FILE: 1984/85-05

Trial: 1984/85-01
See also: 1984/85-06

IN THE MATTER OF THE UNIVERSITY TRIBUNAL

OF THE UNIVERSITY OF TORONTO

(APPEAL DIVISION)

B E T W E E N:

THE UNIVERSITY OF TORONTO

Complainant
(Appellant)

- and -

Ms. P.

Accused
(Respondent)

APPEARANCES:

Ian McGilp, for respondent, accused.

Kathryn Feldman, for appellant, complainant

BEFORE:

Messrs. D.S. Affleck, A.McN. Austin, C.A. Keith

R E A S O N S

This is an appeal by the University against the sanctions imposed by the Trial Division of the Tribunal on July 5, 1984. The appeal was based originally on two grounds: that letters, one presented at the hearing on behalf of the accused, dated June 5, 1984, addressed to the students' counsel, Ms. Michelle Fuerst from Dr. I. Kruger on the letterhead of Northwestern General Hospital, and a second dated September 21, 1982, from the same doctor addressed to Mr. Waugh, were fraudulent documents. During the proceedings, the university

abandoned its appeal with respect to the letter of September 21, 1982. The objection originally taken by counsel for Ms. P. against the attempt by counsel for the University to adduce further evidence was withdrawn, and Ms. P.'s counsel accepted that the Tribunal had discretion to admit additional evidence.

Having been advised of the nature of the evidence, the Appeal Tribunal determined it fell within s.12(2) of the Discipline Structures and Procedures, 1980:

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

The Tribunal having ruled that the evidence would be admitted, counsel for Ms. P. acknowledged that the evidence was that the doctor referred to in the letter of June 5, 1984 was unknown to Ms. P. and that Ms. P. had not been in Northwestern General Hospital during the time period mentioned in the letter. Counsel for the University took the position that, in those circumstances the Appeal Tribunal should put itself in the shoes of the jury, with the additional information that the letter in question was in fact false. The Appeal Tribunal should determine what penalty the jury would have imposed had that additional information been available to them.

As we see our responsibilities, we could refer this matter back to be retried either by the same jury or by a new jury. Having regard to the length of time these proceedings have lasted, we believe we should dispose of this matter here and now. In the circumstances, what we should do is not

to penalize Ms. P. for misconduct (the concocted letter) but we should consider the original offence and what sanctions would be appropriate in light of the true circumstances. Giving it the best consideration we can, we believe that the jury would have suspended Ms. P. from the University for a period of five years from July 1, 1984, with the sanction to be recorded on Ms. P.'s academic transcript for the same time period.

A number of matters contributed to our decision. Offences of plagiarism cover a wide range, but in that range this must be regarded as a deliberate, serious, and extensive, albeit unsophisticated, attempt. We are left with no explanation as to why it was done or why the plagiarism was allowed to sit for seventeen months before the plagiarized essay was submitted. We are completely unable to understand either of these actions. We took into consideration that this was a first offence. We also considered that, during the trial and the appeal hearings, Ms. P. sat by and allowed both her counsel to put forward situations she knew to be untrue.

We have attempted to follow the language of the Supreme Court in Lees vs. Her Majesty the Queen [1979] 2 RCS, 749. The language of Mr. Justice McIntyre on page 754 with respect to the argument that evidence was improperly admitted and relied upon was:

> The trial judge was right in receiving this evidence. It was relevant on the question of sentence and it was entitled to serious consideration. In reply the Crown, which had not attacked the character of the appellant in giving particulars of the offence, gave evidence of the circumstances which were discovered upon the appellant's arrest about a year after the offence. This evidence was properly admissible on the issue of the appellant's character, conduct, and attitude, all proper factors to be taken into consideration on sentencing.

The Appeal Tribunal believes that this is a comparable situation and that the evidence that the document was concocted and the circumstances in which it was presented are proper factors to be considered in sentencing.

per

Decision delivered: February 13, 1985