panel advised the student that notwithstanding the evidence portion had closed, she would be given an opportunity to call her friend, Ms. Karunakaranas, to give evidence if she wished. She contacted Ms. Karunakaranas but she was not available that evening. The Panel adjourned.

On April 1, 2009, the Panel reconvened. The student was in England and attended via Skype. Ms. Karunakaranas attended in person and gave evidence. She testified that she and N.B. often sat together at Hart House. She recalled seeing N.B. writing something which she said she was going to give to a T.A. Ms. Karunakaranas did not know what the paper was.

The parties then completed their submissions on the merits. The student emphasized that she did not intend to claim additional marks.

The Panel gave oral reasons at the hearing. We found that the University had established the academic misconduct alleged in the first charge and as a result, it was not necessary for us to decide whether the allegation in the second charge was made out, specifically whether the altered term test constituted an altered academic record within the meaning of B.1.3(a) of the Code.

We accepted the evidence of Ms. Feke that she did not receive a loose sheet of paper explaining the additions to the test paper and we did not accept the evidence of N.B. that

the sheet was added. Although she asserted that her friend Ms. Karunakaranas had observed her writing the explanatory paper before providing it to Ms. Feke, the testimony of Ms. Karunakaranas did not assist the student as Ms. Karunakaranas could not recall any details. She thought at some point in time, the student was writing something. She did not know what it was.

We did not accept the student's evidence that she was not seeking a re-mark for additional marks but only a discussion for study purposes. The email exchanges between her and Professor Jones and Ms. Feke substantiate that the student wanted a re-mark and that it would be provided by Ms. Feke. We found that the additions were made to the paper with a view to obtaining additional marks. In making this finding, we also relied on the fact that the additions were seamless with respect to the placement of the additions following the answers, the spacing on the page, the consistency of the handwriting, the colour of the ink, and the absence of anything on the pages of the term test to suggest there had been additions.

Letters of reference were submitted by the student in the first portion her submission on merits. These letters of reference were written in 2007 by her history teacher from high school, and by the manager of the Richmond Hill Cineplex, where she had worked for several years. She also provided various certificates of achievement and accomplishment from her high school. These letters did not change our assessment of the evidence in this case. We advised the student that the letters could be relied on in the sanction portion of the hearing.

The hearing adjourned for a short recess, then reconvened to hear submissions on penalty.

On reconvening, there was initial Skype contact with the student. Very soon, however, there appeared to be problems hearing N.B. on Skype and the connection eventually ended.

The Tribunal determined it would proceed in N.B.'s absence and gave the following reasons:

> As the record has indicated periodically since we've been having difficulty, there have been numerous attempts to try and either re-connect or contact N.B. through email, telephone and Skype. We note that the problems with the apparent connection began when the penalty hearing was just about to commence.
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> It appeared that we had visual connection with N.B., but there was no apparent audio on the Skype connection. We noted, however, at the outset, although we could not hear N.B.'s voice when her lips were moving, we could hear background noise apparently coming from her premises. We asked her to clap her hands to see if that resulted in a sound. She clapped once. We noted that we could hear nothing. We noted, however, that the clap resulted in the tips of her fingers touching, not her full hands. When asked to clap a second time and to make sure that both hands came together, we could hear the clap. When N.B. was asked to move very close to her computer and shout she did move close. We could hear whisper-like sounds, as if she were mouthing the words which resulted in a slight whisper.
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> We find the fact that we could hear the clap and the background noise and not her voice inconsistent with any technical failure of the equipment. Rather we conclude that she sought to interrupt the proceedings and eventually terminate them by disconnecting her Skype connection and, thereby, her attendance. We find this was voluntary.

This finding is reinforced by the fact that she was emailed by counsel for the University, Ms. Harmer, and no response was received. She was telephoned at the number provided by her to the University on Monday and that telephone number was used both by direct line and through the operator. Both resulted in the advice that there was no service there. The email was sent at this point with no indication that it had not been received. However, there has been no response to date. We also noted that when the Skype connection was again tried, the message received was that N.B. was off-line. Importantly, there has been no phone or email message from N.B. to the University since the disconnection.

It is clear that she had both the telephone number and the email address of Ms. Smart, the Judicial Affairs Officer. So we have concluded that there has been a deliberate attempt to remove herself from the hearing and on that basis we are prepared to proceed. I should also add that we have the log of Skype, indicating the times that she was attempted to be reached through Skype after the initial problem. We can put that in as an Exhibit 17. On that basis we will proceed.

We then proceeded to hear submissions from the University on the appropriate sanction. After hearing submissions, we reserved. On April 2, 2009, at 10:12 a.m. an email was sent by N.B. to Nancy Smart, Judicial Affairs Officer. The e-mail was provided to the panel. We directed that the following e-mail be provided by the Judicial Affairs Office to N.B.:

TRIBUNAL RESPONSE AND DIRECTION TO EMAIL DATED APRIL 2, 2009 FROM N.B.

