

February 8, 2008, at which time the Student denied making a re-grade request. During that February 8 meeting, the Student stated that the handwriting on both the exam booklet and the Post-It note was not his own and, furthermore, that the original booklet was at his home. Professor Liang was asked if the Student ever produced the original exam booklet, to which Professor Liang responded that he had not.

- [20] Professor Valaee testified that he found an examination booklet slid under his office door to which had been affixed a Post-It note from the Student asking that his mid-term examination be re-graded and his mark on CCNet be revised. Professor Valaee was asked to describe CCNet to which he responded that it is a web-based interaction application that allows instructors and students to communicate with one another. Typically, course materials, past tests and grades are uploaded to CCNet. Students can view their own grades, but not other students' grades. Students are not able to alter the grades posted to CCNet.
- [21] When Professor Valaee received the booklet and the re-request for a re-grade, he conferred with Professor Liang. Since Professor Liang was the course coordinator and was responsible for student grades, Professor Valaee explained that he had had no further dealings with the issue until his preparation for the Tribunal hearing.
- [22] Professor Gulak, the instructor for ECE334, was also called to testify before the Tribunal. He explained to the panel that the mid-term tests were worth 20% each. Professor Gulak testified that on December 21, 2007 he received an email from the Student's UTOR email account. In that email the Student indicated that there were discrepancies between the marks that he had attained on the test and those posted on CCNet. The Student wrote that he would drop off his mid-term test that day at Professor Gulak's office, so that the discrepancy could be corrected. Sometime between December 21, 2007 and when the University re-opened early in January 2008, the Student submitted his second mid-term test to Professor Gulak by sliding the test under Professor Gulak's office door. A Post-It note was affixed to the exam.
- [23] On January 21, 2008 the Student sent a second email message to Professor Gulak to inquire about his "mark update on CCNet". In this note the Student explained that he had had a kidney operation after the mid-term test and, so, was unable to pick-up his test until the last day of class in December 2007. For this reason, the Student explained, he had not been able to make the re-grade request until the end of the course.
- [24] Mr. Centa inquired whether Professor Gulak would have been able to alter the grade on CCNet at such a late date. Professor Gulak replied that it would not have been possible. The grade could only have been changed if the Student had submitted a petition to the Registrar's Office based on medical reasons.
- [25] On April 18, 2008 Professor Gulak prepared a "memo to file", which recounted the events in the case to date as he understood them. The memo records that the Student had attained 16.5 out of a possible 47 marks on the second mid-term test. It further records that the Student wrote on the Post-It note that he had actually earned 37 marks, not 16.5.

Finally, because of the significant discrepancy, Professor Gulak records that he “was suspicious that the test had been tampered with and the Student was committing an academic offence”. For this reason, Professor Gulak passed the matter along to Professor Grant Allen, Dean’s Designate in matters of academic misconduct.

- [26] The panel asked Professor Gulak if the answers written on the exam were, indeed, worth 37 out of 47 marks. Professor Gulak confirmed that, had the teaching assistants found the answers as they now appear before the panel, the Student would have earned 37 marks. Professor Gulak confessed that he could not account for the discrepancy between the answers as currently written and the 16.5 marks recorded on CCNet at the time of marking.
- [27] The panel then inquired into the method of marking. Professor Gulak explained that there were several TAs working on this course. Each TA was assigned one question to mark. This was done to ensure consistency of marking. Once a paper had been graded by all of the TAs, the total score was entered on to CCNet. Professor Gulak testified that scores for individual answers were not entered, only the total score for all answers.
- [28] Professor Grant Allen was also called to testify before the Tribunal. He was the Dean’s Designate in this matter and a Professor in the Chemical Engineering and Applied Chemistry Department and Vice-Dean of Undergraduate Affairs. Professor Allen testified he met with the Student on two separate occasions, specifically February 8 and April 14, 2008. Present at both meetings was Ms. Anna-Lee Potvin, who took notes. Professor Allen confirmed that Ms. Potvin’s notes were substantially in accordance with his independent recollection of those meetings. Mr. Centa sought to allow Professor Allen access to these notes as a means of refreshing his memory. The Chair permitted Professor Allen to access these notes within such limits. The notes were not entered as exhibits.
- [29] Professor Allen testified that ECE302 was the subject of the meeting held on February 8, 2008, while ECE334 was the subject of the second meeting held on April 14, 2008. Professor Allen explained that he began the February 8 meeting with the “Dean’s warning”, that is, he informed the Student of the meeting’s official nature, that he had a right to counsel, that he was not obliged to make an admission statement, but that if he did make any statements they could be used in evidence before the Tribunal. Professor Allen then ascertained that the Student understood these rights.
- [30] Upon being shown the exam booklet from ECE302, the Student disavowed the examination booklet, stating that it was not his booklet. The Student said that the handwriting was not his own. Instead, the Student claimed that the exam booklet was at his home. Professor Allen was asked if the Student ever returned with any other document to substantiate this claim, to which Professor Allen replied that he did not.
- [31] Professor Allen further testified that the Student disavowed an email sent to Professor Liang on January 21, 2008 from a gmail account in the Student’s name, in which the Student requested a mark update on CCNet for ECE302. The Student denied even

having a gmail account. When asked how the email came into existence, the Student claimed that another student created a gmail account using his name and sent the request to Professor Liang without his knowledge. The Student did not provide the name of the individual who he believed had done this.

- [32] At the meeting on April 14, 2008, Professor Allen repeated the "Dean's warning" to the Student, after which he showed the Student mid-term test 2 from ECE334. The Student denied that the document being shown to him was his own. When the Student was asked how the test booklet came to be submitted on his behalf, he explained that he had asked a friend to submit the test, since he had to be out of town. The Student claimed that he also asked his friend to send him an email to confirm that the test had been submitted. When asked if the Student had received the confirmatory email from his friend, he acknowledged that he had. The Student then stated that he emailed Professor Gulak, asking for a mark update.
- [33] Professor Allen was asked if the Student offered an explanation as to why the test that was submitted on his behalf by his friend was not, as the Student alleged, the original. Professor Allen replied that the Student provided a rather confusing account, in which he suggested that he had a friend who was ready to confess and that Professor Allen ought to investigate the Engineering Society. The Student alleged that a member of the Society did not like him and was trying to get him into trouble.
- [34] Professor Allen was asked if the Student identified the name of the friend who was willing to confess, to which he responded that the Student named another engineering student, Mr. A.M. Professor Allen testified that the Student did not return to his office with Mr. A.M. so that Mr. A.M. could confess, nor did the Student ever provide any further evidence to substantiate his explanation.
- [35] In concluding the second meeting, Professor Allen informed the Student that he would be receiving a letter regarding the allegation of misconduct in both ECE302 and ECE334. It was at this juncture that the Student implicated Mr. A.M. in the events associated with ECE302 also. Professor Allen confirmed that the Student never did admit to having committed an academic offence with respect to either course.
- [36] Prior to deliberation, discipline counsel provided the panel with a brief closing statement, in which he highlighted the burden and standard of proof required for the Tribunal to return a finding of guilt. Mr. Centa explained that the panel must be satisfied that the University has proven on a balance of probabilities, that is, that it is more likely than not, that the Student committed academic misconduct in ECE302 and ECE334. It was acknowledged by counsel that it is not possible to give an account of *how* the falsification of documents was accomplished, since it is impossible for the University to photocopy all exams prior to them being returned to Students. However, Mr. Centa argued, it is irrelevant to proving *that* the offence has occurred.

Decision of the Tribunal

- [37] The panel, after considering the evidence and submissions of discipline counsel, found the evidence to be overwhelming and, therefore, returned a finding of guilt on charges #1 and #3. As a result, discipline counsel withdrew the alternative charges #2 and #4.

Penalty Phase

- [38] The University submitted that the appropriate penalty in the circumstance was:
- i. A grade of zero in ECE302 and ECE334
 - ii. A four-year suspension from the University to commence from the date of the hearing
 - iii. A six-year notation on the Student's transcript to commence from the date of the hearing
 - iv. A report of the decision to the Provost for publication in the University's newspaper with the name of the Student withheld.
- [39] The University placed a Book of Authorities before the panel so that it might have an opportunity to review several decisions of other panels of the University Tribunal in similar cases. In particular, the panel reviewed the criteria for sanction first proposed by the late and former Mr. Justice Sopinka in the matter of the appeal of Mr. C. (November 5, 1976). According to these guidelines, the Tribunal should consider the following six criteria when deciding on an appropriate sanction:
- 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.
- [40] Mr. Centa acknowledged that the challenge for the panel is to consider sanction in the absence of submissions from the Student. The panel could glean nothing regarding the Student's character, except for the evidence presented against him. Moreover, there was no explanation of mitigating factors that might help the panel to understand the Student's behaviour. The latter is especially troubling in light of the academic promise shown by the Student in his first year of study.
- [41] Mr. Centa argued that what can be gleaned from the Student's non participation is his lack of insight and remorse. It is a failure to own up to one's responsibilities. This is in stark contrast to many other cases that come before the Tribunal in which the accused

pleads guilty and enters into an *Agreed Statement of Fact* and a *Joint Submission on Penalty*. In the absence of evidence of insight, the University seeks a significant suspension, in order to give the Student an opportunity to reflect on his behaviour and, hopefully, to rehabilitate the academic relationship that has been compromised.

- [42] Mr. Centa further argued that the detriment to the University, had the Student succeeded, cannot be overstated. In a competitive program the undermining of the University's evaluation system is extremely problematic. Furthermore, it is difficult to protect against such subversive behaviour. Tests are returned to students for good pedagogical reasons, so that they can learn from their mistakes. To abuse this pedagogical opportunity for one's own academic advantage threatens to undermine the University's mission.
- [43] The panel's attention was drawn to the case of Mr. S.B. (Nov. 14, 2007). In paragraphs 33-34 of that decision, the Tribunal provided an overview of its own case law and concluded that the norm for a serious breach of trust results in at least a two-year suspension. Mr. Centa argued that the misconduct in this case, which clearly required a great deal of premeditation and effort to execute, constitutes a serious breach of trust, not once but twice and, therefore, warrants a significant suspension. In effect, discipline counsel recommended to the panel that a two-year suspension be imposed for each infraction for a four-year suspension in total.
- [44] Discipline counsel concluded that the proposed sanction strikes the right balance: it provides the Student with the opportunity to return to the University; yet it also strongly denounces this type of behaviour, and sends the message to the Student as well as the community at large that such misconduct cannot and will not be tolerated by this University.

