FILE: 1992/93-12
APPEAL

Trial: 1991/92-07

THE UNIVERSITY TRIBUNAL OF THE UNIVERSITY OF TORONTO

TRIBUNAL APPEALS BOARD

BETWEEN: Mr. V.
Appellant

- and -

The University of Toronto
Respondent

BEFORE: Mr. Anthony Keith (Chair)
Ms Rachelle Leblanc
Professor John Slater
Appeals Board

APPEARANCES:

Ms Linda R. Rothstein
Counsel for the Respondent

SUMMARY OF PROCEEDINGS BEFORE THE TRIBUNAL AND REASONS FOR DECISION OF THE APPEALS BOARD

This is an appeal by Mr. V. to the Appeals Board of the University Tribunal *from the sanction imposed, in his absence, by the jury in the* Trial Division of the University Tribunal on May 7th, 1992, immediately following the jury's unanimous finding that the Appellant had committed offences under the University of Toronto Code of Behaviour on Academic Matters, 1985 and 1991. *The Appellant asks that the sanctions be modified so as to provide for a reduction* in sanction, from expulsion to suspension, combined with publication of the offence in the University newspapers. The Appellant asks that the sanction be reduced because the penalty is harsh and excessive in the circumstances.

Mr. V. was charged with the following offences:

1. On or about *March 12, 1991 he did forge or falsify* an academic transcript, or make use of such a forged, altered or falsified record, contrary to Section E.1.(c) of the University of Toronto Code of Behaviour on

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In particular, he wrote to the Ontario Medical Schools Application Service (OMSAS) and enclosed a document which purported to be his academic transcript but was in fact a false, altered or forged document.

2. On or about July 16, 1991, he did forge or falsify an academic record, namely his academic transcript, or make use of such a forged, altered or falsified record, contrary to Section B.I.1.(a) of the University of Toronto Code of Behaviour on Academic Matters, 1991.

In particular, he sent a "Special Letter" to OMSAS which contained a document which purported to be his academic transcript but was in fact a false, altered or forged document.

The Trial Division jury recommended expulsion from the University and that the decision and sanction imposed be reported to the Vice-President and Provost for publication, without identification, in the University newspapers. Pursuant to the Code of Behaviour, expulsion is automatically recorded on a student's academic transcript permanently.

In response to questions by the Chair of the Appeals Board, the Appellant said that he was aware of the seriousness of the matter and had chosen to appear on his own behalf. He had had Counsel, who had prepared the written appeal materials, but he had dismissed him. However, he would be using and referring to those materials, which had been sent to members of the Appeals Board.

The Appellant told the Board that due to the fact that he had failed to attend the hearing in the Trial Division, he wished to present evidence at this time which had not been presented at his trial hearing. He said that he had not received the original letter from the Secretary of the University Tribunal outlining the Tribunal's procedures and notifying him of the date for his hearing. This was due to the fact that it had been sent to his previous address. He had subsequently received a reminder letter concerning the trial date but by that time, he had had only three weeks to prepare for the hearing, both mentally and emotionally. Perhaps if he had had additional time, he could have prepared. In answer to a question, the Appellant stated that his Counsel had requested an adjournment in the circumstances but the request had been denied.

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The Appellant said that he could not justify his behaviour in committing the offences. However, he wished to describe to the Board his state of mind at the time of their commission. He said that basically, his whole world had fallen apart: his research and academic activities and his personal life. He had been engaged to be married but it had been broken off when he had confessed his offences to his fiancee. In addition, he had been having problems with his parents over the pending marriage, which had made it harder to tell them about the offences. He had been, at the same time, enrolled at the University of in the M.Sc. Program in Physiology in the Faculty of Medicine. It had been only on May 4th, 1992 that he had been able to admit his offences to his supervisor. He had also been a member of a research team working on a paper. When he told the supervisor, he had immediately been taken off the authorship of the paper and barred from participating in any further experiments. He drew the Board's attention to a letter from his psychoanalyst outlining these stresses on him. Because of these events, he had not been prepared to come before the Trial Division of the Tribunal.

