**DISCIPLINE APPEALS BOARD**
**UNIVERSITY OF TORONTO**

**IN THE MATTER OF** an appeal by C[redacted] A[redacted] M[redacted] from findings against him by The University Tribunal of the University of Toronto of academic dishonesty and an appeal by C[redacted] A[redacted] M[redacted] against the imposition of sanctions and penalties imposed in consequence thereof;

**AND IN THE MATTER OF** charges of academic dishonesty made on July 19, 2012;

**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**

Respondent

and

**C[redacted] A[redacted] M[redacted]**

Appellant

REASONS FOR DECISION

**Appeal hearing date**: December 3, 2013

**Members of the Discipline Appeal Board:**

Ms. Patricia D.S. Jackson, Chair
Ms. Beth Martin, Student Panel Member
Professor Elizabeth Peter, Faculty Panel Member
Mr. Michael Dick, Student Panel Member

**Appearances:**

Mr. David B. Cousins, for the Appellant C[redacted] A[redacted] M[redacted]
Mr. Robert A. Centa and Ms. Tina Lee for the Respondent, the University of Toronto

**Parties in attendance:**

Mr. C[redacted] A[redacted] M[redacted]

## REASONS FOR DECISION

1. Mr. M[redacted] ("the Student") was charged and convicted of the following academic offence:

> On or April 3, 2012, you knowingly engaged in a form of a cheating, academic dishonesty misconduct, fraud or misrepresentation in order to obtain academic credit or other academic advantage of any kind, by altering and submitting a document that you claimed was your examination for Class Test 1 in the Course, contrary to Section B.1.3(b) of the Code.

2. The Panel hearing the case imposed the following sanctions:

(a) a final grade of zero in the Course;

(b) a suspension from the University for a period not to exceed 5 years from the date of the Panel's order or until the Governing Council makes its decision on expulsion, whichever comes first;

(c) a recommendation to the President of the University that he recommend to the Governing Council that the Student be expelled from the University; and

(d) that the case be reported to the Provost, with the Student's name withheld, for publication of a notice of the decision of the Tribunal and the sanction imposed.

3. The Student appeals from the sentence imposed, and further seeks to introduce further evidence on the appeal.

4. In summary, the Student asserts that the sanction imposed was excessively harsh and severe having regard to:

(a) the Panel not being apprised of his personal circumstances, antecedents and prospects;

(b) his ineptitude and lack of expertise in attempting to defend himself;

(c) his exercise of his right to a hearing on the issues of his guilt;

(d) his position that he was not accusing or blaming anyone for his situation;

(e) that although assisted by counsel, he was not in fact represented by counsel; and

(f) his infraction concerned a test representing 5% of the total mark in the Course and in the absence of any mark on the test he would still have passed the Course.

5. The Student asks that the recommendation for expulsion be quashed, that he be assigned a mark of zero in the Course and the balance of the penalties imposed be quashed or reduced.

6. The Student has abandoned his appeal of the conviction. That conviction was based on the facts set forth below.

7. The Student was enrolled in ECE318 - Fundamentals of Optics (the "Course"). In February of 2012 a class test, worth 5% of the final mark, was administered. The Student did not attend or write the test. A student who subsequently dropped the Course did write the test and received 20/20 or 100%.

8. After the tests had been returned, the Student approached the Professor with the assertion that there had been an error with respect to the recording of his test results, and that rather than the zero he was recorded as having received he in fact got 20/20. He asked the Professor to correct the mark from zero to 20 and showed him a copy of the examination paper. The test

paper the Student gave the Professor was the one written by the student who had dropped the Course after obtaining 100% in the test. The Student had changed the name on the test to make it appear to be his own.

9. A subsequent meeting was held among the Professor, the Student and the Dean's designate to discuss these events. The Student was aware that he could bring someone to the meeting but chose not to. He was advised that notes would be taken and could be used at a later time. At that meeting, the Student admitted the offence. He was told that a sanction would be imposed, but at that meeting was not told what the sanction would be.

10. Thereafter the Dean's designate wrote to the Student to advise that on the basis of the facts, including the fact that this was his second academic offence (the first is described more fully below) the sanction for the offence would be:

(a) a mark of zero in the Course;

(b) the placing of the Student's name on an offence database as a second offender with a copy of the sanction letter in his student file;

(c) no official recording of the sanction on his academic transcript.

