FILE: 1993/94-06

Trial: 1992/93-11

UNIVERSITY TRIBUNAL OF THE
UNIVERSITY OF TORONTO

TRIBUNAL APPEALS BOARD

BETWEEN:

UNIVERSITY OF TORONTO

Complainant
(Appellant)

- and -

Ms. E.

Accused
(Respondent)

BEFORE:

D.S. Affleck, Q.C. (Senior Chair)
Fred Budnik
Principal John Browne

APPEARANCES:

Linda R. Rothstein
and M. Hadskis for the Appellant

No one appearing for the Respondent

DATE:

August 30, 1993

WRITTEN REASONS
released March 15, 1994

This is an appeal by the Provost of the University of Toronto from sanctions imposed on the Respondent student.

On March 9, 1993 the Respondent was found guilty of seven offences under the *University of Toronto Code of Behaviour on Academic Matters* by the Trial Division of this Tribunal. Those seven offences were:

1. THAT on or about August 8, 1991, she did illegally enter the office of Ms. Sophia Kirschner (now Garofano) for the purpose of attempting to forge or falsify an academic record, contrary to section B.II.2 and section B.I.3(a) of the *University of Toronto Code of Behaviour on Academic Matters*, 1991.

2. THAT on or about August 8, 1991, she did attempt to access University personal academic files without proper authorization, contrary to section B.I.4(c) and section B.II.2, of the *University of Toronto Code of Behaviour on Academic Matters*, 1991.

3. THAT on or about June 20, 1991, she did represent as her own an academic work submitted for credit in PSY341F (91S) an idea or expression of an idea or work of another contrary to section E.1(a)(ii) of the *University of Toronto Code of Behaviour on Academic Matters*, 1985, by submitting an essay written by one B as her own.

4. THAT on or about June 20, 1991, she did represent as her own an academic work submitted for credit in PSY341F (91S) an idea or expression of an idea or work of another contrary to section E.1(a)(ii) of the *University of Toronto Code of Behaviour on Academic Matters*, 1985, by submitting an essay written by Ms. S as her own.

5. THAT in or about October, 1991, she did forge or falsify an academic record, and/or make use of a forged, altered or falsified record, in relation to MEI250S (90W), contrary to

section B.I.3.(a) of the *University of Toronto Code of Behaviour on Academic Matters*, 1991.

6. THAT in or about the third week of May, 1991, she attempted to forge or falsify an academic record, and/or to make use of a forged, altered or falsified record, in relation to MEI250S (90W), contrary to section B.I.3.(a) and B.II.2. of the *University of Toronto Code of Behaviour on Academic Matters*, 1991.

7. THAT at some point in late June or early July, 1991, she did forge or falsify an academic record relating to PSY201F (90W) in contravention of section BI.1.3(a) of the *University of Toronto Code of Behaviour on Academic Matters*, 1985.

The jury was unanimous in its finding of guilt in respect to each of those offences.

Following the findings of guilt, the jury immediately heard submissions as to sanctions and, by a bare majority (3:2), imposed the following sanctions on the Respondent:

(a) assignment of a grade of zero or a failing grade for the courses in PSY341F, MEI250S and PSY201F and PSY210Y;

(b) suspension of five (5) years from the University;

(c) a notation of the sanctions and the reason for them on the Respondent's transcript until such time as the

Respondent may have completed an undergraduate degree; and

(d) requested the case be reported to the Provost and that there be publication of a notice of the decision of the Tribunal in the University newspapers.

The Respondent student did not appear before the Trial Division or before us nor was she represented on either occasion although all required efforts had been made to notify her of the original hearing and of this Appeal.

Each charge of which the Respondent was found guilty by the jury is one of considerable gravity. Suffice it to say that the charges involved such matters as breaking and entering with intent to falsify academic records and the submission for credit of stolen essays. The evidence introduced by the University before the Trial Division made it clear that the Respondent either knew she was benefiting from criminal conduct or was a participant in such conduct.

The University, as Appellant, argues that the sanctions imposed by the majority of the jury of the Trial Division were inadequate in light of the serious nature of the offences of which the Respondent was found guilty, that those sanctions were inconsistent with sanctions imposed by the Tribunal in other cases, that the sanctions did not take into account deterrence as a factor and that the sanctions did not take into account the detriment to the University occasioned by these offences.

While the Tribunal Appeals Board is normally reluctant to disturb the verdict of a jury respecting sanction, we find ourselves in this case in agreement with the position put forward on behalf of the Provost of the University. Not only is the conduct portrayed by all the evidence shocking

but it is conduct from which the University must be shielded. Students must be alerted to the fact that criminal conduct will not be tolerated at the University of Toronto.

While the transcript of the proceedings before the Trial Division might suggest that the Respondent student could have put forth some mitigating circumstances on her own behalf, she failed to attend to do so and to have any testimony she might give tested by cross-examination. Instead, she wrote a letter to the Provost dated November 27, 1992 admitting to the charges against her and apologizing. The apology is, of course, self-serving and we have no way of judging its sincerity. The Respondent's failure to attend before the Trial Division or before us deprived us of that opportunity.

A review of the decisions of the Tribunal Appeals Board discloses no case in which there was a systematic and widespread pattern of deceptive conduct such as was found in this case. Indeed, it can be said that there are no cases displaying such a concerted attack on the evaluation process as is to be found in the proven facts of this case.

In the absence of any redeeming factors on the part of the Respondent, we unanimously recommend to the President of the University that the Respondent Ms. E. be expelled from the University of Toronto forthwith.

In reviewing the transcript of the proceedings before the Trial Division we noted that the two members of the jury that disagreed with the majority in respect to sanction were not afforded a clear opportunity to express their reasons for disagreement. We would like to recommend that, in future, the chair provide any dissenting juror with an opportunity to express reasons for dissent. We would also recommend that more consideration be given by counsel appearing before the Trial Division to providing the jury with prior decisions of the Trial Division and the Appeals

Tribunal for the purpose of assisting the jury in relation to their deliberations on sanction.

D.S. Affleck, Q.C.

Fred Budnik

Reasons delivered by Principal John Browne:

I agree completely with the decision to allow the appeal by the Provost and with the reasons supporting the decision.

I believe it is unfortunate that the University no longer allows the notation of expulsion to be removed from the transcript at the end of a specified period of time. The jury in this case clearly felt that there were mitigating circumstances with respect to sanction and wished to allow the accused the opportunity of returning to university in the future. The permanent notation of expulsion on the accused's University of Toronto transcript does little to encourage her to pursue such an opportunity since it makes application to another university a daunting prospect.

Even if this consideration did not influence the jury's decision about sanction, I would still urge the Provost to consider amending the sanctions available to the Tribunal to allow the notice of expulsion to be removed upon review after a specified period of time when mitigating circumstances can be cited. Such an amendment would allow discipline Counsel more latitude in recommending sanction and could be a useful alternative in those cases where warranted.

John Browne