Sanction and Reasons

- [45] Following submissions about penalty, including the review of previous Tribunal sanctions, the panel deliberated. The panel concluded that the penalty requested by the University should be imposed, specifically:
- i. A grade of zero in ECE302 and ECE334
 - ii. A four-year suspension from the University to commence from the date of the hearing
 - iii. A six-year notation on the Student's transcript to commence from the date of the hearing
 - iv. A report of the decision to the Provost for publication in the University's newspaper with the name of the Student withheld.
- [46] The panel commented that it was disappointed that the Student had chosen not to participate in the discipline process. It noted that the Student had engaged in an on-going campaign of deception beyond just the original misdeed of falsifying documents. He disavowed submitting an examination booklet and a mid-term test that, on a balance of probabilities, the Tribunal found to be the Student's. He denied sending e-mail from his

own gmail account. He initially referred to his own kidney operation as a reason for a late regrade request, but later suggested that it was his mother's kidney operation. Worse, when confronted with the allegation of academic misconduct, he implicated and named a third party who was purportedly involved in the deception. This, in the panel's estimation, was a significant aggravating factor. While the Student was not being expelled from the University, his misconduct warranted the serious sanction requested by the University in the circumstances.

Dated this 5th day of May, 2009



Andrew Pinto, Co-Chair

THE UNIVERSITY TRIBUNAL
THE UNIVERSITY OF TORONTO

IN THE MATTER OF charges of academic dishonesty made on July 30, 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:

THE UNIVERSITY OF TORONTO

- and -

C [REDACTED] L [REDACTED]

Members of the Panel:

- Ms. Lisa Brownstone, Chair
- Professor Richard B. Day, Faculty Panel Member
- Mr. Mir Sadek Ali, Student Panel Member

Appearances:

- Mr. Robert Centa, Assistant Discipline Counsel
- Dr. Kristi Gourlay, Manager, Office of Student Academic Integrity
- Mr. Steve Frankel, Student Legal Representative
- Mr. C [REDACTED] L [REDACTED] Student

Preliminary

- [1] The Trial Division of the University Tribunal was convened on February 2, 2009 to consider charges under the University of Toronto *Code of Behaviour on Academic Matters, 1995* (the "Code") laid against the student by letter dated July 30, 2008 from Professor Edith Hillan, Vice-Provost, Academic.

Hearing on the Facts

[2] The two charges facing the student were the following:

- i. On or about March 27, 2008 you knowingly represented as your own, an idea or expression of an idea, and/or the work of another in a term paper titled "Radio; Transmission and Reception", which you submitted to fulfill the course requirements of PHY205 contrary to Section B.I.1(d) of the *Code*.
- ii. In the alternative, on or about March 27, 2008, you knowingly engaged in a form of cheating, academic dishonesty or misconduct, fraud or misrepresentation not otherwise described in the Code in order to obtain academic credit or other academic advantage of any kind in connection with a term paper titled "Radio; Transmission and Reception", which you submitted to fulfill the course requirements of PHY205, contrary to section B.I.3(b) of the Code.

[3] Particulars of the charges were as follows:

- i. In Winter 2008 you enrolled in PHY205 ("Course") and you were a student in the Course at all material times.
- ii. On or about March 27, 2008, you handed in a term paper titled "Radio; Transmission and Reception" to fulfill the Course requirements. This paper contained verbatim or nearly verbatim excerpts from websites and other sources. You knowingly failed to use quotation marks to indicate that you were quoting from another source. You knowingly failed to attribute appropriately these quotations to the sources from which you obtained them.

[4] Discipline counsel for the University, Mr. Centa, introduced an *Agreed Statement of Facts*, which, including its attachments, was entered as Exhibit 1. Mr. Centa provided an overview of Exhibit 1:

- i. In the Fall of 2004, the Student registered at the University of Toronto in the Faculty of Arts and Science.

- ii. In the Winter of 2008, the Student enrolled in PHY205, *Physics of Everyday Life*, taught by Professor Kaley Walker. The course requirements included an essay worth 20% of the final grade, to be submitted on March 26, 2008.
- iii. On March 27, 2008, the Student submitted an essay, entitled *Radio Essay*, to fulfill the essay requirement. The Student admits that the *Radio Essay* contains verbatim and nearly verbatim excerpts from unacknowledged sources, and that those excerpts were not attributed appropriately using quotation marks. The Student admits that the *Radio Essay* consisted almost entirely of plagiarized material. Almost all of the pages comprising the *Radio Essay* were taken directly from unacknowledged internet sources. The Student admits that he did not use quotation marks to indicate that he had taken the material directly from internet sources.
- iv. The Student admits that he knew or ought to have known that he had represented as his own an idea or expression of an idea or work of another in the *Radio Essay*. The Student admits that he committed the academic offence of plagiarism with respect to the *Radio Essay*, and he pleads guilty to charge #1 of the Charges, which were attached.

Decision of the Tribunal

- [6] On the basis of the Agreed Statement of Facts, the Tribunal accepted the plea and found a contravention of the *Code* as set out in the first charge. At this time, the University withdrew the second charge.

Penalty Phase

- [7] The parties submitted *Agreed Statement of Facts & Joint Submission on Penalty*, which was entered as Exhibit 3. The following sanctions were recommended to the Tribunal by the parties:
 - i. assignment of a final grade of zero in the course PHY205;
 - ii. suspension from the University from February 2, 2009 to September 1, 2012;
 - iii. notation on the Student's transcript from February 2, 2009 to September 1, 2014, stating that he has been found to have committed academic offences; and
 - iv. report to the Provost who may publish a notice of the decision of the University Tribunal and the sanctions imposed, with the Student's name withheld.
- [8] Discipline counsel reviewed the *Agreed Statement of Facts* supporting the *Joint Submission on Penalty*, a summary of which is provided here:

- i. The Student has previously admitted to committing two other academic offences for which he received sanctions at the Divisional Level, specifically:
 - a. On November 22, 2006, the Student admitted that he had taken computer code from a friend without that friend's permission and had used it to obtain unauthorized assistance to complete his own computer assignment in CSC108H. On that day, Professor Betty Roots, Dean's Designate for Academic Behaviour sent a letter to the Student imposing the following sanction:
 - a grade of zero on the assignment;
 - a further 20 mark reduction in the course; and
 - a two-year transcript notation.
 - b. On February 29, 2008, the Student admitted that, on February 15, 2008, he had submitted an essay in ECO301Y1Y, which was copied entirely from unacknowledged internet sources. On that day, Professor John Britton, the Dean's Designate for Academic Discipline imposed the following sanction:
 - a grade of zero on the assignment;
 - a suspension to run from May 15, 2008 to May 14, 2009; and
 - an annotation until graduation that the Student had been suspended for academic misconduct.
- ii. The Student admits that he committed his third offence on March 27, 2008, after having been advised that he would be suspended for one year at the end of the term.
- iii. The Student states that during late 2007 and 2008, he was affected by an illness suffered by his father. The Student states that the problem with his father's prostate gland was first detected in November or December of 2007. In January 2008, the Student states that his father was diagnosed with prostate cancer, underwent treatment, and was admitted to hospital for surgery on February 25, 2008. The Student states that his father had post-surgery lingering effects until June or July of 2008.

[9] Mr. Centa drew the panel's attention to the period of suspension proposed by the parties, noting that, if the panel accepted the *Joint Submission on Penalty*, part of the Student's suspension would run concurrently with the suspension imposed at the Divisional level on February 29, 2008. As such, the proposed sanction would result in a 4-year and 4-month suspension in respect of the Student's second and third offences.

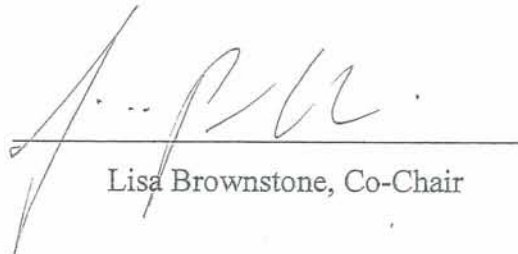
[10] The Tribunal was reminded by counsel that, while not obliged to accept a joint submission on penalty, the joint submission should not be rejected unless to accept it would be contrary to the public interest or bring the administration of justice into disrepute. The Panel accepts and acknowledges that this is a high threshold for declining to accept a joint submission.

- [11] Having regard to the facts in this case, in particular the aggravating fact that this was a third offence involving academic dishonesty, the mitigating facts that there was an admission, a guilty plea and co-operation by the student, the Panel is of the view that the agreed-upon sanction was within an appropriate range of sanction in the circumstances.

Sanction

- [12] The Panel therefore accepted the joint submission on penalty, and makes the following order:
- (a) the assignment of a final grade of zero in the course PHY205;
 - (b) a suspension from the University of Toronto from February 2, 2009 to September 1, 2012;
 - (c) a notation on the Student's academic record and transcript stating that he has been found to have committed academic offences, such notation to run from February 2, 2009 to September 1, 2014; and
 - (d) a report of this case to the Provost who may publish a notice of the decision of the University of Toronto Tribunal and the sanctions imposed, with the Student's name withheld.

Dated this 1st day of May, 2009



Lisa Brownstone, Co-Chair

**THE UNIVERSITY TRIBUNAL
THE UNIVERSITY OF TORONTO**

IN THE MATTER OF charges of academic dishonesty made on September 2, 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:

THE UNIVERSITY OF TORONTO

- and -

Mr. F.C.