11. After receiving this letter, the Student decided to withdraw his admission and the charges were laid that led to the hearing below.

**The Hearing on Liability**

12. The Student was originally represented by counsel including at a settlement conference held before a different Tribunal Co-chair. Although the Student represented himself at the

hearing, his previous counsel attended the portion of the below hearing that considered whether the Student had committed an offence. Counsel said that he was there in case any issues with respect to previous communications had with himself as counsel became an issue, and also to consult with the Student if he required assistance. During the course of the hearing counsel did from time to time consult with the Student and on occasion made observations to the Tribunal, apparently designed to clarify the Student's position.

13. As the Student is not appealing the finding of guilt, we do not review in detail the evidence below upon which the panel below made its finding of guilt.

14. In summary, the evidence showed that the Student did not sign in at the test although the student who subsequently dropped the Course did. After the tests were returned, the Student approached the Professor on the basis that there had been an error in recording the test results and showed him a test paper that had received 20/20. The Professor examined the test paper and noticed that it looked like the name had been changed, a conclusion which was reinforced when he examined it with a magnifier. The test paper was subsequently examined by a Forensic Document Examiner who testified that she conducted a number of tests and concluded that underneath the Student's name, which had been entered in ink, was erased pencil writing which was consistent with the letters and student number of the student who had dropped the Course after receiving 100% on the test.

15. The Student's defence called in to question the University's evidence in a number of ways, including on the basis that the statements of recollection by the Professor and Teaching Assistants in the Course were not "proof", that copies of emails sent and received by the Student had been fabricated, and that the evidence based on those emails was equally fabricated. In

cross-examination and in argument the Student asserted that both the Teaching Assistant and Professor had made up or possessed bogus emails, and fabricated their evidence.

16. The Student testified in his own defence. He testified that he did not write the test, that he did not submit the 100% test written by another student as his own, that he was not the recipient of the emails from the Teaching Assistant and the Professor, and that he had not seen the emails, which he characterized as fabricated, until a week before the hearing.

17. He acknowledged attending the meeting with the professor and the Dean's designate, but said that he did not say that he had committed the offence but was saying "yes" because he wanted "to get out of it".

18. The Panel below did not believe the Student's evidence. It rejected his defence and found him guilty.

**The Hearing on Sanction**

19. When the hearing resumed for the consideration of sanction, the Student continued to represent himself, but no longer with the assistance of his previous counsel.

20. The University led evidence that showed that the Student had previously violated the Code of Behaviour on Academic Matters in the context in plagiarism and collaboration on two lab reports and a quiz during his first year. Although these were in fact three separate violations they occurred within a short period of time during the Student's first term and were treated as one concurrent first offence.

21. The letter sent to the Student recording these violations noted his assurance that a violation of the Code would never be repeated and determined on that basis that the penalty would be a mark of zero in each of the lab reports, a reduction of marks equal to a double zero for the quiz, and a letter documenting the incident in his student file but without official recording of the decision on his academic record. The letter concluded:

> "academic offences are extremely serious and constitute unacceptable behavior in the University and in the Faculty of Applied Science and Engineering. I want you to clearly understand that a second offence will result in more severe sanctions. As a student working towards becoming a professional engineer, you need to possess integrity and understand the ethics involved in order to succeed. I urge you to let this letter serve as a strong warning to you that any future academic work must be conducted in **full** accordance with the rules and regulations of the University." (Emphasis in the original.)

22. Following the University's evidence on sanction, the Student sought to introduce evidence which he described as relevant to the issue of his liability and not to sanction. The Panel was uncertain whether it had the jurisdiction to reconsider the liability portion of the hearing. However, the Panel concluded that even if it did it would not exercise its discretion to admit new materials given that a full hearing had already occurred, that the Student had had access to counsel at that hearing even though he was not represented by counsel, and that all of the information he wished to present to the Panel was in existence and available to him at the time of the initial hearing.

23. The Student advised that he had no evidence on the issue of sanction and was not going to talk about the issue of sanction since he disagreed so strongly with the decision of the Panel.

