The University Tribunal of the
University of Toronto

Karl D. Jaffary Q.C., Chairman
John Sopinka Q.C.
Irena Ungar

IN THE MATTER OF the University of Toronto Code of Behaviour and an Appeal by Mr. C.

Reasons for Decision

Delivered by Mr. Karl D. Jaffary

This was an appeal by Mr. C. against the sanction imposed by the Local Branch of the Trial Division of the Tribunal following its finding that Mr. C. had committed an offence in that he did, in April, 1976, submit a term paper in SOC 216 which he represented as his own work but which was in fact the work of another with intent to deceive within the meaning of Section E.1(a)(ii) of the Academic Code of Behaviour.

Following the Appeal Division hearing, the Tribunal advised the parties that it had decided to make an order:

a) Confirming the decision of the Local Branch of the Trial Division that Mr. C. be suspended for a period of twelve months from the end of the session in which the order of the Local Branch was made; and

b) Ordering the publication of a notice of the decision, and the sanction imposed, by affixing the same to Mr. C. 's transcript for a period of three years or until he obtains a degree from the University of Toronto, whichever first occurs.

The Tribunal further advised the parties that it would deliver written

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reasons for its decision as soon as possible. In view of the fact that this matter is the first to come before the Appeal Division, the Tribunal decided to give more extensive reasons than might otherwise have been the case, and to deal with some of the procedural matters which arose.

Prior to the commencement of the hearing, Mr. Sopinka advised that he delivered lectures at the Faculty of Law, although he was not considered a member of the teaching staff. Mr. C. and Mr. Laskin, the University Discipline Counsel, both advised that they took no exception to Mr. Sopinka sitting as a member of the Tribunal.

The facts of this case appear from the transcript of the Local Branch hearing of June 29, 1976. Mr. C. did not appear at that hearing, but the evidence indicated that he was duly notified of it, and he admitted to the Appeal Division that he had actual notice of the hearing. The evidence was that he had been excused from writing a term test on medical grounds; that he had elected to submit a term paper in lieu of writing a second test (although his professor had felt that he should do both); that he discussed various topics with his professor and in each case the topic was found to be unsuitable; that without consultation about the topic he submitted a paper on a subject and in a style more appropriate to the Faculty of Law; that much of the paper was mechanically reproduced from a typescript, with the first and last few pages written in longhand; that he explained the longhand with a note stating that he had spilled coffee on a few pages.

Mr. C. 's professor contacted him by telephone. Mr. C. was said to have stated that he was holding a full-time job, was unprepared for the test and had done no work in the course and that he had submitted work done by a friend. Mr. C. was asked to attend an interview with the Dean.

Mr. C. arrived an hour late for the interview with an

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unfinished, longhand essay entitled "Cheating - Being a Reversible Deviant", and claimed to have presented the paper that was not his own as an experiment.

Evidence was given at the Local Branch hearing that Mr. C. had, in a previous year, plagiarized another student's work and had been refused standing in that course.

On that evidence a jury in the Local Branch found the offence to have been committed, imposed a one year suspension as asked for by the University and ordered that the decision be a part of Mr. C. 's transcript for the period set forth above. We have slightly varied the form of the decision only to indicate that the order concerning the transcript is not a part of the sanction but rather an order about publication under Section G9 of the Code.

We considered, first of all, the role of the Appeal Division of the Tribunal in considering sanctions imposed, as is here the case, by a jury. We discussed whether appeals from the sentence of a provincial court were analogous, and also considered the situation of an appeal court considering a jury's award of general damages. We decided that the Appeal Division should attempt to give some guidance in the matter of sanctions and should, over a period of time, attempt to ensure some uniformity of sanction, always considering the particular facts of each offence and each offender. We concluded that it would be appropriate for the Appeal Division to vary a sanction if it believed the sanction imposed to be wrong.

The grounds for appeal as stated in Mr. C. 's letter of August 12th last were -

1) that the offence was a first offence;
2) that Mr. C. is, for medical reasons, already a year behind in his academic career;

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3) that it is particularly important to Mr. C. that he not miss another year;

4) that, upon completion of a degree, Mr. C. hopes to do post-graduate work at Florida International University;

5) that Mr. C. will lack intellectual stimulation if he does not attend University.

At the appeal Mr. C. advanced as a further ground the fact that he did not attend the Local Branch hearing.