Members of the Panel:

- Ms. Rodica David Q.C., Chair
- Professor Bruno Magliocchetti, Faculty Member
- Mr. Sam Liu, Student Member

Appearances:

- Mr. John N. H. Britton, Dean's Designate, for the University of Toronto
- Mr. Robert A. Centa, Assistant Discipline Counsel, for the University of Toronto
- Mr. Khalid Janmohamed, assisting Mr. Robert A. Centa
- Mr. F. C., the Student
- Mr. Nick Shkordoff, Law Student for the Student, F C
- Ms. Charlotte Macdonald, assisting Mr. Nick Shkordoff
- Mr. Daniel Saposnik, assisting Mr. Nick Shkordoff

THE CHARGES

[1] The Student was charged with various offences under the *University of Toronto Code of Behaviour on Academic Matters* ("Code") which may be summarized as follows:

- a) Plagiarism relating to two separate essays;

- b) Submitting an examination paper under a false name;
 - c) Having another person sit in for him while giving a false name on a final examination.
- [2] The Student pleaded guilty to all charges.
 - [3] Although the Student also pleaded guilty to alternative general charges laid under Section B.1.3.(b) of the *Code*, the University withdrew these charges and these charges were not proceeded with.
 - [4] The University of Toronto and the Student filed a Joint Book of Documents as well as an Agreed Statement of Facts.

BACKGROUND

- [5] In June 2006, the Student graduated as an Ontario scholar from Thornlea Secondary School. In his last year of high school he had high marks. According to his mother, who gave testimony, he not only did well in high school, being an Ontario scholar, but he also participated in sports and did volunteer work in an old age home.
- [6] He was admitted into a first year Commerce Programme at the Faculty of Arts and Science at the University of Toronto in the fall of 2006. After one year in this programme, his marks were not sufficient to enable him to continue studies towards a Bachelor of Commerce degree. Accordingly, in the fall of 2007, he switched to Philosophy. During the 2007-2008 academic year, he worked full-time with the Canadian Imperial Bank of Commerce while enrolled in a full time Arts programme in Philosophy.
- [7] In the winter of 2008, the Student was enrolled in the following two Philosophy courses: PHL240H - Persons, Minds and Bodies, taught by Professor James John; and PHL271H - Law and Morality, taught by Professor Wayne Sumner. The charges to which the Student pleaded guilty related to events that occurred in connection with these two courses between May 6, 2008 and May 23, 2008.
- [8] In the Fall of 2008, the Student ceased attending the University of Toronto and was enrolled in Computer and Marketing courses at Seneca College. He obtained good marks in these courses. However, he did submit an essay that, while quoting from and giving credit to various online websites, did not actually place quotation marks around the quotes. He did not attribute any significance to the absence of quotation marks since it is clear from his essay that he clearly identified the sources of the excerpts he had taken from the websites.

EVENTS RELATING TO THE CHARGES

- [9] On January 14, 2008, the Student received a lengthy memorandum entitled "Honesty in Scholarship" which outlined in detail the nature and consequences of plagiarism.

Persons, Minds and Bodies PHL240H

- [10] The course outline indicated that there were four elements to this course as follows in respect of which the Student's performance was dismal:
- a) Tutorial participation - 5% - The Student did not attend any tutorials.
 - b) Essay # 1 – 20% – The Student handed in an essay entitled "A Study of Moral Responsibility and Alternative Possibilities" significantly later than its due date, having given various excuses why it was late. This essay listed verbatim and nearly verbatim excerpts from sources that he did not identify nor did he attribute these excerpts to any source by using quotation marks or otherwise.
 - c) Essay # 2 – 30% – The Student again handed in, much past the deadline, a document entitled "Personal Identities Essay" which likewise contained extensive excerpts from unacknowledged sources without attributing them to these sources.
 - d) Final examination – 45% – The Student attended at the examination, provided his student identification, and then handed in an examination booklet under the fictitious name of Alex Li. Subsequently, the Student falsely alleged that he had completed the examination and then had the audacity to complain that he had received a mark of zero when his examination paper could not be found. We assume that the University staff was put to unnecessary effort to try to locate this fictitious examination paper.

Law and Morality PHL271H

- [11] Two days after the Student attended the examination in the course entitled Persons, Minds and Bodies, the Student attended to write the examination in Law and Morality. He presented his student card, and signed an examination list. He submitted an examination booklet in a fictitious name (the details of which were not revealed in the evidence) and, in addition, arranged for a friend (who he refused to identify) to attend the examination and submit the examination booklet in his name.

Disposition on the Substantial Charges

- [12] Section C.II.(a)9 makes it clear the onus is on the University to show on "clear and convincing evidence" that the accused committed the alleged offence.
- [13] Given the Agreed Statement of Facts and Joint Document Brief, the Tribunal

had no hesitation in accepting the Student's plea of guilty on these charges.

SANCTION – POSITION OF THE PARTIES

- [14] The University took the position that the Tribunal should recommend to the President, expulsion under section C.II.(b)(i). The student put forth the position that he should be suspended for a period of five years.

THE EVIDENCE ON SANCTION

- [15] The University offered no evidence on sanction; it relied on the Joint Book of Documents and the Agreed Statement of Facts.
- [16] The Student testified on his own behalf. In addition he called his mother as a witness.
- [17] We found that the evidence submitted by the Student and his mother to be credible. This evidence revealed that the Student had a rather tortuous family history. His mother throughout this period had serious health issues including hypertension, diabetes, high cholesterol, and heart disease. These conditions became so serious that she was hospitalized in September of 2008. She apparently followed in the footsteps of her own mother who, with similar ailments, died in a supermarket in front of the Student and his sister while they were grocery shopping. Presumably this had a life long effect on the Student.
- [18] The Student's mother had held a senior position at the Royal Bank of Canada, an obviously very responsible position. When the Student was in grade 10, she quit this position to become a marketing consultant. However, she had a very fervent desire to see the Student pursue higher education and achieve success. It appears that it is for this reason that the Student originally enrolled in the Commerce Programme. When his marks were so poor that he did not satisfy the requirements to continue in the Commerce Programme, he apparently arbitrarily chose to enrol in Philosophy in the Faculty of Arts. At approximately the same time, he became employed full-time with the Canadian Imperial Bank of Commerce. He testified that he was torn between pursuing a career through continuing to work or pursuing higher education. He worked so much that he did not have time to devote to his Philosophy courses in which, one could reasonably conclude, he had very little interest. He enrolled in this course because of the significant pressure placed upon him by his parents, and presumably, in particular, by his mother.
- [19] The Student testified that he wasn't aware that he was actually plagiarizing at the time that he submitted the essays. However, it would appear more likely that he simply paid little attention to these essays and felt so pressured to

submit them, that he simply fired them off without much thought. It was obvious that he was not ready to write any exams given that he did not attend classes, did not attend tutorials and had presumably done very little study in the courses. He then began to try to devise ways of passing the exams, firstly by creating a fictitious exam so that he would be given another opportunity to write it, and secondly by having a friend impersonate him on the next exam.

- [20] Following the events giving rise to the charges, he wrote a letter to his professor in PHL240H - Persons, Minds and Bodies trying to urge the professor to consider his essays and insisting that he had written the exam. This letter was apparently primarily composed by his mother.
- [21] The Student attended a meeting with the Dean along with his mother. He testified that he could not find the courage to admit everything, although he did admit the plagiarism at that first meeting. He expressed remorse and advised that he knew what he had done was wrong.
- [22] In the second meeting with the Dean, which his mother did not attend, he admitted guilt again on the plagiarism and also on the personation offences relating to the two examinations.
- [23] During his testimony, the Student repeatedly expressed remorse about his conduct. He acknowledged that he had plagiarized the essays. He refers to himself as being stupid and that he should have known better. The Student described his behaviour in relation to the personation offences as being "ridiculous, completely unacceptable"
- [24] The Student expressed the hope that he could complete his courses at Seneca which he estimated would take three years, and thereafter enrol in University again for a period of four years. If he successfully completed every year of his programs, he would be age 27 when he graduated University. He now understands the importance of higher education and appeared to be sincere in wishing to pursue this goal. He expressed sincere regret to everyone for the consequences of his conduct.
- [25] The Student advised that he was extremely depressed during this time period. However, he failed to provide any expert medical evidence in this regard. Notwithstanding the absence of expert evidence, it does appear that his depression coupled with the pressure that was being exerted upon him by his parents accounts for his decision to pursue the disastrous course that resulted in the charges. Although he could have simply dropped out of the course when he had an opportunity to do so and wished to do so, he was persuaded and pressured by his mother to continue. Moreover it is entirely possible that his cultural background made it difficult for him to seek help such as counselling among numerous services available at the University of Toronto.
- [26] It is clear that the Student has been thoroughly humiliated and discredited

within his own family and possibly within his ethnic community.

RANGE OF SANCTIONS AVAILABLE

- [27] Pursuant to the Code, the Tribunal's authority to impose sanctions is clearly set out (and indeed limited) by section C.II.(b)1. The range of sanctions within the jurisdiction of the Tribunal to impose, are from a minimum of an oral reprimand to a suspension of up to five years. Unfortunately there is no jurisdiction in the Tribunal to recommend a suspension exceeding five years.
- [28] Pursuant to subsection (i), the Tribunal does however have jurisdiction to recommend expulsion, but, in that event, the recommendation is made to the President for a recommendation by him or her to the Governing Council. The Tribunal does not have the jurisdiction to impose a sanction of expulsion.
- [29] Regardless of the sanction imposed, the Tribunal has the power to order that any sanction be recorded on the student's academic record and transcript, without limitation as to the length of time; the length of time is entirely in the discretion of the panel.
- [30] Finally the Tribunal may report any case to the Provost who may publish a notice of the Tribunal's decision and the sanction imposed in the University newspapers with the name of the student withheld.

SANCTION CONSIDERATIONS

- [31] In the well known case of Mr. C, (November 5, 1976), a decision of the University Tribunal sitting on Appeal from the then local branch of the Trial Division of the Tribunal, Mr. John Sopinka, as he then was, enunciated the principles relevant to sanction namely:

"The classical components of enlightened punishment are reformation, deterrence and protection of the public. In applying these criteria, a tribunal should consider all of the following:

- 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."*

THE AUTHORITIES AND CASE LAW

- [32] Appendix "C" to the Code, the Provost's Guidelines on Sanctions, Offences and Suggested Penalties For Students, states, inter alia, as follows:

"The particular circumstances of each case will, of course, have to be taken into account, but the following are suggested guidelines:

- 2. For submitting work, where it forms a major fraction of the course, in whole from another person, the sanction recommended shall be suspension from the University for at least two years.*
- 6. For personating, or having an individual personate on a test or examination, the recommended sanction shall be expulsion from the University."*

- [33] It is clear, therefore, that each case must depend on its own facts.