24. The University submitted the offence was very serious, planned and deliberate and that the student had demonstrated that he was dishonest, would be dishonest to obtain an advantage

for himself, and was not afraid to point fingers and implicate others, including by making serious unfounded allegations against University members. The University further submitted that the likelihood of repetition of the offence was high given the previous three code violations and that there was nothing to suggest the student had any insight or remorse to deceive.

25. The Panel rejected the submission of the University that it was an aggravating factor for the Student to suggest in his defence that there was a "systems error". The panel concluded, in our view correctly, that students must be able to bring forward questions about the systems in place without fear of these questions being cast as aggravating factors.

26. The Panel otherwise accepted the submissions of the University and imposed the sanctions set forth in paragraph 2 of this Decision. In doing so, it noted:

> The Panel concluded that the University's request in terms of sanctions was reasonable and appropriate. The Panel found the case of *The University of Toronto and Ms. N[redacted] B[redacted]*[1] to be most compelling and wishes to underscore the seriousness of the offence…
>
> …The Panel was concerned that [the Student] did implicate both…the Teaching Assistant and [the] Professor…to a degree by suggesting that they had made up or possessed "bogus" emails. In addition, [the Student's] offence was extremely serious, and in the words of *B[redacted]*, calculated; no mitigating factors were presented to the Panel; the act was intentional as contrasted to some of the plagiarism cases brought before this Tribunal; and the degree of planning and deliberation was high. Given these factors and [the Student's] history, the Panel was of the view that the order requested was necessary and appropriate, and made that order on May 2, 2013.

**Request to Introduce New Evidence on the Appeal**

27. On this appeal, the Student sought to introduce further evidence relating to:

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[1] *In the matter of the University of Toronto and N[redacted] B[redacted]*, Case#538, August 14, 2009

(a) his immigration to Canada at the age of 18;

(b) the indebtedness of his family, to the extent of approximately $125,000, arising from the cost of his education at the University;

(c) his academic achievements before his admission to the University and while studying at the University. (During high school he was among the top students, was elected Head Boy, and was a recipient of a number of awards. He was accepted into a number of universities and while at the University of Toronto and until the events in issue maintained a 71% average. Although unable to pursue graduate work as a result of receiving zero in the Course, he had previously been accepted for an MSc program in Physics at the University College of London);

(d) his involvement in and completion of a further course in the fall of 2012 with the result that he had successfully completed all course work required for the granting of his degree;

(e) his employment history prior to the offence;

(f) that although he understood that by proceeding to a hearing he risked consequences more severe than a zero in the Course he had no real appreciation that the penalty could escalate as it had; and

(g) his explanation of the circumstances of the first three concurrent violations of the Code.

28. Section E.8 of the Code permits this Board to receive fresh evidence in exceptional circumstances:

> An appeal shall not be a trial de novo, but in the circumstances which it considers to be exceptional, the Discipline Appeals Board may allow the introduction of further evidence on appeal which was not be available or was not adduced at trial, in such manner and upon such terms as the members of the Board hearing the appeal may direct.

29. This Board has previously noted the criteria associated with the well-established test for admitting fresh evidence on appeal, namely whether or not the proposed evidence:

(a) was available at the time of the hearing with the exercise of due diligence;

(b) is relevant to a potentially decisive issue at first instance;

(c) is credible; and

(d) could, if believed and taken together with the rest of the evidence reasonably to be expected to have affected the initial decision.

30. As this Board said in the *M* [redacted] case[2], it is not necessary in every case that a party seeking to adduce fresh evidence on an appeal satisfy *all* of these criteria to be successful. In the first place, section E.8 of the Code appears to contemplate a greater level of discretion in the introduction of new evidence that exists in other forums. As well, the Supreme Court of Canada has determined that it may not always be necessary to show that the evidence was not available

[2] *In the matter of the University of Toronto DAB and M* [redacted] *M* [redacted], Case#543, April 14, 2011

at the time of the hearing by the exercise of due diligence, particularly where there is a reasonable explanation for the failure to adduce the evidence. [3]

31. As in the *M*[redacted], case, though, we do think it appropriate to consider these for criteria in deciding whether to admit the new evidence.

32. All of the evidence the Student proposes to introduce on appeal was available to him at the time of the hearing on sanction and his affidavit does not explain why he did not leave the evidence at the sanctioning phase of the hearing.