The Appeal Division does not find merit in any of those grounds. The offence was not a first offence. Mr. C. 's personal circumstances seem of little relevance. He admitted having notice of the Local Branch hearing. He showed no repentance, indeed he constantly referred to his innocence although when questioned he made it clear that he did not wish to seek an enlargement of the time so as to permit him to appeal the conviction. He suggested no mitigating circumstances, such as emotional or extreme financial pressure. He offered no character evidence. It is perhaps unfair to judge him on his personal appearance before the Appeal Division, but at that time he did not impress the Tribunal as being frank or truthful.

The University Discipline Counsel advised that offences appear to be increasing and that the element of deterrence had to be carefully weighed.

The Tribunal noted that the sanction imposed was one of the most severe that the Local Branch was entitled to impose, and that the University had elected to proceed in the Local Branch. That being so, and the University not at any time having asked for any more severe sanction, the Tribunal did not consider imposing any greater sanction. However, that is not to be taken as an approval of a one year suspension for an offence of this sort.

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The Criminal Law of Canada must deal with all human beings. No person has a choice. All must obey it. That being so, criminal justice must take particular cognizance of human frailty in those it convicts and punishes.

The University, on the other hand, is open only to those who choose to be members of it. Those people can and must be expected to obey its basic rules. Even when those rules are broken, no sanctions can be imposed except with the consent of the accused or upon the decision of a jury based on proper evidence. When findings are made on such evidence, the University is then entitled to protect itself.

Behaviour such as Mr. C. 's will destroy the University. There can be no integrity in an exchange of plagiarized ideas. The reputation of the University's degrees will be debased if any significant number of them are granted to persons whose scholarship is suspect.

Plagiarism, cunningly done, must be difficult to detect in an institution as large as the University of Toronto. While those evaluating work must be vigilant, we must acknowledge that some cases will not be detected, and we must try to prevent a situation where the major function of those evaluating work will be the detection of offences. Severe sanctions ought to assist in deterring attempts at plagiarism.

In this case the attempt at plagiarism was so badly done that it was easily detected, and Mr. C. argued that those facts supported his defence, and showed that he had no intention to deceive but merely wished to see how the University would deal with a situation of cheating. The jury understood that point and obviously rejected it. The Tribunal is concerned that the submission of so obviously plagiarized work may indicate that the practice is widespread.

Mr. C. has been found to have attempted to obtain all of the credit for a full course on the basis of plagiarized work. He did little or no work of his own in the course. It was a second offence, following what must have been a serious warning and a zero grade, for

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plagiarism, in another course. He shows neither repentance nor extenuating circumstances and, therefore, no prospect of rehabilitation.

Speaking now for myself, I have great difficulty in understanding why the University is prepared to accept him back in the fall of 1977, with every prospect that he will eventually carry one of the University's degrees for life. Are his future instructors to be warned? What deterrent will a one year suspension be to any other like-minded student, in these days of course-credit degrees, when many students, for good reason, choose to interrupt their academic progress for years at a time? I would personally have supported far more severe sanctions.

In conclusion, I will touch upon several matters of administrative detail. The Tribunal was very kindly provided with appeal books prepared by The Discipline Counsel. Mr. C. expressed ignorance of the material before the Tribunal, apparently due to his not picking up his mail. It might be appropriate, in future, for the Tribunal secretary to prepare appeal books after settling their contents with both parties. Where the sanction is in issue, it might be wise if the record of the individual were before the Tribunal. In this case, both parties referred to the record, but it was not placed before us.

No formal order was taken out after the Local Branch hearing, and in order to determine the findings made, reference had to be made to a transcript and to the Secretary's notes. In future it would be appropriate for the Secretary to issue an order in Local Branch matters and for the Discipline Counsel to take one out in other cases, settling its form with the Secretary or, in case of difficulty, with the Tribunal Chairman who acted on the hearing.

There appears to be no mechanism for publishing or collecting reasons for decisions by the Tribunal, although the decisions themselves can be ordered to be published. I would have thought that hearings of

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the Tribunal were public unless otherwise ordered, and that written reasons are simply a convenient substitute for oral reasons given at a public hearing. Thus I would have thought that reasons ought to be considered to be public unless otherwise ordered.