- [34] Counsel for both parties presented extensive case authorities, which they urged the panel supported their position. Unfortunately, none of these cases on their facts mirror the case of this Student.

- [35] With respect to the case authorities submitted to us by counsel for the University, the cases differ significantly and can be distinguished as follows:

1. In the case of Mr. S.B. (November 14, 2007), the student had pleaded not guilty and accordingly a Trial was necessitated on the merits. The student had two prior offences. However, only one count of plagiarism was involved. A three year suspension was imposed for a third offence which, according to paragraph 35 of the decision, *"strikes a balance of punishment, compassion, rehabilitation and deterrence"*.
2. In the case of Mr. K.N. (April 18, 2008) there was one count of personation, the student did not appear, but there was a Joint Submission for a five year suspension.
3. In the case of Mr. V.A. and Mr. A.H. (May 17, 2002), also cited by the Student, the two students charged were the impersonator and the registered student who was being impersonated. An Agreed Statement of Facts was submitted with a Joint Submission on sanction recommending five year suspension for each student. The student requesting the impersonation, being the initiator, pleaded guilty and was given a five year suspension. There were mitigating circumstances in that he had medical difficulties and had expressed remorse.

The impersonator was given only a four year suspension as the panel felt that the initiator should be more severely sanctioned than the

impersonator. In both instances, a comparable period of time was set for the notation of the suspension on each student's academic record.

4. In the case of Mr. C., (November 17, 2000), also cited by the Student, the student, who had impersonated another student at an examination was expelled. However, the student did not attend the hearing, and there were absolutely no extenuating circumstances.
5. In the case of Mr. P., (November 17, 2000), being the student for whom Mr. C. in the above matter had acted as impersonator, also cited by the Student, a suspension of five years was imposed and a five year notation was placed on his academic record.

Mr. P. pleaded guilty to four different charges relating to the personation on the exam as well as falsifying doctor's notes and a medical certificate. However, there are some similarities with the case before the panel, specifically:

- a) He made an effort to substantially improve his academic performance.
 - b) All four charges occurred within a very short period of time.
 - c) There were no previous convictions nor any further misconducts subject to the one series of events that led to the four charges.
6. In the case of Mr. A.P., (July 5, 2005), the student was expelled on a second offence of forging an academic record. However, the student did not appear and there were no mitigating factors. There was, on the contrary, the aggravating factor that he had made it extremely difficult to be served.
 7. In the case of Ms. E., (March 15, 1994) after a Trial, the student was found guilty of separate offences relating to plagiarism and forgery. As she did not appear, the Trial had to proceed in her absence. Although the student had admitted the offences in a letter that she wrote to the Provost, and apologized, there were no other extenuating circumstances and no redeeming factor made known to the Tribunal. Accordingly, the sanction was expulsion.
 8. Finally in the case of Ms. S.L., (April 6, 2006) the student submitted two essays that she had purchased. The student pleaded guilty based on an Agreed Statement of Facts. Expulsion was recommended, however in that case, the Tribunal was of the view that the student's evidence of adverse circumstances could not be "*clearly causally connected to the offence*". In paragraph 31 the Tribunal stated "*The Tribunal is not satisfied that personal adversity encountered by Ms. L. was sufficiently connected to the occurrence of the offence, and nor was that personal adversity sufficient in kind to reasonably give rise to the suspension of otherwise*

sound judgment.”

- [36] Counsel for the Student cited three additional cases, all of which involved multiple offences and none of which resulted in an expulsion. Two of these cases involved Joint Submissions.
- [37] Finally the Student referred to four expulsion cases all of which involved aggravating factors.
- [38] In our view, the cases involving a Joint Submission on Sanction are of little assistance in this case, as the test for the Tribunal to refuse to accept a Joint Submission is a stringent one. It was enunciated in the decision of the Tribunal in the case of Mr. K.N. at paragraph 12 as follows:

“In its submissions on penalty, the University reminded the panel of the courts’ directives on joint submissions, namely that adjudicators should be loathe not to accept the joint submission and should do so only if the administration of justice would become in disrepute following acceptance of a joint submission. In that context, the University strongly encouraged the panel to accept the joint submission on penalty”.

- [39] The facts of the case of Mr. P.M., (April 9, 2002) cited by both parties most closely resembles this case. The student pleaded guilty, based on an Agreed Statement of Facts, to one count of personation. On a Joint Submission he was given five years suspension and five years notation on his academic record. The factors that were most similar to this case provided in the Joint Submission in litigation were as follows:

“The Joint submission set out the following mitigating factors in this case:

- 1) The student acknowledged his guilt when first confronted with the allegations;*
- 2) The student expressed remorse to the Dean when first confronted with the allegations;*
- 3) The student is a transplanted individual who has not been able to adjust fully to Canadian society in general, and to the university culture in particular;*
- 4) The student comes from a culture that is dominated in family control, in which personal decisions and educational decisions are made only with permission of the parents or elders. In this case, the student felt intense pressure to complete his studies, and believed that the consequences of failure would be severe;*
- 5) At the time of the offence, the student had a limited support network of friends. He did not have the benefit of*

close peers to assist him in dealing with his academic problems when they first arose; and

- 6) *The student understands the need for a significant sanction. The student has shown respect for the discipline process throughout, and accepts that the sanction submitted is appropriate."*

DISPOSITION ON SANCTION

- [40] We are of the view that the conduct of the Student is extremely egregious and deserves a very serious sanction. However, as there are mitigating circumstances, we are not persuaded that he should be given the "life sentence" of expulsion.
- [41] We have therefore concluded that the most appropriate sanction within the limitations of the Code is as follows:
- (1) Suspension for five years
 - (2) That the sanction be recorded on the Student's academic record for ten years.
 - (3) Report to the Provost to publish a notice of the decision of the Tribunal and the sanction imposed in the University newspapers with the name of the Student withheld.
- [42] We would have imposed a suspension for ten years, if we had been given the authority to do so under the Code.

Rodica David

Rodica David, Co-Chair

[43] **Amendment to the Reasons for Decision**

Through oversight, one of the sanctions which discipline counsel and counsel for the Student recommended to the panel was not included in the original *Reasons*. For the sake of clarity, the parties have requested that the panel list all sanctions to be imposed. Therefore, we order the following sanction:

1. Grade of zero in PHL240H and PHL271H
2. Suspension for five years
3. That the sanction be recorded on the Student's academic record for ten years
4. Report to the Provost to publish a notice of the decision of the Tribunal and the sanction imposed in the University newspapers with the name of the Student withheld.

April 20, 2009

Rodica David

Rodica David, Co-Chair

**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. Feka 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.

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.

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 offences¹.

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

UNIVERSITY TRIBUNAL
The University of Toronto

IN THE MATTER of charges of academic dishonesty made on October 24, 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, as amended.

B E T W E E N:

UNIVERSITY OF TORONTO (the "University")

- and -

S.H.

Panel Members:

Ms. Roslyn M. Tsao, Chair
Professor Andrea Litvack, Faculty Panel Member
Mr. Sadek Ali, Student Panel Member

Appearances:

Mr. R. Centa, Assistant Discipline Counsel for University
Ms. Julia Wilkes, Law Student, for the Student (on June 30, 2009)
Mr. R. Singh, for the Student (on February 26, 2009)

In Attendance:

S.H., the Student
Ms. Lucy Gaspini, Academic Affairs Office, University of Toronto at Mississauga

Reasons for Decision

Delivered by Ms. Roslyn M. Tsao

1. BACKGROUND

- 1.1 The trial division of the University Tribunal was convened on February 26, 2009 to consider the charges against the Student as set out in a letter dated October 24, 2008 from Professor Edith Hillan. The Notice of Hearing for those charges was dated November 11, 2008.

1.2 The Student was charged with the following academic offences:

- (a) On or about April 8, 2007, the Student knowingly aided or assisted Ms. P. to commit the offence of plagiarism contrary to section B.I.1(d) of the *Code*;
- (b) On or about April 8, 2007, the Student knowingly aided or assisted Ms. P. to obtain unauthorized assistance contrary to section B.I.1(b) of the *Code*;
- (c) In the alternative, the Student knowingly aided or assisted Ms. P. to engage in a form of cheating, academic dishonesty or misconduct, fraud or misrepresentation in order to obtain academic credit or other academic advantage, contrary to Section B.I.3(b) of the *Code*.
- (d) On or about November 19, 2007, the Student knowingly aided or assisted Mr. A. to commit the offence of plagiarism contrary to section B.I.1(d) of the *Code*;
- (e) On or about November 19, 2007, the Student knowingly aided or assisted Mr. A. to obtain unauthorized assistance contrary to section B.I.1(b) of the *Code*;
- (f) In the alternative, the Student knowingly aided or assisted Mr. A. to engage in a form of cheating, academic dishonesty or misconduct, fraud or misrepresentation in order to obtain academic credit or other academic advantage, contrary to Section B.I.3(b) of the *Code*.

2. CHARGES AND FACTS

1.3 An Agreed Statement of Facts as signed by the parties on February 23, 2009 was admitted into evidence. Without repeating all of the agreed upon facts, the most pertinent are:

- (a) The Student was registered at the University of Toronto at Mississauga ("UTM") in the Fall of 2004.

Essay Purchased by Ms. P.

- (b) In the Fall of 2006, another student at UTM, Ms. P., hired the Student to write an essay for her to submit in one of her courses in exchange for \$120.00. The Student did provide an essay for Ms. P. to submit and was paid \$120.00. Furthermore, the Student admits that the essay consisted entirely of plagiarized material.