33. It is true, as his counsel submits, that he was unrepresented by counsel at the hearing, but he had been represented until shortly before the hearing and was accompanied by his former counsel to the first portion of the hearing on liability. Moreover, the Panel went to great lengths to explain the process to the Student and to invite him to call any evidence relevant to sanction.

34. Students have the right to be represented by counsel at Tribunal hearings. However, where a student makes a tactical or strategic decision to appear without counsel, that decision should not be used as the basis for the introduction of new evidence on an appeal. Indeed, to do so would create an incentive for a student to appear unrepresented at the Tribunal in order to preserve broader rights on a subsequent appeal.

35. As to potential relevance, for the purposes of this decision, we accept the University's admission that the evidence might have been found by the Tribunal below to be relevant and therefore admissible.

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[3] *R. v. J.A.A.*, 2011 S.C.C. 17

36. Finally, we assume for purposes of this issue that the evidence the Student seeks to admit is generally credible.

37. However, we do not consider that the evidence could or should, when taken with the rest of the evidence reasonably be expected to have affected the final decision.

38. The Student's status as an immigrant is an irrelevant factor to the question of sanction. We agree with the University that it would be an error in principle to impose either a lesser or more severe sanction based on a student's immigration status.

39. Equally, the expense associated with attending the University, and the Student's source of funding for that attendance is not an appropriate factor on which to base a sanctioning decision.

40. While the proposed new evidence indicates a history of academic achievement before admission to the University, that alone is not sufficient to affect sanction. Indeed in general the students gain admission to the University by virtue of such strong academic performance.

41. The evidence of the Student's employment history merely indicates that he was employed for approximately a year and a half as a Hardware Qualification Engineer. It says nothing about his working standards, ethics or achievements and is a bare record of employment. We do not consider that it could reasonably be expected to affect the sanctioning outcome at the hearing below.

42. The Student proposes as new evidence his failure to appreciate that by withdrawing his admission of guilt and seeking a hearing he might be subject to a drastic escalation in penalty such as that which occurred. However, this must be taken in light of his acknowledgement on this appeal that he understood he risked a more serious penalty. Moreover, the Provost's

Guidelines on Sanctions, which form part of the Code, while noting that the circumstances of each case will be taken into account also contain as "suggested guidelines"

> "3. Where a student has been previously convicted under the Code and commits another offence, the recommended sanction shall be from suspension for two years to expulsion from the University.
>
> ....6. For impersonating, or having an individual personate on a test or examination, the recommended sanction shall be expulsion from the University"

43. It is important to emphasize that these are only guidelines, and that the sanction imposed in any particular case will be made by the panel hearing the case and will depend upon the circumstances of that case. However, the Guidelines were a clear indication to the Student the more serious sanction that might result. Even if the Student hoped otherwise or failed to anticipate that he would in fact be subject to such serious sanction, we do not consider that that by itself would be a basis upon which the hearing below would have come to a different conclusion.

44. The Student's evidence with respect to his three prior violations of the Code does not detract from the fact that he did in fact violate the Code. Moreover, although because of the circumstances they were treated as only one offence, his attention was drawn to the existence of the Code and its importance, and to the seriousness of any future violation of the Code. Importantly, one of the reasons for the sanction imposed on that first offence was the Student's assurance that a violation of the Code would never be repeated. In the circumstances, we cannot conclude that the Student's evidence respecting the circumstances of this prior offence could reasonably be expected to have change the sanction imposed.

45. Finally, the only additional evidence proposed by the student with respect to his academic achievements during university that was not before the Panel below is the transcript record of his completion of a further academic course in the fall of 2012, evidencing the completion of all of the course requirements for graduation. While it does appear that the transcript that evidenced the completion of that final course was before the Panel below, it is evident from their reasons with respect to sanction that they proceeded on the basis of the student's assertion that he had completed all of the course requirements and would otherwise be eligible for his degree. In the circumstances, we cannot conclude that the addition of the transcript itself would have affected the decision below.

46. For all of these reasons, we do not consider that it is appropriate that any of the evidence described should be considered on the appeal, or that it would influence the result of the appeal if it were.