On April 2, 2009, at 10:12 a.m. an email was sent by N.B. to Nancy Smart, Judicial Affairs Officer. The email read as follows:

"Dear Ms. Smart,

The internet has stopped working here on my end, so I am sending you this email while at the library. I understand we need to do sanctioning, so please, let me know how you would like to

proceed. I am not sure when the internet will start working again, but sometimes it re-connects itself after a few hours.
I will check my email as regularly as possible. I apologize for the inconvenience.

Sincerely,

N.B."

The Tribunal Hearing respecting charges of academic dishonesty proceeded on April 1, 2009. The Tribunal made its findings on the merits and found that N.B. had committed offences contrary to the University of Toronto *Code of Behaviour on Academic Matters*. After a short recess, the proceeding convened for the sanction portion. After some difficulties, the connection to Skype was disconnected. The Judicial Affairs Officer and, university staff and university counsel made efforts to communicate with N.B. by Skype, email and telephone. No communication was received until the email referred to above.

The Tribunal considered the circumstances which had occurred before and after the disconnection and determined that N.B. had left the hearing voluntarily. As a result, the Tribunal proceeded in N.B.'s absence to hear submissions on the University's sanction. A transcription of the oral reasons given for proceeding is attached.

The Tribunal reserved its decision on sanction. It has not been rendered.

It is open to N.B. to bring a motion to reopen the sanction portion of the hearing. If the motion is granted, N.B. would have an opportunity to hear the University's submissions on sanction and to respond. The Tribunal would expect such a motion to address the circumstances of the disconnection and the Tribunal's conclusion that N.B. voluntarily left the proceeding.

If N.B. wishes to bring this motion it should be forwarded within 3 weeks of today's date to Ms. Nancy Smart, Judicial Affairs Officer, who will provide it to the counsel for the university and to the Tribunal. Ms. Smart will also attend to making the necessary arrangements for the hearing.

There was no further communication from N.B..

Sanction

The factors to be taken into account when determining penalty are well established:

a) The character of the student;

b) The likelihood of repetition of the offence, and whether the student shows remorse,

c) The nature of the offence;

d) Any extenuating circumstances;

e) Detriment to the University occasioned by the offence;

f) The need to deter others from similar offences[1].

Counsel provided us with a number of University Tribunal decisions which imposed penalties for forgery or similar dishonesty. They imposed suspensions up to four or five years.

Each case of course, depends on the individual circumstances and balancing of factors set out.

The University submitted that the appropriate sanction was a zero in the course, and a recommendation to Governing Counsel for expulsion with a five year suspension pending a decision by Governing Counsel. In the alternative, the University submitted that if the Panel did not recommend expulsion, a five year suspension with a period of a seven years notation on her record should be substituted for that portion.

We have reviewed the evidence and letters of reference provided by the student. We note the letters addressed the student's high school record and high school jobs. They do not reflect knowledge of this matter. We have taken them into account.

[1] In the matter of the University of Toronto Code of Behaviour and an Appeal by Mr. C. J. November 1976.

Counsel for the University advised that the student had a previous discipline history. In 2005, she admitted to an offence of submitting another student's answer book as her own. She had replaced the student's name and number with her own. The matter was dealt with at the decanal level in the spring of 2006. The student received a letter in March of 2006 which referred to the student's indication that she was under pressure from her family. The letter indicated that she could have been suspended. The letter warned the student that subsequent misconduct would not be treated as lightly. The offence subject of this hearing occurred a few months after that letter.

Counsel for the University also asked us to take into the account that this hearing was subject to a long adjournment because the Judicial Affairs office was advised that the student was not in the country during the summer of 2008. Evidence was provided that she had in fact been enrolled in two courses at the University and had been present at least to write the examinations.

We have already found that the student mislead the Panel with respect to "problems" with the connection on Skype failing just before the submissions on penalty. The student was given an opportunity to move to reopen the penalty portion. She did not avail herself of the opportunity.

There has been no contradictory evidence or explanation which would enable us to conclude the offence was a lapse of judgement of a person otherwise of good character.

The student denied her dishonesty throughout the hearing. The offence was calculated. Great care was taken to present the additions to be as seamless as possible. There was no evidence of any mitigating factors or extenuating circumstances.

We regrettably conclude the student turns to dishonest conduct when it appears it will advance her position. There is no basis on which we can conclude that she is unlikely to commit similar misconduct in the future.

Falsifying an examination in order to achieve undeserved credit is a very serious offence. The University relies on the integrity of its students to maintain its own standards and its institutional integrity.

We have reviewed the decisions provided to us where similar serious misconduct resulted in a lengthy suspension rather than a recommendation for expulsion. In each case, there were some distinguishing features which favoured the student. In *University of Toronto and Mr.A.K.*, May 7, 2001, the student pled guilty and there was a joint submission on penalty. In *University of Toronto and Mr. L.,* March 9 2000, the student pled guilty and the Panel concluded there was a likelihood of rehabilitation. Unfortunately, there were no similar mitigating factors in this case.

In our view the appropriate penalty is,

a) A grade of zero in CLA203H;

b) A recommendation to Governing Council the student be expelled;

c) A five year suspension pending the consideration of the recommendation by Governing Council.

d) The case is to be reported to the Provost who may publish it in accordance with the Code without the use of the student's name.

Dated this 14th day of August, 2009

Janet E Minor

Janet E. Minor, Chair