The Appellant said that he believed that he had the potential to contribute in a positive way to society. He drew attention to two research articles in which he had been involved: at the and at the , copies of which had been sent to the Board. Although he had entered the program under false pretences, his grade report from the University of demonstrated his potential in this field of research. He had made strides in his research, strides which he hoped would be important in the field of neo-natal lung disease. He also noted that he had been awarded a fellowship by the Medical Research Council but he had not taken it up. Instead, his supervisor at the University of would be contacting the Council to explain his situation. He had worked as hard as he could at the University of and was involved in preliminary experiments concerning clinical research at in Ontario. He drew attention to several letters expressing confidence in his potential in this field.

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The appellant said that he did not believe that his poor standing at the University of Toronto reflected his intelligence. However, faculties of medicine relied only upon grades for admission into their programs. He had believed that the only way to achieve his goals was to falsify his transcript. He now knew that this was wrong. He believed that because of what he had gone through during the past year, he was now a different person. He had thought deeply about the situation and believed that he now had a better understanding of himself.

In the materials received by the Board from the Appellant's Counsel, several Tribunal cases had been cited. The jury in one case had suspended a student and had recommended psychological counselling. It was argued that the penalty given to the Appellant should reflect his efforts to seek psychological counselling. In another case, a "repeat offender" had been awarded sanctions of grades of zero in each of her eight courses, suspension from the University for five years, the suspension recorded on her transcript for ten years and the decision reported in the University newspapers. Therefore, it was argued, there was no precedent that required "repeat offenders" to be expelled. Cases had also been cited to demonstrate that other equally serious offences had not resulted in expulsions.

The Appellant's Counsel had also submitted that expulsion was not necessary to adequately punish the Appellant and that there was no reason to believe that a suspension combined with publication of the offence would have any less a deterrent effect on other students that an expulsion.

In summation the Appellant noted that, if expelled, he would not be able to contribute to the world of science, which, he believed, he was capable of doing.

Counsel for the respondent submitted that the Appeals Board should not accept new evidence in determining the propriety of the Appeal but rather the Appeal should be determined on the record as it existed. The jury's sanction was not only justifiable but appropriate and it should not be interfered with by the Board.

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Counsel for the Respondent briefly highlighted the facts of the case. The Appellant had been a student enrolled at Woodsworth College and had completed about three years of study when the events in question had taken place. He had applied to the Ontario Medical Schools Application Service (OMSAS) in order to apply to several Ontario medical schools. The evidence showed that the Appellant had received a letter from OMSAS requesting an official University of Toronto transcript and, in response, had sent a letter stating that he had requested the Faculty of Arts and Science to forward his transcript. He had enclosed with the letter a document purporting to be a copy of his transcript. Once again he had been asked to provide his official transcript and he had telephoned OMSAS to report that he had requested it. Subsequently, OMSAS had contacted the Faculty and had been told that there had been no request made by the Appellant and, in addition, that the grades on the copy of the transcript OMSAS had received were fraudulent. OMSAS had then received a "Special Letter" purporting to come directly from the Faculty with another envelope enclosed containing an identical transcript to the one already received from the Appellant.

Counsel for the Respondent argued that the Appellant's second action was even more serious than the first because the document purported to come directly from the Faculty and might never have been discovered but for the fact that the "Special Letter" had been addressed in the Appellant's own hand and that a clerk at OMSAS had followed up on the Appellant's statements that he had made transcript requests.

Counsel for the Respondent remarked that there had been an original transcript falsification in March of 1991, followed by a second in June of 1991. She compared the Appellant's official transcript to the ones submitted to OMSAS. Every grade had been changed except one. In addition, a number of courses, which the Appellant had never taken, and a notation that a degree had been awarded, had been added to the transcript. She submitted that it was a deliberate and extravagant falsification of the Appellant's academic record.

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Counsel for the Respondent pointed out a notation on the official transcript which showed that this had not been the Appellant's first offence. He had previously been suspended from the University for six months with a two-year notation on his transcript for falsifying his grades on two separate occasions, in order to ballot for courses. This fact had been brought out at trial, after the Appellant had been found guilty, in order for the jury to determine an appropriate penalty. Counsel remarked that in light of this, the new evidence that the Appellant sought to introduce was irrelevant. He had been warned and sanctioned before for virtually the same behaviour.

Counsel for the Respondent noted that pursuant to the Code of Behaviour, provision for admitting new evidence on appeal was very limited. She pointed out the Board's decision in 1988/89-03 , where it had ruled that the Board could not "be put in the position...of substituting its view of the appropriate sentence for that of the jury at the Trial Division." She noted that it would be a rare case where new evidence would be admitted on Appeal, and only if it could be established that it had not been available at trial by due diligence, and, in addition, that it could reasonably be expected to have altered the outcome of the trial.

