

THE UNIVERSITY OF TORONTO
The University Tribunal
Trial Division

IN THE MATTER of charges of academic dishonesty against made on August 7, 2008 and November 21, 2008;

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:

UNIVERSITY OF TORONTO (the "University")

- and -

A [REDACTED] A [REDACTED]

Hearing Date: December 9, 2009

Members of the Panel:

Ms. Laura Trachuk, Barrister and Solicitor, Chair
Professor Graham Trope, Department of Ophthalmology and Vision Sciences,
Faculty of Medicine, Faculty Member
Mr. Adil D'Sousa, Student Member

Appearances:

Mr. William Trudell, Barrister and Solicitor, Counsel for Mr. A [REDACTED] A [REDACTED]
Ms. Linda Rothstein, Discipline Counsel for the University of Toronto, Paliare
Roland Barristers
Ms. Lily Harmer, Assistant Discipline Counsel for the University of Toronto,
Paliare Roland Barristers

In Attendance:

Mr. A [REDACTED] A [REDACTED], the Student
Ms. Natalie Ramtahal, Coordinator, Appeals, Discipline and Faculty Grievances,
Office of the Governing Council

DECISION

[1] A hearing of the Trial Division of the University Tribunal was convened on December 9, 2009 to consider sanctions against A█████ A█████ under the *University of Toronto's Code of Behaviour on Academic Matters* (the "Code"). Two prior decisions have been issued with respect to this matter. A preliminary decision which dealt with a challenge to the panel's jurisdiction was issued on January 14, 2009. A second decision finding Mr. A█████ guilty of several offences under the Code was issued on October 9, 2009. This decision provides supplementary reasons for the sanctions imposed on Mr. A█████ at the hearing on December 9, 2009.

Charges

[2] At a hearing held on September 10, 2009, Mr. A█████ pled guilty to the following charges:

(i) On or about April 23, 2008, you knowingly forged or in any other way altered or falsified any academic record or uttered, circulated or made use of any such forged, altered or falsified record, whether the record be in print or electronic form, namely the final exam submitted by N█████ A█████ in MGTC03H – Principles of Finance, contrary to section B.I.3.(a) of the *Code*.

(ii) On or about November 29, 2007, you knowingly forged or in any other way altered or falsified any academic record or uttered, circulated or made use of any such forged, altered or falsified record, whether the record be in print or electronic form, namely the marks for the mid-term exam submitted by N█████ A█████ in MGTB03H – Management Accounting, contrary to section B.I.3.(a) of the *Code*.

(iii) On or about December 10, 2007, you knowingly forged or in any other way altered or falsified any academic record or uttered, circulated or made use of any such forged, altered or falsified record, whether the record be in print or electronic form, namely the marks for the final exam submitted by N█████ A█████ in MGTB03H – Management Accounting, contrary to section B.I.3.(a) of the *Code*.

[3] In the decision dated October 9, 2009, the Tribunal accepted Mr. A█████'s plea and found him guilty of the above charges.

Sanctions

[4] A hearing was convened on December 9, 2009 to consider the sanctions which should be imposed upon Mr. A [REDACTED] for the above offences. The University was seeking expulsion and Mr. A [REDACTED] was asking for a lesser penalty. At the conclusion of that hearing the Tribunal made the following comments and imposed the following sanctions:

We have considered the submissions of the University and Mr. A [REDACTED]. The offences committed by Mr. A [REDACTED] are, as he acknowledges, extremely serious. He held a position of trust that he abused on three occasions. It is absolutely fundamental that students at this University have confidence in the impartiality of those assigned to assess them. Mr. A [REDACTED]'s actions profoundly undermine that necessity. We therefore did consider the penalty of expulsion. However, we also believe that Mr. A [REDACTED] has the potential for rehabilitation. We are concerned that we did not hear his testimony on this issue. Nevertheless, we believe that the record we do have before us today in addition to the testimony and materials from last day, allow us to conclude that Mr. A [REDACTED] can be rehabilitated and should not be precluded forever from graduating from the University of Toronto. Nevertheless, a strong message needs to be sent to the community that such conduct will lead to very serious sanctions. We therefore consider it appropriate that Mr. A [REDACTED] be suspended from the University until April 2013. That will, in effect, mean that Mr. A [REDACTED] will have been prevented from graduating from the University for five years. We consider that to be a penalty which reflects the seriousness of the offence and the necessity for deterrence balanced with the principle of rehabilitation. We therefore order as follows:

1. A [REDACTED] A [REDACTED] will be suspended from the University from October 9, 2009 until April 30, 2013.
2. The suspension will be recorded on his academic record for that period of time.
3. This decision will be reported to the Provost for publication with the name of the student withheld.