(c) Ms. P. was given a failing grade on the purchased essay and, as a result, failed the course. Ms. P., therefore, sought a refund from the Student. However, Ms. P. had difficulty in tracking down the Student, was only able to communicate with the Student's brother (also a UTM student) and ultimately got into an altercation with the Student's younger brother who had nothing to do with the purchase of the essay.

(d) As a result of this altercation on January 13, 2008, the Campus Police became involved and the Student's brother made a report to the Campus Police. In his signed Statement to the Campus Police, the Student's brother states:

To begin with, my brother, [S], gets paid to complete and do other people's assignments, such as essays. A person I know at UTM... has paid my brother \$120 for a school assignment to be completed by my brother. Since [] got a failed mark on the assignment, he approached me to somehow to pay off the \$120 in short instalments, as my brother is not willing to pay the full amount...

(e) Ms. P.'s statement to Campus Police states:

I had heard of [S] around campus a couple of times, but never really took it seriously until I was actually in a bind. At that moment I found out details of [S] from an acquaintance and decided to give him a call... I gave them all the books needed, along with a note that I had for the essay. After having received the essay about 3-4 days later, I handed it in.

(f) The Campus Police met with the Student following the incident and cautioned him that he was not required to give any Statement. The Student, nevertheless, provided a signed Statement on January 16, 2008, which confirmed that he agreed to write a paper for Ms. P. in exchange for money and that he was aware of the fact that the essay would be handed in for her course.

(g) As an aside, the Student advised that he was willing to provide Ms. P. with a refund of \$50 and had agreed to drop off the funds with the Campus Police Office the following week. However, the Student did not ever attend at the Campus Police Office to leave the \$50 refund, as he had previously agreed.

(h) The incident came to the attention of the Dean's office and Ms. P. was the subject of an academic offence meeting in August 18, 2008. Ms. P. admitted her guilt to having received unauthorized aid from the Student. Ms. P. received academic sanctions consisting of a zero grade in the course, a 12-month suspension and an 18-month notation on her transcript.

Essay Purchased by Mr. A.

- (i) In early November, 2007, another UTM student, Mr. A., asked the Student to write an essay for him at a cost of \$20 or \$25.
- (j) Mr. A. has sworn in his Affidavit of October 21, 2008 that he has known the Student since 2007 and recalls the Student telling him that he was a "good student and wrote essays for other students who paid him for the essays". Mr. A. has sworn that he had hired the Student to write an essay for him the Fall of 2007 for \$30 or \$40, which Mr. A. had submitted and received a high grade. It is noted that the Student denies these particular factual allegations of Mr. A. in the Agreed Statement of Facts.
- (k) The essay that Mr. A. retained the Student to write in early November, 2007 was provided on November 19, 2007 by the Student. The essay was handed in by Mr. A. The content of the essay attracted the attention of the professor. At the meeting with the professor, Mr. A. admitted that he had had unauthorized aid from the Student and was engaged in academic dishonesty. Mr. A. has been charged under the *Code* and these charges remain outstanding pending the disposition of this case¹.

Attempts to Address Allegations Against the Student Between February and August, 2008

- (l) As a result of the matters involving Ms. P. and Mr. A. coming to light, the Assistant Dean wrote to the Student on February 5, 2008 to advise him that she had received reports from the Campus Police and other sources which indicate that he provided "unauthorized assistance to other students" by writing essays for other students for a fee. This letter was clear as to the allegations against the Student. The Student was to contact Ms. Gaspini before February 19, 2008.
- (m) On or around February 19, 2008, the Student called Ms. Gaspini and indicated that he was ill and did not want to meet with the Dean's Designate for another three months. The Student also asked that Ms. Gaspini only contact him by email at a given email address.
- (n) On February 20, Ms. Gaspini emailed the Student asking him to call her that day to discuss "a couple of concerns" and indicating that she thought "it would be in our best

¹ As advised by Mr. Centa.

interest to talk". There was no response from the Student. On February 21, Ms. Gaspini emailed the Student again and indicated that "It is important that we speak". The Student emailed back on February 22 and stated "I am not in school right now. When I am back in school I will talk to you. Thanks!". Ms. Gaspini replied within 15 minutes "I understand you are not in school right now but we still need to talk. Can you call me on Monday or Tuesday?"

- (o) From the Agreed Statement of Facts, there appears to be no further communication between Ms. Gaspini and the Student until April 17, 2008, when Ms. Gaspini reached the Student's mother by telephone and asked her to tell the Student that she was calling "with regard to an important matter" and left 2 contact numbers. Later that day, Ms. Gaspini emailed the Student to advise that she was aware that he would be on campus on Thursday, April 24 and that she would like to organize a meeting with the Dean's Designate with him that day.
- (p) On April 18, 2008, the Student called Ms Gaspini to advise that he would not be able to meet on April 24th due to full-time work obligations. The Student told Ms. Gaspini that he would get back to her with dates for the end of April or early May to meet. The Student did not, however, call or email Ms. Gaspini after April 18th.
- (q) On August 1, 2008, the Dean wrote to the Vice-Provost requesting that charges be laid against the Student.

3. Finding of Guilt

- 3.1 Based on the facts set out in the Agreed Statement of Facts and the documents contained in the Joint Book of Documents filed by the parties as Exhibit "3", and no other evidence being called by the Student, the Panel unanimously accepted the Student's Guilty Plea to charges (i), (ii), (iv) and (v). The University has withdrawn charges (iii) and (vi).

4. Penalty Phase

Scheduling Background

- 4.1 The penalty phase was adjourned to March 30, 2009 following the guilty plea on February 26, 2009. This was to permit the Student to make a full response to the University's request for a recommendation for expulsion.

- 4.2 The Student wanted to tender expert evidence of a psychiatrist, Dr. Syed, for the penalty phase. The Panel also notes that the Student's counsel alluded to the possibility that the Student would make an apology in requesting the adjournment. University counsel advised that he would want disclosure of all documentation considered by Dr. Syed and of his notes of any meetings with the Student in advance of Dr. Syed giving evidence.
- 4.3 On March 30, 2009, the Student attended at the hearing but his counsel emailed that afternoon that the Student had "terminated" him as his counsel. It is presumed that this termination occurred on March 30th or only just before since there was no prior notice given by counsel or the Student of the change in representation.
- 4.4 The Student's father, Dr. H., acted as agent for the Student on March 30th and, accepted the University's offer of an adjournment so that the Student could obtain new counsel to give him advice as to the evidence of Dr. Syed and to address disclosure requests of the University counsel if Dr. Syed was being tendered. The Panel notes that Dr. H. wanted to tender a written "apology" from his son that evening but that the Panel advised him to leave it with new counsel to introduce at the resumption of the hearing. Again, University counsel advised that he would want disclosure of all documentation considered by Dr. Syed and of his notes of any meetings with the Student in advance of Dr. Syed giving evidence. This issue was to be discussed between counsel and, if it could not be resolved, then a motion in advance of the penalty hearing would be arranged.
- 4.5 The Chair, via telephone conferences, case-managed the ensuing scheduling of a hearing date for penalty and any other preliminary matters. During a conference call on April 15, 2009, the resumption date of June 30, 2009 was selected with the Student's interim counsel², Mr. Mirza, and was on a pre-emptory basis to the Student, with or without counsel. The Student was counselled by the Chair to seek the assistance of Downtown Legal Services in the event that he was unable to retain his interim counsel for the resumption date.
- 4.6 On June 18, 2009, Mr. Mirza emailed to advise that the Student's file was being immediately transferred to Downtown Legal Services and that the resumption date of June 30th would remain in place.

² Mr. F. Mirza, acted on behalf of the Student during some of the conference calls on an interim basis until he could be formally and fully retained.

Student's Evidence for Penalty Phase

- 4.7 On June 30, 2009 the hearing resumed for the Penalty phase.
- 4.8 The Student tendered Dr. H., the Student's father, as a witness for this phase³. Dr. H. is the Student's father. Dr. H. explained that he and his wife brought their family to Canada from Bangladesh in October, 1995. Dr. H. has a PhD degree from an American university and Mrs. H. has a Master's degree in Statistics. Unfortunately, neither Dr. or Mrs. H. has had much success in finding fruitful employment in Canada and have been surviving on life-savings.
- 4.9 Dr. H. indicated that the family's financial problems were not discussed with his 2 sons and that they were sheltered from the burden of their difficult financial circumstances except by the obvious inability of the children to have the type of luxuries that their fellow schoolmates may have had. Dr. H. also testified that the Student and his brother had received student loans which were currently outstanding. The Student, who has lived with his parents during university, has not paid nor contributed to the household expenses. The Student did some tutoring in 2007 and, according to Dr H. kept his income for his own (social) expenses.
- 4.10 Dr. H. testified that it was very important to have his sons graduate from university so that they can find employment. He further confirmed that his sons are aware that graduating is important for the family.
- 4.11 Dr. H. further testified that he took his son to counselling on April 20, 2008 after learning of the Student's dishonest behaviour. A letter from the Imam/Resident Scholar of the Islamic Institute of Toronto dated June 26, 2009, ⁴ was tendered through Dr. H. and confirms that the student has been given "counseling" (*sic*) "on and off, since April 20, 08. The purpose of the sessions has been to instill in him a deep sense of morality and make him aware of the dire consequences of such cardinal sins as breach of trust, lying and cheating –...".
- 4.12 Finally, Dr. H. gave evidence that, the Student had started to take medication in February, 2009, and has become more responsible, attentive to his classes and is "more mature and more focused

³ Dr. H. testified under oath and submitted a written "letter" entitled "Our Perspective on [S]", the contents of which he adopted during his testimony.

⁴ The letter is hearsay as the author did not testify to introduce the letter. However, the University has not opposed its introduction as evidence. Accordingly, the Panel has considered the letter but factored its hearsay nature in giving it weight as evidence.

on academics". Dr. H. states "We as a family remain committed to do the right thing and teaching our children to be responsible and accountable for their mistakes. [S] is not an exception in this matter."