Counsel for the Respondent next addressed the issue of adjournment of the trial hearing which had been raised by the Appellant. She had not been aware that this was an issue. There had been no mention made of it in the materials sent to the Board by the Appellant's Counsel, nor was there any record in her file concerning a request for adjournment. She was confident that if a request based upon such a good reason had been made, the University would have granted an adjournment, based on the Tribunal's previous practice.

Counsel for the Respondent remarked that there had been no reasons given by the Appellant as to why the new evidence which he was seeking to introduce could not have been available at the trial hearing. She said that he was asking the Board to conclude that he had been emotionally overwrought and therefore unable to attend the hearing. She believed that this position was unsupported by evidence. Even the letter from his psychoanalyst did not suggest an emotional

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breakdown or a severe emotional incident. Where there was discussion of depression, pressure and anxiety, there was nothing to corroborate the Appellant's statement. She put it to the Board that the Appellant had not felt remorseful or contrite at that time and it was only after his conviction that he sought counselling and took steps to remedy the situation. Furthermore, it was only after the University of had learned of the Tribunal's proceedings that the Appellant had had to face the events and had then experienced remorse. Therefore, she believed that the Board should have grave concerns over remorse which was expressed after a trial was over. The Board would not wish to condone a student's ignoring trial proceedings until the University had proven its case and then coming forward and calling evidence.

Counsel for the Respondent remarked that the new evidence was mainly in affidavit form and therefore not open to cross-examination. She said that because of this, it should be viewed as less credible. Secondly, the grade report from the University of did not specify courses, it was not an official transcript and it did not show if the courses had been completed. Thirdly, the psychoanalyst's letter appeared to be premised on the fact that the Appellant was guilty of one dishonest act, which suggested that the real facts had not been disclosed. Because the psychoanalyst did not realize the magnitude of the situation, his conclusions should not be viewed as valid. Fourth, none of the character references seemed to reflect the magnitude or longevity of the dishonesty either. Therefore, the evidence, she submitted, could not be viewed as credible.

Counsel for the Respondent submitted that the Board should review the record of the case alone and consider the sanction recommended unanimously by the jury. She believed that the Board should determine first whether the jurisprudence of the Tribunal Appeals Board supported the proposition that the Board should not interfere with a penalty imposed by a jury, unless it had cogent reasons for doing so. She drew attention to the case of 1977/78-02 which supported this position. Secondly, the decision of the jury, when unanimous, was given more weight, and thirdly, the likelihood that an offence would be repeated were very

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important factors in considering the appropriateness of a sanction. She submitted that on the record, the likelihood of a future offence weighed heavily against the Appellant. The sanctions given in previous offences had not deterred him from committing the offences in question. Fourthly, the record alone disclosed no extenuating circumstances. Even if the Board were to look at the new evidence, there were no extenuating circumstances which would justify the long-standing and premeditated attempts to deceive. His pressures and emotional problems could produce sympathy but they could not be viewed as exceptional or greater than the kinds of pressures affecting most students in this competitive age. Fifthly, the Board should consider the nature of the offence, the detriment to the University occasioned by the offence and the need to deter others, which, she believed, were the most important factors to consider. This was among the most serious offences. The deception was not confined to a single course or a single component of a course but encompassed the Appellant's entire academic record. Every course but one had been misrepresented. An offence of this nature seriously undermined the University's evaluation system and was difficult to detect. Other universities and institutions had to be able to rely on the integrity of the University's transcripts, particularly those represented to be official. Damage had been done because the University of had admitted the Appellant into a Master's program and he had been able to gain a number of awards. She cited two similar Tribunal cases: 1978/79-06 and 1983/84-07 . In neither case had there been evidence of previous misconduct but in both cases the juries had recommended expulsion. In 1983/84-07 the Appeals Board had agreed to remove the notation from the transcript after ten years but under the current Code of Behaviour, there was no discretion for the Board to do this.

Counsel for the Respondent submitted that the Board had three options: to consider the new evidence which the Appellant was seeking to introduce; to decide not to consider the new evidence but to decide the case on the record alone; or, if the Board had any doubts regarding the new evidence, to order a new trial on sanction which would permit both sides to call evidence and cross-examine.