**Standard of Review on Appeal**

47. Section E.4 of the Code provides the right of appeal from a sanction decision of a Panel to the Discipline Appeals Board.

48. The Discipline Appeals Board has wide powers to modify a sanction imposed and may impose any sanction that it sees fit that the Panel below could have imposed. Section E.7 provides that the Board shall have the power 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".

49. Thus, although the appeal does not proceed as a hearing *de novo*, the Appeals Board has a very broad jurisdiction. Indeed, decisions of the Board over several years have recognized that the Appeals Board has very broad powers and little obligation to show deference to the decision of the Panel below.

50. *C*[redacted], a 1976 decision of the Appeals Board recognized as the leading decision on sentencing principles, holds that it is appropriate for an Appeals Board panel to vary a sanction if it believes the sanction imposed below to be wrong. Other Appeals Board decisions have held that a panel has authority to quash or modify a Tribunal decision where there are errors of law and significant errors of fact.[5]

51. Importantly, in the application of these principles, is a concern to ensure that there is some order of consistency in sanction, that like penalties are opposed for like offences, and that direction is given in that respect. As the Board said in *S*[redacted], it would modify a sanction if it "concluded that the sanction imposed in this case is materially inconsistent with the weight of other Tribunal and appeal decisions".[6]

**The Sanction Imposed**

52. The primary guidelines with respect to determining penalty are well established and set forth in the *C*[redacted] case:

(a) the character of the person charged;

(b) the likelihood of repetition of the offence;

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[4] *In the matter of the University of Toronto and C*[redacted], Case#1976/77-3, November 5, 1976, p. 3.
[5] *In the matter of the University of Toronto and S*[redacted], Case #451, August 24, 2007
[6] *S*[redacted] para. 48.

(c) the nature of the offence committed;

(d) any extenuating circumstances;

(e) the detriment to the University occasioned by the offence; and

(f) the need to deter others from committing a similar offence.[7]

53. There are a number of aspects of the offence in this case which indicate that it is both very serious and detrimental to the University. In the first place, this is a second offence, committed by a student who has previously assured the University that he would never again violate the Code. It was a planned and deliberate offence which required persistence in its execution from the acquisition and falsification of the original test through the written and oral communications with both the Teaching Assistant and the Professor. Finally, the offence was committed by a fourth year student who is expected to have acquired a solid understanding of and commitment to the academic integrity of the institution in which he has studied and who is pursuing a degree in a profession with standards of integrity that he is expected to be cognizant of. That he would commit this level of dishonest conduct at that stage of his academic career for a paper worth 5 percent of the final mark is also troubling.

54. However, in this case, unlike in most others that come before the Tribunal, the University had engaged in a serious examination of the appropriate penalty for the offence of this seriousness, and had committed to what that was -- a mark of zero in the Course. There is no question that in making this assessment the University has access to, and should have regard to, the sanctions imposed in previous cases including decided by the Tribunal.

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[7] C[redacted], p. 12.

55. Because of the foregoing, the issue in this case is not whether the seriousness of the offence as augmented by the Student's conduct at the hearing warrants expulsion, but the narrower and more difficult question of whether the Student's refusal to acknowledge the offence and his conduct at the hearing warrants an escalation from the zero in the Course the University was previously prepared to impose for an offence of this seriousness. Our answer is to the latter question, not the former, and it is that we do not think that it does.

56. It is well established in the Tribunal's jurisprudence, and the Student in this case was advised that penalties imposed at the decanal level when a student admits an offence, are more lenient than those imposed after a contested hearing at the Tribunal. There are sound reasons for this. A student who acknowledges his or her fault and accepts the penalty reflects significantly on the assessment of the student's character, remorse and the likelihood of repetition of the offence. In other words, the more serious penalties imposed are a result of the application of the [redacted] factors, not as an arbitrary penalty for the Student seeking a hearing.

57. However, it is important that the sanction imposed upon conviction at the end of a contested hearing bear a rational relationship to the sanction previously established for an admission of the offence having regard to the impact of the conduct of the hearing on the factors that legitimately affect the sanctioning process. In noting this, we are not deferring to the decision at the decanal level, but holding the University to a consistent position in its dealings with the Student and in its assessment of the nature of the offence he committed.