- 4.13 The Student did not testify nor provide any written statement during the penalty phase.
- 4.14 The Student, through counsel, tendered copies of 2 receipts dated February 6, 2009 for prescriptions for Divalproex and Risperidone. The Student did not tender evidence from his prescribing physician nor was any evidence tendered to confirm whether the Student was taking such medication regularly, or at all. No receipts for any other dates were tendered. Accordingly, the Panel gives no weight to the receipts nor any submission regarding any medical conditions allegedly suffered by the Student.
- 4.15 The Student also tendered a letter from All World Tutoring Services dated March 30, 2009 confirming that he tutored from January to October, 2007⁵ and a letter from the Eden Community Food Bank dated June 25, 2009 confirming that he completed 10 community service hours⁶.

5. Decision and Reasons for Penalty

- 5.1 The University has requested the following penalty:
- (a) a 5 year suspension to commence at the end of the hearing; and
 - (b) a recommendation to the President of Governing Council that the Student be expelled.
- 5.2 The Student has requested a 5 year suspension to commence at the end of the hearing.
- 5.3 The Panel was directed by both parties to the decision in file 1976/77-3, *In the Matter of the University of Toronto Code of Behaviour and an Appeal by Mr. C* (hereinafter "*In the Matter of Mr. C*") and in particular, to the following factors to consider in imposing penalty:
- (a) the character of the person charged;

⁵ The letter is hearsay as the author did not testify to introduce the letter. However, the University has not opposed its introduction as evidence. Accordingly, the Panel has considered the letter but factored its hearsay nature in giving it weight as evidence.

⁶ There was no reference as to when the hours were completed and, as such, it is not clear whether the Student only recently completed this hours.

- (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.

Character of the Student/Extenuating Circumstances Surrounding the Commission of the Offence /Likelihood of a Repetition of the Offence

5.4 There was minimal evidence tendered by the Student about his good **character**. Moreover, the Panel notes that the following omissions on the Student's part give rise to an adverse finding about the character of the Student:

- (a) The Student did not actively respond to nor reply to the requests of the University to meet with the Dean's Designate which were initiated in February, 2008. This is despite the Student and his family being aware of the allegations of dishonesty and the Student purportedly beginning moral counselling with the Islamic Institute of Toronto on February 20, 2008. The Student put off Ms. Gaspini's requests to meet and did not follow through on his promise to get in contact with her on April 18, 2008, such that the request for formal charges had to be made on August 1st, some 6 months later. This lack of co-operation until facing formal charges is notable.
- (b) The Panel accepts that the plea of guilty is an acknowledgment of guilt and that the Student has cooperated in the presentation of an Agreed Statement of Facts. However, the Student has not apologized nor conveyed any remorse for his actions. However, despite the indications by the Student's first counsel and then, his father, that an apology might be given by the Student, there was no *viva voce* nor written apology tendered by the Student. Dr. H. did not, and fairly so, purport to convey an apology from his son (rather, Dr. H. conveyed his regret about his son's behaviour). The Panel recognizes that the Student is not obligated to testify during any hearing of charges, but the Panel is not convinced that it may not draw an adverse inference if, during the penalty phase, the Student does not testify but instead tries to introduce mitigating character evidence through another witness or documentary evidence, as was done here.

- 5.5 The letter from the Imam does not provide any opinion or observations as to whether the Student has acknowledged his guilt or remorse to the Imam or whether the Imam was aware of the purpose for which he was providing his letter. The letter regarding the Student's recent community service does not convincingly support the Student's submission that has made attempts to improve himself.
- 5.6 With respect to **extenuating circumstances**, the Panel notes that there is no evidence of any extenuating circumstances. In particular, the Student's father testified that he sheltered the children from the knowledge of the family's financial problems. In any case, many students face difficult financial circumstances without resorting to academic dishonesty. As noted above, there was no medical evidence regarding any extenuating circumstances at the time of the offence nor any subsequent diagnosis.
- 5.7 With respect to the **likelihood of repetition**, the Panel notes that the Student was apparently raised by Dr. H and his wife in an ethically-minded fashion and that Dr. H. is sincere about their intention to keep the Student on track if he is given the opportunity to complete his education. However, the Student is an adult and committed the offence while living with his parents and, apparently, with the knowledge of his brother. Accordingly, the Panel is not convinced that there is no risk of re-offending given the lack of apology/remorse, that no extenuating circumstances were proffered (see above) and that the Student has delayed at all stages of this process.

Nature of the Offence/Detriment to the University

- 5.8 The nature of the offence in this case is unique --- the Student has admitted to the sale of essays to other students, for financial gain, and with the knowledge that the essays would be submitted for academic credit in that other student's name. Neither counsel for the University nor agent for the Student was able to find any previous decision of this Tribunal involving the "seller" and it is acknowledged that it is rare that the Tribunal would have jurisdiction to sanction the "sellers" as they are very often commercial enterprises which do not involve current or former University of Toronto students. It is also very difficult to detect the purchase of academic work since it is generally "original" work not authored by the student submitting same for credit (although in this case, the Student's essay for Ms. P's was admittedly plagiarized from other sources).
- 5.9 The University has urged the Panel to impose a more significant sanction on the Student, given his role as the "seller" in the 2 transactions before the Panel. The University's rationale is that the

seller is engaged in a "corrupt enterprise" for financial gain and should garner more serious punishment. It is also argued that the level of intent of the seller is deliberate and cannot be spontaneous as the researching and writing of an essay requires sustained intent on the part of the seller. The Panel does not agree, as a general proposition, that the seller is a more significant a player in the sale/purchase of academic work. The purchaser who has contracted and made payment for the work and has likewise displayed sustained intent, especially given that the purchaser can choose not to submit the work at any time after purchasing it. However, where there is evidence that the seller has engaged in an ongoing enterprise, as in this case, this should be an aggravating factor in assessing penalty.

- 5.10 Somewhat conversely, the Student has asked the Panel to recognize that the seller and purchaser differ insofar as the buyer is the "initiator" and the seller is, thereby, less culpable and cites the decision of the Tribunal in *V.A. and A.H.*⁷. The Panel does not agree with this submission as a blanket proposition. The seller, in this case, was known to be engaged in this type of transaction and was not approached for the first time by Ms. P or Mr. A --- he had, what might be termed, an outstanding "reputation for selling" that other students could approach him to act upon.
- 5.11 The detriment to the University fabric of purchasing or, in this case, selling work which will be submitted under dishonest and unethical circumstances is manifestly obvious. This is addressed in the Tribunal decision in *V.L.* (Case No. 440) at paragraph 21:

Moreover, the "enterprise" of purchasing work for submission to the University is emblematic of the highest and greatest danger to the University community that the Code attempts to prevent, namely the circumstance when respect for learning is forsaken 'in favour of self interest, when trust becomes a hostage of expediency.' In this regard, a failure to recognize the severity of this threat would in effect be punitive to those students and teachers who strive through their honest hard work to maintain those values.

- 5.12 Finally, Appendix "C" of the *Code – Provost's Guidelines on Sanctions, Offences and Suggested Penalties For Students* recommends that:

5. For submitting purchased work, the sanction recommended shall be expulsion from the University. The minimum sanction shall be suspension from the University for a period of time and zero as the final grade where the offence occurred.

⁷ File 2001-02-08

Although, the Student did not submit purchased work, for the reasons above, the Panel is of the view that the recommended sanction for the purchaser confirms the seriousness of the offence, regardless of whether it is the purchaser or the seller being charged. Obviously, the latter part of the minimum sanction would seemingly only be applicable to the seller if he/she was enrolled in the same course as the buyer.

- 5.13 The Panel further finds, as a fact, that the Student was engaged in the practice of selling academic work to other students prior to these present 2 instances. The statement of the Student's brother to the Campus Police⁸ confirms that the Student was engaged previously in this kind of activity. Ms. P knew of the Student's reputation for this kind of activity. Mr. A swears that he purchased an essay from the Student before. Although the charges before the Tribunal relate to only 2 transactions, the Panel finds that there is evidence of previous offences having been committed.
- 5.14 In short, the Panel considered that both penalty positions advocated by the University and by the Student to be within the appropriate range.

Deterrence

- 5.15 Although sellers fall under the jurisdiction of this Tribunal much less often than buyers, when a seller is a student, or former student, they will be subject to the *Code* to the fullest extent possible.
- 5.16 There is no basis to reduce penalty because the general deterrence effect will be minimal given the nature of the perpetrators. General deterrence considerations may be relevant to impose an increased penalty or may be neutral but it can not be argued that since there may be little effect on general public deterrence that the penalty may be reduced.
- 5.17 There is justification for specific deterrence in this case. The Student, without the guidance of his parents at this juncture may well re-offend. He has not displayed any remorse or insight into his offence.
- 5.18 A harsh sanction is required to meet the concerns of both general and specific deterrence.
- 5.19 The Student's agent has distinguished the more serious cases where expulsion was imposed and demonstrated that suspension is the more appropriate penalty based upon other cases before the

⁸ See Agreed Statement of Facts, paragraph 29.

Tribunal relating to "purchasers" (sometimes repeat offenders) and other plagiarism-type situations. In a recent a decision of May 15, 2009⁹ relating to a purchaser of an essay, discipline counsel acknowledges in a joint submission on penalty that, although Appendix "C" of the *Code* recommends that expulsion is sought for purchased papers, "the principle of consistency must inform the Tribunal when it imposes sanctions" and that "while some cases similar to this one did result in expulsion, the majority did not."

6. Penalty

- 6.1 The Panel views the within offences as very serious and considers this case to be approaching the level warranting expulsion. The Panel also views the lack of co-operation by the Student to address the charges as early as possible to be significant in this matter. Furthermore, the adjournment of the hearing date on February 26, 2009 after the plea of guilty to allow the Student to provide medical evidence for penalty considerations was granted in good faith. The further adjournment on March 30, 2009 and the ultimate setting of a hearing date of June 30, 2009 was arranged based on the availability of the Student's prospective new counsel. In the end, neither medical evidence nor prospective counsel attended on June 30th.
- 6.2 During the period from February 26 until June 30, 2009, the Student was able to complete courses and obtain credits that he would not have been able to do had the suspension been imposed at the February 26th hearing date.
- 6.3 The Panel finds that the University was not responsible for any of the delay in addressing penalty in this matter after February 26th.
- 6.4 Accordingly, the Panel imposes the following penalty:
 - (a) That the Student be suspended from attendance at the University of Toronto for a period of five (5) years, commencing February 26, 2009 (accordingly, any course work after that date should not be credited to the Student);
 - (b) That a notation be placed on the Student's transcript for a period of seven (7) years from the date of the final hearing on June 30, 2009 to the effect that the Student was suspended from the University for academic misconduct; and

⁹ *University of Toronto and Yoon*, May 15, 2009, see paragraph 18

- (c) That a report of the decision be made to the Provost for publication in the University's newspaper with the Student's name withheld.