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Asked if he wished to respond to any of Counsel's submissions, the Appellant remarked that he could have continued to lie to the University of but he had consciously decided to tell them the truth. In response to the point made by Counsel regarding his psychoanalyst's letter, he said that he had made it clear to the doctor that this had been a recurring act. He believed that the doctor had lumped them altogether because all the acts were the same; the only difference was the bodies to which he had submitted the altered grades.

The members of the Appeals Board retired to consider the submissions.

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(Delivered orally by C.A. Keith)

With respect to the Appeal concerning the submission that we hear new evidence: Section C.III.9. of the University of Toronto Code of Behaviour on Academic Matters, 1991, provides that "An appeal shall not be a *trial de novo* but in circumstances which it considers exceptional, the Tribunal 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 may direct." The Appellant has cited to us the fact that during the period immediately prior to the hearing on May 7th, 1992, he was suffering from extreme emotional upset. He felt himself unable to deal with the reality of the situation, was unable to confront his parents and, in fact, a forthcoming marriage relationship was terminated as a result of what he had to deal with. These are the circumstances which are relied upon as justifying the reception of new evidence. The new evidence that he wishes us to consider consists of testimonials from various persons with whom he has had association, both professionally and otherwise, together with a letter from a psychoanalyst, child and adolescent psychiatrist, Dr. Saul J. Goldstein, dated November 13th, 1992, in which Dr. Goldstein refers to certain discussions that he has had with the Appellant.

During the course of his submissions, the Appellant also alluded to the lateness of his receipt of the notice of the hearing at trial and alleged that, in conversation

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with his Counsel, he had sought an adjournment. The Board can find no reference in any of the written material submitted by the Appellant, or on his behalf, to any request for an adjournment. We are all of the view that had this been a matter of concern to the Appellant, it would have occupied a prominent place among the material submitted to this Board. The evidence at trial clearly

indicated that Counsel for the University had been in direct contact with the Appellant's Counsel at the time, and was clearly advised by him of the Appellant's decision not to appear either in person or by Counsel. We are therefore not prepared to give any effect whatsoever to the submission before this Tribunal, for the first time, that he had been refused a proper opportunity to prepare for the trial proceedings.

With respect to the fresh evidence generally, we are not persuaded that the circumstances referred to by the Appellant are exceptional within the meaning of that term as we understand it to be used in Section C.III.9. of the Code. We are mindful of the fact that, generally speaking, in our legal procedures, fresh evidence, in order to be considered by an appellant tribunal, must not have been available through any exercise of due diligence at the time of the original hearing. We have considered the question of whether or not the circumstances were exceptional in light of whether or not those circumstances were such as to have reasonably deprived the Appellant of an opportunity to gather, obtain and present such evidence at trial. The circumstances that have been related are such that we are not persuaded that there is any exceptionality to what the appellant has brought to us today. Nevertheless, we have all read the new evidence which the Appellant has sought to put before us and have considered it, for the purposes of our decision in this Appeal. We are all of the view that there is nothing in that evidence which would have materially affected the result before the Trial Division of the Tribunal, had it been presented and had the jury heard it. For those reasons the application to tender new evidence is therefore dismissed.

With respect to the Appeal against the sanction imposed by the jury, we are all of the view that we should not interfere with the jury's decision. The offences with which the appellant was charged, and as now admitted by him both in the

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material filed before the Board and in his oral submissions, were both serious and premeditated and involved a conscious and deliberate deception of various persons within and without the University community over a considerable period of time. The nature of these offences called into question the very integrity of the University's certification and transcript system. We are mindful that the jury, in imposing the sanction, was unanimous. We are further mindful of the fact that, as was put to the jury, this was not the first offence of this nature of which the

Appellant had been convicted. In that regard, Exhibit 15, filed at the trial hearing, is a letter from the Associate Dean to the Appellant, dated December 7th, 1989, which summarizes the circumstances of the first offence which resulted in a six-month suspension from the University, with that suspension to be noted on his transcript for two years. We are all of the view that the Associate Dean's letter was couched in the harshest of possible terms and ought to have been sufficient warning that any further offence, and particularly one of a similar nature, would not, under any circumstances, be tolerated by the University community. We are further in agreement with Counsel for the Respondent that the decision of the jury was fully in accord with previous decisions of this Tribunal, both at the Trial and Appellate Divisions. For all of those reasons, then, the Appeal is dismissed.

Anthony Keith | John Slater | Rachelle Leblanc

March 16th, 1993