Assuming that the Tribunal is designed to be an ongoing feature of the University, it seems to me that there would be benefit in Tribunal decisions and reasons being publicly available. The element of deterrence requires that the sanctions imposed be known. Persons who are brought before the Tribunal ought to be able to consult a record of the Tribunal's past decisions. Both of those features might be achieved if reasons for decisions of at least the Appeal Division were provided to the University Archives, to the Faculty of Law Library and to the University newspaper. I assume that reasons for Tribunal decisions are the property of the Tribunal, and can be dealt with as the Tribunal directs. Rather than giving such a direction in this case, I suggest that the Senior Chairman of the Tribunal consider the matter.

The question of publicizing reasons for a decision raises the whole question of whether the identity of those against whom sanctions are imposed should be publicly identified. The law protects the identity of children, while the Code of Behaviour contemplates members of the University being treated as adults. The Rules of Procedure provide for some offences being dealt with privately within a department. One can contemplate cases where the protection of the identity of an individual might assist in his rehabilitation, just as there might be other cases where an individual might wish wide publicity of the fact that his name had been cleared. I believe that reasons for decisions should not hide the identity of an accused unless the Tribunal otherwise directs, but I suggest that this matter, too, be considered by the

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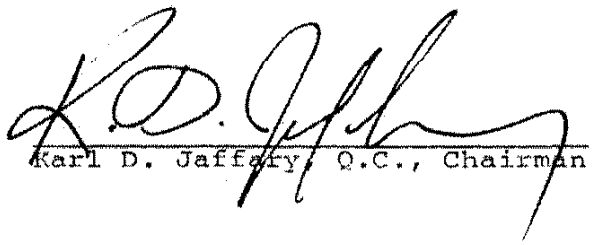
Senior Chairman.

Finally I shall deal with the matter of costs. The Tribunal is empowered to award costs. The University was put to considerable expense in this appeal, as the Discipline Counsel decided to order a transcript of the Local Branch hearing. The appellant, in his notice of appeal, offered to pay for the costs of a transcript. In the result, the transcript was most helpful to the Tribunal but was paid for by the University. However, the Discipline Counsel made no submissions as to costs, although invited to do so. The Tribunal concluded that while the appeal was found to be without merit, this was the first appeal to be made to it, and the parties might have been, understandably, unsure of what to expect. For that reason there will be no order as to costs.



Karl D. Jaffary, Q.C., Chairman

Reasons for Decision

Delivered by Mr. John Sopinka

I have had the advantage of reading the Reasons for Decision of the Chairman and I agree with the facts as stated by him and with the disposition of the appeal. I find it desirable, however, to state my own reasons.

This is the first appeal with respect to an academic offence under the Academic Code of Behaviour which was adopted by the University on October 1, 1975. Prior to the enactment of this code these matters were dealt with by a body known as the Caput which was entirely composed of persons associated with the University. By virtue of the provisions of an enactment of the Governing Council respecting the Disciplinary Tribunal of the University of Toronto, Members of the Disciplinary

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Tribunal, except for the jury, are persons not employed by the University.

This is an appeal from sentence only. The sentence imposed is set out in a letter of June 30, 1976 from Patrick S. Phillips, Secretary, Academic Tribunal to the appellant. The letter states in part as follows:

> "The jury has decided to agree with the University's sanction of suspension for twelve months...We have decided that the suspension for plagiarism be recorded on his transcript:
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> 1) Until he receives a degree from the University of Toronto, or
> 2) For three years, whichever occurs first."

The authority for the jury to impose a sentence is contained in the Code of Behaviour and is as follows:

> "F. SANCTIONS
>
> 2. Academic
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> a) Subject to the provisions of section G hereof, the following sanctions, listed in order of increasing severity, may be imposed by the Tribunal upon conviction of any student of any academic offence as hereinafter defined:
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> (i) Caution or warning;
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> (ii) Censure or reprimand;
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> (iii) Failure in or cancellation of credit for any course or programme of study in respect of which any

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academic offence was committed;

(iv) Suspension from attendance in all courses in which the student is registered at the time the offence was committed for any period less than twelve months from the date on which the offence was committed, and with loss of credit for all courses which have not been completed or in which no grade or final evaluation has been registered at that time;

(v) Suspension for such period not exceeding two years from the end of the session in which order of the Tribunal was made, as the Tribunal may determine;

(vi) Expulsion."

I am assuming in these Reasons that the order of the Tribunal which imposed the sentence was made in the session which ended in 1976 and commenced to run from the end of that session.