6.5 The Panel wishes to thank both Mr. Centa and Ms. Wilkes for their thorough and able arguments.

Dated at Toronto, this 11th day of August, 2009



Roslyn M. Tsao, Chair

UNIVERSITY TRIBUNAL
The University of Toronto

IN THE MATTER of charges of academic dishonesty made on October 24, 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*, as amended.

B E T W E E N:

UNIVERSITY OF TORONTO (the "University")

- and -

A. A-A. (the "Student")

Members of the Panel:

Ms. Roslyn M. Tsao, Chair
Professor Louis Florence, Faculty Panel Member
Ms. Elena Kuzmin, Student Panel Member

Appearances:

Mr. R. Centa, Assistant Discipline Counsel for University
No one appearing for the Student

In Attendance:

Ms. Lucy Gaspini, Academic Affairs Office, University of Toronto at Mississauga

Heard: April 14, 2009

Background

1. The Trial Division of the Tribunal heard this matter on April 14, 2009. The Student was charged on October 24, 2008 of the following:
 - (a) In August, 2007, the Student 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 letter purportedly

written by Dr. Zohreh Sotoodeh at the Arizona State University, contrary to Section B.I.1(a) of the *Code* .

- (b) In the alternative, in August, 2007, the Student knowingly engaged in a form of cheating, academic dishonesty or misconduct, fraud or misrepresentation, not otherwise described in the *Code* in order to obtain academic credit or other academic advantage of any kind by submitting a letter purportedly written by Dr. Zohreh Sotoodeh at the Arizona State University to the University of Toronto, contrary to section B.I.3(b) of the *Code* .
- 2. The Student did not attend at the Hearing. The Tribunal waited 30 minutes after the scheduled commencement of the Hearing to allow for the Student to appear. The Student did not advise the University that he would not be attending this evening and, in fact, there has been no communication from the Student in relation to these charges.
- 3. The University proposed to proceed in the Student's absence and, therefore, had the onus of satisfying the Tribunal that "reasonable notice" of the Hearing had been provided to the Student pursuant to the *Code* and the *Statutory Powers Procedure Act* ("*SPPA*"). Reasonable notice of the hearing must also include a warning to the Student that if he does not attend at the hearing, the tribunal may proceed in his absence and the Student will not be entitled to any further notice in the proceeding (s. 6(3)(b) of the *SPPA*) (the "Warning").
- 4. The University presented evidence to the Tribunal with respect to the steps undertaken to communicate with the Student, advise him of the charges, provide notice of the Hearing and disclosure of materials, by calling Ms. Betty-Ann Campbell, a law clerk at the firm of Paliare Roland Rosenberg Rothstein LLP, the University's counsel.
- 5. On or about October 30, 2008, Ms. Campbell was able to speak with the Student personally by telephone at his cell phone number. Ms. Campbell advised him of the pending charges and that further communication would be forthcoming. Ms. Campbell was also able to confirm with the Student his mailing address in North York and email addresses (2) as per his ROSI records. This was the only direct communication that Ms. Campbell was able to have with the Student.
- 6. The University's efforts to advise the Student of the charges and of the Hearing consisted of, not only direct contact between Ms. Campbell and the Student on his cell phone, but also delivery of the requisite materials to the Student at both the address listed in his ROSI (Repository of Student Information) and at a residence address in Brampton, Ontario. Subsequent to her call with the

Student, Ms. Campbell again confirmed, with the Student's step-sister, that the ROSI cell phone number and e-mail address were correct.

7. Numerous e-mails to the Student's e-mail address(es) were sent, including an e-mail that had attached all relevant disclosure and the Notice of Hearing. None of these e-mails to the Student were returned to the sender (i.e. "bounced back") according to the evidence of Ms. Campbell.
8. Initially, a hearing date of March 10, 2009 had been set and the University had emailed and couriered Notice of the Hearing and other materials to the residence address in Brampton in advance of the Hearing, as per its obligations. Ms. Campbell happened to speak with the Student's stepmother at the residence on February 25, 2009. The stepmother confirmed that the courier package had been delivered to the residence in January, 2009 but that it had not been picked up by the Student because she and the Student were estranged. However, according to Ms. Campbell, the stepmother advised that the Student's step-sister would be delivering it to the Student "at some point". When faced with this actual knowledge that the courier package had not reached the attention of the Student, the University rightly adjourned the March 10, 2009 hearing date and scheduled a new Hearing date.
9. The Notice of Hearing (including the Warning) for April 14, 2009, the Charges and the University's Disclosure Brief were re-served by email and regular mail to the Student's ROSI addresses.
10. The Tribunal is satisfied after hearing the evidence of Ms. Campbell and the exhibits filed, that the Student has received reasonable notice of the charges and Notice of the Hearing. The fact that none of the e-mails to the Student were returned and that his step-sister confirmed his e-mail address to Ms. Campbell, satisfies the Tribunal that the Student has had actual notice of the charges and hearing or ought reasonably to have had such notice. The failure of the Student to review his e-mails or check his ROSI mailing address does not negate the University's efforts to effect proper service.
11. Accordingly, the Hearing may proceed without the Student.

Facts of the Case

12. The facts of this case are quite straightforward. The evidence of Ron Racioppo, Acting Assistant Registrar and Front-Line Services Supervisor at the Office of the Registrar at UTM testified as to the following:

- (a) In or about late August/early September, the Student submitted a Visiting Student Admission Application to the Registrar's Office. Mr. Racioppo explained that the Registrar's office will typically confirm that the Student is in good standing at the other North American University and requires an original Letter of Permission from the home institution ("LOP").
- (b) Mr. Racioppo contacted the Student by telephone to ask to provide an LOP since none was attached to his Application. The Student indicated that he would fax the LOP and Mr. Racioppo made it clear that an original would be required before his Application could be granted on a final basis. The Student faxed an LOP from Arizona State University to Mr. Racioppo.
- (c) After reviewing the Student's academic record at U of T and the faxed copy of the LOP, Mr. Racioppo contacted Arizona State University to verify the authenticity of the LOP which was purportedly signed by a Dr. Zohreh Sotoodeh. After sending Dr. Sotoodeh a copy of the LOP, Dr. Sotoodeh advised that the letter was not valid and that her signature appeared to have been forged.
- (d) Mr. Racioppo discussed the matter with Ms. Diane Crocker, the Registrar, and coincidentally, after meeting with her, the Student came into the office to inquire as to why his Application had not been approved. Mr. Racioppo asked the Student to wait while he had Ms. Crocker join them.
- (e) At this meeting the Student told them both that he did not have time to get the letter from the Arizona State University, so he made up the letter and signed it for Dr. Sotoodeh. Mr. Racioppo advised him that this matter would be sent to the Dean's office for investigation and Dr. Sotoodeh was apparently doing the same at the Arizona State University.
- (f) An Affidavit sworn on April 7, 2009 of Dr. Sotoodeh was tendered by the University into evidence. We accept the Affidavit evidence. We note that there is no prejudice to the Student by accepting the Affidavit, given that the Student is not in attendance at the Hearing and, therefore, does not require the opportunity to cross-examine Dr. Sotoodeh. In her Affidavit, Dr. Sotoodeh confirms that she did not write nor sign the LOP.

Decision of the Tribunal

13. Based on the evidence as tendered by Mr. Racioppo and the Affidavit of Dr. Zohreh Sotoodeh, the Tribunal finds that the Student is guilty of the charges before him. The University has withdrawn the second charge and accordingly, there is a finding of guilt on the first charge against the Student.

Penalty

14. The University has requested the Tribunal to recommend to the President of the University of Toronto that the student be expelled from the University.
15. The sanction of expulsion should be reserved for the most serious of academic offences and, in particular, where there is little prospect of rehabilitation.
16. The forgery of any document, in any context, is a serious and deliberate act of dishonesty. The forgery of the LOP by the Student demonstrates knowing and deliberate forethought without the regard to the integrity of either academic institution involved. In particular, the Tribunal notes the following:
 - (a) The Student has been previously found guilty of forgery at the University of Toronto in September, 2003. The Student pleaded guilty to that offence and received a one year suspension and a one year annotation on his transcript;
 - (b) The Student has had modest success at the University of Toronto. Although this factor, in itself, does not necessarily weigh in favour of expulsion, it has relevance in this case, given the previous academic offence; and
 - (c) The Student has not responded to the charges nor appeared at this Hearing to provide any submissions or displayed any remorse which might suggest that a lesser penalty is appropriate.
17. The Tribunal also agrees with the University that the Student may have caused a diversion of resources and, in tendering an Application with a falsified LOP, could have denied other worthy candidates from being accepted had the forgery not been discovered.
18. The integrity of the University and of academic institutions as a whole, is compromised when such deception is committed. This Student was seeking an enhancement to his academic

credentials from the University of Toronto based on a falsified document. It is possible, if not likely, that a student who would engage in such dishonesty at this juncture in his life will, as an alumnus, tarnish the University's credentials in future by his actions.

19. For the purpose of not only individual deterrence, but also for general deterrence, the Tribunal imposes the following penalty:

- (a) The Tribunal recommends to the President that he recommend to the Governing Council that the Student be expelled from the University.
- (b) A permanent notation on the Student's academic record will be made indicating that he has been expelled for academic misconduct.

Dated at Toronto, May 4, 2009

A handwritten signature in black ink, appearing to read 'Roslyn M. Tsao', written over a horizontal line.

