

**UNIVERSITY OF TORONTO
UNIVERSITY TRIBUNAL
Discipline Appeals Board**

Members of the Panel:

Janet. E. Minor, Co-Chair

Professor John Browne, Faculty member

Ms Francoise Ko, student member

Mr. Jorge Sousa, student member

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

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

AND IN THE MATTER of disciplinary charges against The Student

The Student, in person

Lily I. Harmer, Assistant Discipline Counsel, for the University

A Panel of the Discipline Appeals Board was convened on June 21, 2005 to consider an appeal brought forward by the Student.

The Student appeals from a decision of the University Tribunal dated April 16, 2004. The Panel accepted a plea of guilty from The Student on the following charges:

1. THAT on or about April 10, 2001, you knowingly forged, or in any other way altered or falsified any document or evidence required by the University, or uttered, circulated or made use of any such forged, altered or falsified document, whether the record be in print or electronic form contrary to Section B.I.1.(a) of the *Code*. In particular, you provided a forged, or in any other way altered or falsified letter to Professor Perumalla in support of your request to be permitted to write a make-up lab final test in PSL 374.
2. THAT on or about April 7, 2001, you knowingly forged, or in any other way altered or falsified any document or evidence required by the University, or uttered, circulated or made use of any such forged, altered or falsified document, whether the record be in print or electronic form contrary to Section B.I.1.(a) of the *Code*. In particular, you provided a forged, or in any other way altered or falsified Motor Vehicle Accident Report ('MVAR') to Professor Perumalla in support of your request to be permitted to write a make-up lab final test in PSL 374.

3. THAT on or about May 3, 2001, you knowingly forged, or in any other way altered or falsified any document or evidence required by the University, or uttered, circulated or made use of any such forged, altered or falsified document, whether the record be in print or electronic form contrary to Section B.I.1.(a) of the *Code*. In particular, you provided a forged, or in any other way altered or falsified letter purporting to be from Sergeant John Stevenson of the York Regional Police to Professor Perumalla in support of your request to be permitted to write a make up lab final test in PSL 374.
4. THAT on or about April 10, 2001, you knowingly engaged in any form of cheating, academic dishonesty or misconduct, fraud or misrepresentation not otherwise described in the *Code* in order to obtain academic credit or any other academic advantage of any kind contrary to s. B.I.3.(b) of the *Code*. In particular, you provided a forged or in any other way altered or falsified letter to Professor Perumalla in support of your request to be permitted to write a make-up lab final test in PSL 374.
5. THAT on or about April 7, 2001, you knowingly engaged in any form of cheating, academic dishonesty or misconduct, fraud or misrepresentation not otherwise described in the *Code* in order to obtain academic credit or any other academic advantage of any kind contrary to s. B.I.3.(b) of the *Code*. In particular, you provided a forged or in any other way altered or falsified MVAR to Professor Perumalla in support of your request to be permitted to write a make up lab final test in PSL 374.
6. THAT on or about May 3, 2001, you knowingly engaged in any form of cheating, academic dishonesty or misconduct, fraud or misrepresentation not otherwise described in the *Code*, in order to obtain academic credit or any other academic advantage of any kind contrary to s. B.I.3.(b) of the *Code*. In particular, you provided Professor Perumalla with a forged or in any other way altered or falsified letter purporting to be from Sergeant John Stevenson of the York Regional Police to Professor Perumala in support of your request to be permitted to write a make up lab final test in PSL 374.
7. THAT on or about March 2, 2001, you knowingly forged or in any other way altered or falsified a document or evidence required by the University, or uttered, circulated or made use of any such forged, altered or falsified document, whether the record be in print or electronic form contrary to Section B.1.1.(a) of the *Code*. In particular, you knowingly provided false information regarding the reason for your absence from the term exam in PSL 303 on Wednesday, February 28, 2001, to Professor Milton Charlton in support of your request, you told Professor Charlton the following things, which are untrue:

- a. That you sent him an e-mail on February 27, 2001, to explain that you would be absent from the exam;
 - b. That you were unable to write the examination on February 28, 2001, because you attended the funeral in Detroit of your friend or cousin Chris Petrescu, a police officer, who had been killed in the line of duty.
8. THAT on or about April 8 or 9, 2001, you knowingly forged or in any other way altered or falsified a document or evidence required by the University, or uttered, circulated or made use of any such forged, altered or falsified document, whether the record be in print or electronic form contrary to Section B.I.1.(a) of the *Code*. Specifically, you provided a forged, or in any other way altered or falsified, handwritten fax, which you claimed was written by your aunt, to Professor Milton Charlton. You wrote that fax, or in any event gave this fax, which you knew contained false information, to Professor Charlton in support of your request to write a make-up test in PSL 303.
9. THAT on or about March 2, 2001, you knowingly engaged in any form of cheating, academic dishonesty or misconduct, fraud or misrepresentation not otherwise described in the *Code*, in order to obtain academic credit or any other academic advantage of any kind contrary to s. B.I.3.(b) of the *Code*. Specifically, you knowingly provided Professor Milton Charlton with false information regarding the reason for your absence from the term exam in PSL 303 on Wednesday, February 28, 2001. In support of your request for permission to write a make-up exam, you told Prof. Charlton the following things which are untrue:
- a. That you sent him an e-mail on February 27 to explain that you would be absent from the exam;
 - b. That you were unable to write the examination on February 28, 2001, because you attended the funeral in Detroit of your friend or cousin Chris Petrescu, a police officer, who had been killed in the line of duty.
10. THAT on or about April 8 or 9, 2001, you knowingly engaged in any form of cheating, academic dishonesty or misconduct, fraud or misrepresentation not otherwise described in the *Code*, in order to obtain academic credit or any other academic advantage of any kind contrary to s. B.I.3.(b) of the *Code*. Specifically, you provided a forged, or in any other way altered or falsified, handwritten fax, which you claimed was written by your aunt, to Professor Milton Charlton. You wrote that fax, or in any event gave this fax, which you knew contained false information, to Professor Charlton in support of your request to write a make-up test in PSL 303.