This appeal was heard viva voce and the argument was presented by the appellant in person and by Mr. John I. Laskin, acting on behalf of the Provost. The grounds for appeal are set out in the Reasons of the Chairman and I do not repeat them. At the outset it was necessary for the Appellate Tribunal to consider the principles to be applied in determining whether the punishment imposed should be upheld or reduced. There was no request to increase it. Fundamental to this determination is the treatment to be accorded to the decision of the jury which in turn had agreed to accept the punishment suggested by the University.

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It was contended by Mr. Laskin that we should apply the same principles that are applied in the criminal law and the sentence should not be disturbed unless it appeared that there was an error in principle. I have some difficulty in applying this test since it is unlikely that the jury will give any reasons for its punishment in a case of this kind and indeed did not do so in this case.

The theory upon which sentence is imposed in the criminal law is that there is a body of principles which is applied by judges in deciding sentence and that a certain degree of uniformity will be achieved by adhering to these principles. The court of appeal will not, therefore, interfere unless there has been a departure from principle. This theory has not been borne out in practice and, in fact, there is a marked divergence in the sentence imposed by various judges for the same offence. Where, as here, the sentence is imposed by a jury which will be composed of different persons in almost every case, if not in every case, one can expect an even more radical divergence in the sentences imposed for similar offences. Indeed, it is somewhat unusual to have a jury impose a sentence. In these circumstances, therefore, the function of the Appellate Tribunal should be to attempt to achieve some degree of uniformity. In pursuing this objective, it would be hampered if it interfered with the decision of the jury only if it could perceive an error in principle. Accordingly, it is my view that the Appellate Tribunal should develop its own principles and by this means attempt to achieve uniformity in sentencing. The Appellate Tribunal will, of course, respect the decision of the jury and it will be a material circumstance in determining what the sentence ought to have been.

We were provided with particulars of the punishment imposed by the Caput in the past with respect to the offences of plagiarism,

cheating and other offences. Under the heading "Examination irregularity" punishment ranged from assignment of a special examination in the subject concerned to expulsion. Without knowing all the circumstances relating to each of the offences dealt with by the Caput, it would be difficult to place any reliance on these decisions. Furthermore, in completely reorganizing the University's system of adjudicating on academic offences, it would seem to me that it was intended that the Tribunal would not simply adhere to the jurisprudence evolved by the Caput.

What then are the principles that this Tribunal should follow in dealing with an appeal from sentence? First, in my opinion, punishment is not intended to be retribution to get even, as it were, with the student for what he has done. It must serve a useful function. 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.

In considering these matters, the Tribunal may have resort to the transcript of evidence if it is available and to any material presented on the appeal which bears on them.

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In the present appeal the appellant led virtually no character evidence. Inasmuch as he had not appeared at the trial, any character evidence that emerged from the transcript was adverse. In particular, it has been established, at least to my satisfaction, that the appellant had engaged in somewhat similar conduct on a previous occasion. Furthermore, since the appellant maintained his innocence although he had not appealed his conviction, there was little to indicate that there were any extenuating circumstances. The offence which was committed was followed by a very devious plot to excuse it. We are told that plagiarism is becoming a very serious matter at the University and it is therefore a matter from which the University should be protected. The punishment should therefore be such that it will deter others from committing the same offence.

We are told that the appellant will not lose credits in respect of subjects which he completed in the session except for the credit in Sociology. In the circumstances, therefore, I am of the opinion that the local branch of the Trial Division which tried this case was justified in imposing the maximum sentence which it is permitted to impose under s.17 of the Enactment (supra) which limits the period of suspension to 12 months. Our power is similarly limited by s.22(1)(iii) which provides that we may substitute any decision, order, verdict or sanction which could have been made, given or imposed by the branch of the Division that made the original determination. Accordingly, even if we were disposed to increase the sentence, we do not have the jurisdiction to do so. In all circumstances, it does not appear to me that the sentence imposed in light of the principles stated above is excessive, and indeed appears to be very moderate in the circumstances.

I would therefore affirm the punishment imposed by the Local

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Branch, subject to the variation set out in the Reasons of the Chairman.

In my opinion, in a proceeding of this kind it is unusual to award costs and I agree that no costs should be ordered.

John Sopinka

John Sopinka, Q.C.

Reasons for Decision

Delivered by Mrs. Irena Ungar

After careful consideration of the summary and the overall situation, I find that I concur with Mr. Jaffary's recommendation... and that I am prepared to fully endorse Mr. Jaffary's standpoint in this matter.

Irena Ungar

Mrs. Irena Ungar