[5] The panel advised the parties that further written reasons for the decision would follow.

[6] In an early decision of the Appeals Tribunal, Mr. John Sopinka described the approach to be used in considering sanctions for Code offences. He said "The classical components of enlightened punishment are reformation, deterrence and

protection of the public.” Mr. Sopinka also proposed the following useful list of factors to be considered in applying those components:

- 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

[7] That approach has been followed in numerous subsequent decisions and was applied by the panel in this case. The panel was concerned that it did not hear from Mr. A█████ himself during the sanctions part of the proceeding.

[8] However, we were provided with a number of documents attesting to Mr. A█████'s remorse and good character. It was apparent that he had been straightforward with the individuals who wrote the letters about his actions and had even given them the ASF to read. He has been doing volunteer work and had been forthright about these offences when he was applying for the position. Mr. A█████'s academic record is admirable and he has no prior Code offences.

[9] The panel also took into account the very serious nature of the offences. Mr. A█████ accepted teaching assistant positions in courses in which his brother was enrolled. He abused the privileged position of trust he held as a teaching assistant to improve his brother's marks on three occasions. Furthermore, he did not own up to the offences when he was first confronted. However, he did subsequently acknowledge the offences, agree to the ASF and plead guilty to the charges. That demonstrated that he did reach an understanding of the seriousness of his actions and his cooperation saved everyone the time and expense of a trial.

[10] The panel was very cognizant of the detriment to the University occasioned by Mr. A█████'s offences as well as the need to deter other students, particularly teaching assistants, from abusing positions of trust. The teaching faculty must be able to rely upon their teaching assistants implicitly. Furthermore, it is grossly unfair to the other students for a teaching assistant to use his position to give credit to a student who has not earned it. The University's reputation is synonymous with the integrity of the credits earned by its students. Any time credit is given where it is not due that reputation is threatened. Mr. A█████'s actions attacked the promise the University makes to its students that they will be evaluated impartially and to the world that its students have truly earned the marks and credits on their transcripts.


[11] After considering all of the above factors, the panel determined that a very significant sanction should be imposed on Mr. A█████. It seriously considered the

option of recommending expulsion. However, the panel ultimately decided that preventing Mr. A [REDACTED] from graduating for five years would achieve the goals of reformation, deterrence and protection of the public. The greatest penalty the Tribunal can impose short of expulsion is suspension for five years. In this case, Mr. A [REDACTED] had finished his course work and was ready to graduate when his offences were discovered in April 2008. As he was charged with the offences he has not been able to graduate since then. He has been prevented from proceeding with his dream of becoming an accountant, a career which may remain forever out of his reach now. Therefore, by imposing a suspension until April 2013, the panel effectively suspended Mr. A [REDACTED] for five years. That is a very significant sanction which will convey the message that such breaches of trust will not be tolerated.

[12] The panel decided not to recommend expulsion because Mr. A [REDACTED] did not act for his own benefit. This distinguished Mr. A [REDACTED]'s actions from those of Mr. S.L. in the recent decision of *The University of Toronto and S.L.* (January 21, 2010) in which a teaching assistant provided answers to students for money on several occasions. Mr. A [REDACTED]'s situation is also distinguishable from the University of Toronto and M.C. (July 8, 2008), in which a student with access to the University's computer system abused her position of trust to improve her own transcript in such a manner that it could never be discovered. Mr. A [REDACTED] committed the violations of the Code to assist his brother. There is no question that Mr. A [REDACTED]'s offences were extremely serious. It is understandable that the University was seeking expulsion in the circumstances. However, the panel decided that the suspension would provide the necessary deterrence and that there was little likelihood of the offence being repeated. Unlike Mr. S.L., the panel considered it unlikely that Mr. A [REDACTED] would abuse a position of trust in the future. Finally, and most significantly in this case, the panel accepted that Mr. A [REDACTED] could be rehabilitated. It decided that he deserved to have another chance. That decision was also informed by the fact that he did not act for his own benefit.

[13] For all of the above reasons the panel imposed the sanctions set out in paragraph [4] above.

Dated at Toronto, January 29, 2010



Ms. Laura Trachuk for the panel
Mr. Graham Trope
Mr. Adil D'Sousa