After entering a guilty verdict, The Panel ordered

- (a) That The Student receive a mark of “0” in each of PSL 374 and PSL 303, and;
- (b) That this case be reported to the Provost for purposes of publication.

The Panel further recommended to the President that The Student be expelled from the University.

The Student appeals only the penalty portion of the decision respecting the recommendation of expulsion. He does not challenge the orders with respect to the mark of “0” for the courses or that the case be reported to the Provost for purposes of publication.

At the outset of the appeal, The Student brought a motion for the admission of new evidence before the appeal tribunal. The proposed new evidence relates to communication between the University and The Student and is directed towards responding to an affidavit of Ms. Betty Ann Campbell, filed at the tribunal hearing. The Student explained that he wished to submit the evidence to support his position that any difficulties experienced by the University in communicating with him were not the result of his attempting to avoid service and that some of the statements in Ms. Campbell’s affidavit were erroneous. He submitted that he did not receive the affidavit until the final Tribunal Hearing on March 31, 2004, and was able to deal with it only through cross-examination.

Provision E. 8. under the *Code of Behaviour on Academic Matters* provides that:

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

The rule does not restrict the admission of new evidence to material which was not available at trial. The evidence proposed for consideration relates to incidents before the Panel hearing. Nonetheless the rule permits the admission of evidence in the discretion of the board hearing the appeal. In our view, the discretion of the board should be exercised after taking into account whether the evidence was available, and if so, why it was not called, whether the evidence would have been probative, and also whether its admission would be prejudicial to the opposite party.

There were no findings by the Hearing Panel on the issue of communication with the University or any conclusions that The Student was attempting to avoid service. There was no reference in their reasons to that issue.

We do not consider the proposed evidence either relevant or probative to our consideration of penalty. Therefore we will not admit the proposed further evidence.

The hearing Panel accepted the University's submission that a recommendation for expulsion along with marks of "0" and publication were appropriate in this case.

They found The Student's credibility doubtful, and as a result, his testimony unreliable. They noted that his conduct was deliberate and extremely reprehensible. He had lied, forged documents, and implicated other organizations. They noted that the explanation for some of his stress experienced in March would not explain his conduct in February of 2001. They observed when The Student was initially confronted, he had admitted wrongdoing to his Dean, but continued to lie about another incident. The Panel also took into account the impact of The Student's conduct on the University, his relationship with the faculty and the Panel's view of what difficulties would arise if he were permitted to return. The Panel concluded that he did not appear to recognize the impact of his behaviour on either professors or students. He had not been a model student in past.

We have reviewed the transcript of the proceedings before the Panel and heard submissions from The Student and counsel for the University.

In the matter of the *University of Toronto Code of Behaviour* appeal by Howard Chelin, November 1976, the Appeal Panel discussed the purpose of sanctions, and the appropriate considerations for determining them. The sanction for student misconduct is not intended to be retribution. It must contain the elements of reformation, deterrence and protection of the public. When determining a sanction, a panel should take into account the character of the person charged, the likelihood of repetition of the offence, the nature of the offence committed, and extenuating circumstances surrounding the commission of the offence, the detriment to the University occasioned by the offence and the need to deter others from committing a similar offence.

We have reviewed the decisions submitted to us in which students have been expelled from the University:

University of Toronto and [REDACTED], June 15, 1979

University of Toronto and [REDACTED] February 10, 1984

University of Toronto and [REDACTED], May 8, 1992

University of Toronto and [REDACTED] January 27, 1997

University of Toronto and [REDACTED], July 31, 1998

University of Toronto and [REDACTED] March 24, 2002

In a number of the cases the students denied that the acts were committed and/or had expressed no remorse for their conduct.

We note that in all cases the dishonesty involved the changing of a grade or misrepresentation of achievement by misrepresenting grades or a transcript in order to secure advantage - the ability to rely on a higher mark or grades than had actually been received. However, there is no requirement that expulsion be recommended only for this type of misconduct.

We concur with the Panel's finding that The Student's conduct was extremely reprehensible and can in no way be condoned. However we note that his dishonesty, which was directed at advancing his position, stopped short of conduct which would have permitted him to rely on misrepresentation of his achievements. Rather the dishonesty would have permitted him to have a second chance at writing two tests. The marks obtained would still have been based on his performance. This conduct was not consistent with the values of the University. A dishonest course of conduct, which results in an advantage to a student over his peers, is harmful to them and to the integrity of the University.

We accept that The Student was under severe personal stress during the bulk of the period in which the conduct occurred.

The Student pleaded guilty at the hearing and had agreed to a Statement of Fact to be submitted. At the hearing before the Panel he indicated remorse and shame for what he had done. He stated that he was ashamed of what he had done and noted that at the time it was not his intention to hurt anyone or to harm the University. At the hearing of the appeal, The Student repeated these sentiments and apologized to the University. We accept that the remorse and apology are genuine.

Taking all of these factors into account, we would stop short of imposing the most extreme sanction – a recommendation of expulsion. Instead, we would impose a suspension of 5 years from the University.

We therefore allow The Student's appeal and order:

- (a) That The Student receive a mark of "0" in each of PSL 374 and PSL 303, and;
- (b) That this case be reported to the Provost for the purposes of publication;
- (c) That The Student be suspended from the University for five years commencing on April 16, 2004, the date on which the University Tribunal rendered its decision to the Student.

August 21, 2006