Roslyn M. Tsao, Co-Chair

**UNIVERSITY OF TORONTO
UNIVERSITY TRIBUNAL - TRIAL DIVISION**

IN THE MATTER of charges of academic dishonesty being
made on October 31, 2008;

AND IN THE MATTER OF the *University of Toronto Act, 1971*,
S.O. 1971, c. 56 as amended S.O. 1978, c. 88;

AND IN THE MATTER OF the *University of Toronto Code of
Behaviour on Academic Matters, 1995*;

BETWEEN:

UNIVERSITY OF TORONTO

- and -

M. S.

Members of the panel:

- John A. Keefe, Chair
- Professor Lesley Lavack, Faculty Member
- Jamon Camisso, Student Panel Member

Appearances:

- Nick Shkordoff, Downtown Legal Services for the Student
- Robert Centa, Assistant Discipline Counsel for the University of Toronto

REASONS FOR DECISION

1. The University Tribunal was convened on Thursday, March 26, 2009 to hear six charges under the *Code of Behaviour on Academic Matters, 1995* (the "Code") laid against the Student, by letter dated October 31, 2008 from Professor Edith Hillan, Vice-Provost, Academic of the University (the "Charges").

2. At the outset of the hearing, the Tribunal was advised that the matter would proceed on an Agreed Statement of Facts dated March 26, 2009 (the "Agreed Statement of Facts").
3. The Student was present at the hearing. The Tribunal was advised that the Student was prepared to admit that he is guilty of academic misconduct as set out in charges #1 and #4 of the Charges and if the Tribunal was prepared to accept the plea, the remainder of the charges would be withdrawn.

The Charges

4. The charges upon which the Student agreed to plead guilty are as follows:
 1. In or around June 2008, you knowingly forged or in any other way altered or falsified a document or evidence required by the University, or knowingly uttered, circulated or made use of any such forged, altered or falsified document, namely, your Assignment #2 in BIO260, which was written on or about February 28, 2008, contrary to section B.I.1(a) of the Code.
 4. In or about June 2008, you knowingly forged or in any other way altered or falsified a document or evidence required by the University, or knowingly uttered, circulated or made use of any such forged, altered or falsified document, namely, your Assignment #3 in BIO260, which was written on March 26, 2008, contrary to section B.I.1(a) of the Code.

The Agreed Statement of Facts

5. The Agreed Statement of Facts was signed by counsel for the University and by the Student.
6. The Agreed Statement of Facts described the background facts as follows:

A. Background

- (a) In Fall 2004, the Student registered in the Faculty of Arts & Science at the University of Toronto. At all material times, he remained enrolled at the University.

B. Facts Relating to Offences

- (a) In the Spring of 2008, the Student enrolled in BIO260HIS — Concepts in Genetics, which was co-taught by Professors Davie Guttman and Wolfgang Moeder (“Course”).
- (b) Students in the Course were required to submit four written assignments, which were each worth between 10 and 15% of the final grade in the course (the “Assignments”).
- (c) On or about February 13, 2008, the Student submitted answers to Assignment #2.
- (d) On or about March 26, 2008 the Student submitted answers to Assignment #3.
- (e) In May 2008, the Student emailed Professor Guttman to indicate that there were discrepancies between the marks posted electronically on the course blackboard site for some of the Course assignments and the marks that he had actually received. Professor Guttman responded to the Student by email and listed the marks that he had recorded for him. In particular, Professor Guttman advised the Student that he had received a grade of 6.5 on assignment #2 and a grade of 8.0 on assignment #3.
- (f) On May 15, 2008, the Student replied to Professor Guttman and stated that he had received grades of 8.5 and 9 on assignments #2 and #3, respectively.
- (g) Professor Guttman contacted his teaching assistants to try and get to the bottom of the problem. The teaching assistant was Julian Northey. The Student had not picked up the marked version of the Course Assignments. Mr. Northey reviewed

the Course Assignments submitted by the Student and confirmed that the correct grades were posted on the course blackboard.

- (h) The Student then contacted Mr. Northey and asked to pick up the Course Assignments. Mr. Northey photocopied the front page of the Course Assignments, and left them to be picked up by the Student. The Student did pick them up.
- (i) The Student also contacted Peggy Salmon, the Course coordinator about the grade discrepancies. Ms. Salmon told the Student to bring in the Course Assignments so that she could review them and adjust the grades, if necessary.
- (j) In June 2008, the Student submitted versions of Assignment #2 and Assignment #3 to Ms. Salmon. Among other changes, he altered the grade from 6.5 to 8.0 in Assignment #2 and the grade from 8.0 to 8.5 in Assignment #3.
- (k) The Student admits that he knowingly altered Assignments #2 and #3 before resubmitting them to Ms. Salmon. He admits that the documents found at Tabs 7 and 8 are not the original documents he submitted for grading in the Course and that he altered the Course Assignments that he submitted in various ways so that it appeared he had earned more marks than he had actually received. He admits that he knowingly did so for the purpose of obtaining an academic advantage in the Course.
- (l) The Student admits that he altered or falsified and circulated an altered or falsified a document required by the University contrary to section B.1.1(A) of the Code and that he is guilty of charge #1 of the Charges.

- (m) The Student admits that he altered or falsified and circulated an altered or falsified document required by the University contrary to section B.1.1(A) of the Code and that he is guilty of charge #4 of the Charges.
 - (n) The Student acknowledges that the University has advised him to obtain independent legal advice before signing this Agreed Statement of Facts and that he has done so.
7. The Student acknowledged that the facts set out in the Agreed Statement of Facts were true and that he had executed the Agreed Statement of Facts voluntarily. On this basis, the Tribunal accepted the plea and found that the facts supported the finding of a contravention of two counts of the Code as set out in counts #1 and #4 of the Charges.

Joint Submission on Sanction

8. Following the determination by the Tribunal that it was prepared to accept the plea and make a finding of contravention of the Code, the parties then submitted to the Tribunal an Agreed Statement of Facts and Joint Submission on Penalty dated March 26, 2009 ("Joint Submission on Penalty").
9. The following sanctions are recommended in the Joint Submission on Penalty:
- (a) impose a final grade of zero in the course BIO260HIS;
 - (b) suspend the Student from the University of Toronto for three years commencing May 1, 2011, and ending April 30, 2014;
 - (c) impose a notation on his academic record and transcript stating that he has been found to have committed academic offences, such notation to run from March 26, 2009, until April 30, 2015; and
 - (d) report this case to the Provost who may publish a notice of the decision of the University Tribunal and the sanctions imposed, with the Student's name withheld.
10. The following facts are set out in the Joint Submission on Penalty:

- (a) The Student has previously admitted to committing one other academic offence for which he received a sanction at the Divisional Level.
- (b) On July 6, 2005, the Student admitted that he had committed an offence contrary to Code, in an examination in PSY100Y1Y.
- (c) That day, Professor Betty Roots, Dean's Designate for Academic Behaviour in the Faculty of Arts and Sciences at the University of Toronto, St. George Campus, sent a letter to the Student imposing a sanction in respect of the academic offence.
- (d) In May 2008, the Student was suspended from the University for three years for poor academic performance ("Academic Suspension"). The Academic Suspension will expire on or about April 30, 2011. The University and the Student agree that the suspension imposed by the Tribunal should commence after he has served the Academic Suspension.
- (e) The University and the Student agree that, but for the Academic Suspension, a longer period of suspension may have been appropriate in the circumstances of this case.

Guidelines on Penalty

- 11. After considering the Joint Submission on Penalty and all other relevant factors the Tribunal concluded that it would accept the recommended sanction.
- 12. The Factors to be considered when determining penalty are well established:
 - (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.¹

¹ In the Matter of the University of Toronto Code of Behaviour and an Appeal by Mr. C., November 1976 pg 12.

Conclusion on Penalty

13. The Student was in attendance at the hearing. He acknowledged his guilt. He appreciates the seriousness of his conduct.
14. The penalty proposed in the Joint Submission on Penalty involves a lengthy suspension when combined with his earlier Academic Suspension. It means that the Student will not be able to resume his studies at the University until 2014.
15. The most significant factor is the fact that the Student had been disciplined previously for conduct of a similar nature involving academic dishonesty.
16. The Tribunal also took into account the fact that the Student pleaded guilty, came before the Tribunal, openly expressed his recognition of the seriousness of his offence, and took full responsibility for his conduct. This supported the Tribunal's view that there was a good prospect of rehabilitation.
17. The Tribunal also considered the fact that there was a Joint Submission on Penalty. We were provided with cases dealing with the principles associated with the rejection or acceptance of a joint submission on penalty. Specifically, we were referred to the decision of the Ontario Court of Appeal in *R. v. Michael Tsicos* dated October 6, 2006² and the principle enunciated therein that, generally speaking, a joint submission on penalty should be accepted unless it would be contrary to the public interest or bring the administration of justice into disrepute to give effect to the joint submission. This sentencing principle has been adopted by the Tribunal in at least one case.³
18. Overall, the Tribunal considered that the Joint Submission on Penalty was reasonable and reflected a proper balance between recognizing the important principles of preserving ethical behaviour at the University in accordance with the University's standards while at

²*Her Majesty the Queen v. Michael Craig Tsicos*, CAO, Oct. 11, 2006, Docket: C45531

³ See *University of Toronto v. S.M.*, Oct. 6, 2008

the same time providing the Student with some opportunity in the future to resume his academic studies at the University.

19. The Tribunal wishes to emphasize that principles of honesty and integrity are fundamental requirements for membership in the University community. They must be respected. Disregard for these key principles must be dealt with severely. The Tribunal is satisfied that the Student recognizes the importance of these principles and that he has learned an important lesson from this experience.

ORDER

20. The panel imposes the following penalty:
- (a) a final grade of zero in the course BIO260HIS;
 - (b) suspension from the University of Toronto for three years commencing May 1, 2011, and ending April 30, 2014;
 - (c) notation on the Student's academic record and transcript stating that he has been found guilty of academic offences, such notation to run from March 26, 2009, until April 30, 2015; and
 - (d) a report to the Provost who may publish a notice of the decision of the University Tribunal and the sanctions imposed, with the Student's name withheld.

Date

15707209.3

April 29, 2009

John Keefe, Chair