58. In this case, since the seriousness of the offence and the detriment to the University (as assessed by the University at the decanal level) was met by a sanction of zero in the Course, the issue raised in this case (and which did not arise in most other cases to which the parties referred)

is whether the significant escalation in the sentence imposed by the Panel below is explicable in terms of the factors is appropriate on the basis of the remaining *C*[redacted] factors. The nature of the offence and its seriousness did not change as a result of the Student going to a hearing, although the impact of the Student's conduct at the hearing had a marked impact on the assessment of the other *C*[redacted] factors.

59. We agree that as a result of the hearing a significant escalation in penalty was warranted. There was no evidence before the Panel: that the Student was of good character; of any extenuating circumstances that would support a mitigated or reduced sanction; or to suggest that he had any insight into his acts of academic misconduct or any remorse for those acts. There was no indication of a basis upon which the Panel could conclude that the likelihood of repetition of the offence was small, other than the assertion that the Student had completed the courses required for his degree.

60. We agree that in weighing the *C*[redacted] factors it was appropriate for the Panel to have regard to the Student's conduct at the hearing, including his evidence denying the actions that gave rise to the conviction, his allegations against others and his dishonesty. We do not differ from the Panel on either their assessment of these actions, or their seriousness. We also agree with the Panel's assessment that in all of these circumstances the application of the *C*[redacted] factors warranted a very serious sanction, and one that is very significantly more serious than the penalty that would have been imposed at the decanal level.

61. We agree therefore that for all of these reasons, a serious escalation in the sanction, beyond simply a zero in the Course, was appropriate.

62. Where we part company from the Panel is on the question of whether these factors as they played out in the conduct of this hearing justify the escalation from a mark of zero to a recommendation of expulsion. In most cases, where expulsion has been recommended by the Tribunal, a substantial factor in the assessment of the appropriate sanction has been the seriousness of the offence and the detriment to the University — quite apart from the Student's conduct at the hearing. Here, those factors have been adequately addressed, in the University's first assessment, by a mark of zero. The Panel below did not specifically address whether the remaining *C*[redacted] factors alone justified the escalation in penalty. Indeed, in "underscoring the seriousness of the offence" as part of their decision to recommend expulsion, they appear to have overlooked the fact that the University had already determined the appropriate sanction for an offence of this seriousness was a mark of zero.

63. We have specifically addressed this point, and indeed given it anxious consideration. Our conclusion is that the Student's conduct and testimony at the hearing below does warrant a serious escalation in the sanction to be imposed for this offence. We do not consider, though, that it rises to warranting a recommendation for expulsion.

64. In coming to this conclusion we have considered the *B*[redacted] case relied upon by the Panel. However, *B*[redacted] was not a case where the University had already determined that a sanction less than expulsion would appropriately address the seriousness of the offence. Indeed, in that case the seriousness of the offence was one of the reasons specifically relied upon as justifying expulsion. Moreover, in that case the student had repeatedly acted to obstruct the Tribunal's proceedings, including by insisting on a long adjournment on the basis that she was out of the country when she was not, and then by falsely and repeatedly representing that the Skype

connection through which she was participating in the hearing had ceased to function. We consider that these, amongst other factors, make the *B* [redacted] case distinguishable.

65. We therefore conclude as follows:

(a) the Student's completely unacceptable conduct at the hearing requires that the penalty imposed be significantly more serious than the University was prepared to impose had he admitted to the offence at the decanal level; but

(b) the requirement for a rational connection between the penalty the University had initially determined was appropriate for this offence and the penalty ultimately imposed for the very same offence as influenced by the conduct at the hearing precludes a penalty of expulsion.

66. In the result, we accordingly allow the appeal to the extent that it relates to the recommendation for expulsion, with the result that the following sanctions are imposed:

(a) a final grade of zero in the Course;

(b) a suspension from the University for a period of five years from the date of the Panel's order, such suspension to be permanently recorded on the student's academic record; and

(c) that the case be reported to the Provost, with the Student's name withheld, for publication of a noted decision of the Tribunal and the sanction imposed.

67. We are grateful to counsel for their valuable assistance in this difficult matter.

June 3rd, 2014.

Patricia D.S. Jackson, Chair

Beth Martin, Student Panel Member

Michael Dick, Student Panel Member

**DISSENT**

1. I have had the opportunity to review the Reasons for Decision of the Senior Chair. For the reasons that follow I do not agree with her conclusion or proposed disposition of the appeal.

2. The Senior Chair asks whether the Student's refusal to acknowledge the offence and his conduct at the hearing warrants an escalation from a zero in the Course to an expulsion. I believe it does for the following reasons:

3. Because of the very broad jurisdiction of the Appeals Board, it has little obligation to show deference to the Tribunal below. Arguably, therefore, it has even less obligation to show deference to decisions made at a decanal level. Relying so heavily on a decision made at the decanal level could set an unfortunate precedent whereby overly lenient, or overly harsh, penalties made at the decanal level could unduly influence the decision-making at both the level of the Tribunal and the Appeals Board.

4. In *I*[redacted][1], the relationship between the Appeals Board and the Tribunal is further clarified in the following paragraph: "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 there will be transparency and uniformity in the application of sentencing principles to the particular facts of any given case." The key point of responsibility in this regard for the Appeals Board, therefore, is consistency in sanction with previous cases. The Appeals Board, given its broad oversight and access to

[1] *In the matter of the University of Toronto and A*[redacted] Case#606, February 4, 2012

information regarding previous sanctions has the wide-ranging perspective, not readily available at the decanal level, to ensure this kind of consistency. Therefore, little weight should be given to decanal decisions.

5. Mr. M's case has similarities with *P*[2] in which Mr. P falsified an academic record, lied about petitioning to have papers remarked, did not come to the hearing and tried to implicate an innocent person. The letter to Mr. P stated, "By trying to implicate this innocent person you could have destroyed her career. This makes your offence particularly egregious and is an indication of your character." The Panel recommended expulsion. Mr. M implicated several innocent people, including Professor Aitchison, Mr. Wong, Mr. Munir, and the University itself, demonstrating his lack of honesty, extreme self-interest, and lack of remorse.

6. The Senior Chair has argued that the *B*[3] case is distinguishable because the University had not "already determined that a sanction less than expulsion would appropriately address the seriousness of the offence." Again, this factor should hold little weight and only arose in Mr. M's case because Mr. M first admitted to the offence and later recanted.

7. In addition, the Senior Chair also argued that *B* was distinguishable because "in that case the student had repeatedly acted to obstruct and delay the Tribunal's proceedings." While it is true, that Mr. M did not obstruct or delay the proceedings, his behaviour, like B's, demonstrated a lack of regard for the university's processes and a lack of credibility. Mr. M

[2] *In the matter of the University of Toronto and A P*, Case#768, May 20, 2005
[3] *B*

in his initial meeting with Professor Aitchison and Professor Carter, the Dean's Designate, admitted to the offense simply 'to get it over with" and "out of the way". During the Tribunal Mr. M[redacted] demonstrated a complete lack of credibility. He was dishonest throughout and denied the offense under oath. The transcripts indicate that he needed to be redirected frequently, perhaps as result of his inexperience in such matters, or perhaps as a result of his lack of regard for the proceedings.

8. Strictly speaking the credibility of the evidence presented by Mr. M[redacted] is not at issue, because all members of the Tribunal and the Appeals Board believe it to be false. Nevertheless, because the Tribunal had the opportunity to witness Mr. M[redacted]'s behaviour first hand during the Trial, their judgment of his character and credibility is most reliable. In L[redacted], the relationship between the Tribunal and the Appeals Board in this regard is described well in the following: "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 demeanour and quality of evidence of a witness or witnesses." The Tribunal witnessed Mr. M[redacted]'s behaviour firsthand during the February and May hearings of 2013 and rightly concluded that "he was dishonest and would be dishonest to obtain an advantage for himself, that he was not afraid to point fingers and implicate others, and that he made serious, unfounded allegations again the University in closing submissions."

9. With respect to the remaining C[redacted][4] factors, the nature of the offense was also serious given that "it was planned and deliberate." Since this was his second offence, with the first offence consisting of three concurrent offences, the likelihood of repetition is high. He showed no remorse and there were no extenuating circumstances provided that would warrant a more lenient sanction.

10. For these reasons I would dismiss the appeal.

Elizabeth Peter, Faculty Panel Member

[4] C[redacted]