FILE: 1992/93-01

APPEAL

Trial: 1991/92-06

THE UNIVERSITY TRIBUNAL OF THE UNIVERSITY OF TORONTO

TRIBUNAL APPEALS BOARD

BETWEEN: University of Toronto — Complainant (Respondent),

- and -

Ms. S. — Accused (Appellant),

BEFORE: D.S. Affleck, Q.C. (Senior Chair)
Brian Procter
John Browne — Appeals Board

APPEARANCES: Linda Rothstein, for the Respondent

Mr. S. , appearing personally

DATE: July 6, 1992

This is an appeal by Mr. S. to the Appeals Board of the University Tribunal from the sanctions imposed by the jury in the Trial Division of the University Tribunal on April 29, 1992 immediately following the jury's unanimous finding that the Appellant had committed an offence under the University of Toronto Code of Behaviour on Academic Matters, 1985. The Appellant asks that the sanctions be removed.

Mr. S. was charged with the following offence:

> That in or about April of 1991 he did represent as his own in an academic work submitted for credit in HIS295Y 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. In particular, he submitted a paper entitled "The Gambia Colony in the 19th Century" which contained passages plagiarized from at least two published sources, namely, Gailey, A History of the Gambia and J. Gray, History of the Gambia.

The Trial Division jury ordered the following sanctions: assignment of a failure for the course HIS295Y; suspension from the University for one year, from April 29, 1992 to April, 28, 1993; that the suspension be recorded on the Appellant's transcript for a period of three years; and that the decision and sanctions imposed be reported to the Vice-President and Provost for publication, without identification of the Appellant, in the University newspapers.

The Appellant asks that the sanctions be overturned because the jury did not take his evidence into consideration when imposing them. The Appellant told the Board that although he was African, he had the capacity to study and perform academically as well as any other student. He began his studies in Africa, did well and transferred to the University of Toronto. HIS295Y was not the first course he had taken at the University; this was his second year, specializing in Political Science and majoring in History. A second year course, therefore, would not give him difficulty because he had taken third-year and fourth-year courses at the University. In addition, the course content, dealing with African history, he was familiar with because of courses he had taken previously in Africa. Therefore, he submitted, this was an easy course for him and obviously he would be able to do well.

The Appellant drew the Board's attention to a grade statement showing his courses and grades for the 1991-92 academic year. He pointed out that he had received good grades in third- and fourth-year courses and had never been given a 'C', much less the 'F' that the Trial Division jury had given him. He noted that he had always worked hard in his studies and had never had problems with his other professors. He was mature and was in Canada for only one reason - to work hard and complete his degree.

The Appellant stated that he had not come before the Tribunal because he had "broken a law". He had been brought before the Tribunal because of racial discrimination on the part of the professor in the course HIS295Y. Although he respected white people and had learned from them, he felt compelled to speak out against racial issues. He related that initially, when he had applied, he had been told that the University was a "white" school by his African, Jamaican and Caribbean friends who had attended the University of Toronto. They had told him that professors, when they saw that blacks were ambitious and hard-working, would attempt to prevent them from attaining their goals.

The Appellant traced the major issues which had led him to believe that the professor in the course was a racist. First of all, in a lecture concerning the partition of Africa, the professor had made a remark that people had died over a land of no significance, being Gambia, the Appellant's country. Although he had not attended that particular lecture, fellow students had reported this remark to him. He had realized that the remark could be taken several ways and had decided to give the professor the benefit of the doubt.

The next event concerned the first essay paper in HIS295Y. When the papers had been returned to the class, the professor had remarked that there had been cases of plagiarism which were "the worst experience" of his career. However, he had also said that it was alright, giving the Appellant the impression that it was alright because of the type of people who had been involved in the plagiarism. The Appellant himself knew of one white student who had plagiarized her paper because he had seen her copying from books in the Robarts Library.

Next, according to the Appellant, the professor had told the class that whatever grade the teaching assistant assigned for the first two essays (the professor graded the third essay and the final exam) would stand. He would not raise or lower a grade assigned by the teaching assistant. When the Appellant received his second paper back, the professor had changed the teaching assistant's grade of a 'B+' to a 'C.' The Appellant then began to think that the professor was racially discriminating against him.

The Appellant told the Board that because of these events, he had decided to "test" the professor. At that point in time there was only one essay and the final examination remaining in the course. He could not do much with the final exam so he had decided to plagiarize the essay paper like the white student had done. He told the professor that he was going to "test" his racial attitudes.

The Appellant related that he had telephoned the professor in May and had been told that he had received 75 percent on the final examination but that he was going to be brought before the Tribunal because he had plagiarized his essay paper.

It was the Appellant's submission that the professor had brought him before the Tribunal because he was black. The events he had described pointed to racial

discrimination on the professor's part against the Appellant specifically. In addition, white students who had plagiarized their papers had been immune from punishment. Therefore, the Appellant, although he admitted that he had plagiarized his paper, should also be immune from any sanctions. He noted that if one group was immune from the law, everyone should be immune. He also pointed out that he had not plagiarized his paper for academic reasons, but *rather to expose the professor's racial attitudes.*

Counsel for the Respondent remarked that the issues raised by the Appellant were those raised and fully aired before the Trial Division. They were almost entirely factual in nature and it was the jury's responsibility to decide the issues. She said that in the absence of any evidence that the jury had been charged improperly or that their finding was in any way perverse, it was her submission that the appeal should be dismissed.

Counsel for the Respondent spoke concerning the points made by the Appellant in his submission to the Appeals Board. First, the Appellant took the position that he was not seeking credit by engaging in an offence. Counsel submitted that this argument was not borne out, either by the method which the Appellant had chosen or the other evidence which had been adduced at the trial. He had not, for example, taken the position that he be entitled to submit another paper to establish credit by proper means. Rather, he had written to Associate Dean Grise of the Faculty of Arts and Science in October, 1991 to request credit for the course, in spite of the plagiarized essay.

Counsel for the Respondent drew attention to the preamble to Section C of the University of Toronto Code of Behaviour on Academic Matters which reads "...the essence of an offence by a student is the seeking of credit or other advantage by fraud rather than on the basis of merit." It was her submission that even if the Appeals Board believed the Appellant's story that he was trying to expose the professor's racial attitudes by plagiarizing his essay, that would also be prohibited by the language of the Code. Therefore, this could not be used as a defence to the charge.

Counsel for the Respondent noted that many of the Appellant's submissions were contradictory. He said that another student in the class had plagiarized a paper, that he knew what she had done was wrong and that she ought to be penalized. He then said that he had had two options to cheat - either on the

final examination or the third essay paper. When asked by the Appeals Board if he had deliberately plagiarized his essay, he was reluctant to admit it. With respect to the other student, she said that it would have had to be proven that the professor knew she had plagiarized her paper or else it was irrelevant that the Appellant knew or suspected it. There had been no evidence led at trial that the professor knew this to be true. She drew attention to page 73 of the trial transcript where she had questioned the Appellant about this. The only evidence that he had supplied was a conversation which he had had with the professor. On page 47, the professor had been asked whether the student had plagiarized her essay and he had responded that he had no knowledge that she had done so.

Counsel for the Respondent believed that what was at issue was a matter of credibility. She informed the Board of the professor's manner at trial, which, she said, did not come through in the trial transcript. He had been remarkably restrained, given the seriousness of the allegations and the manner in which the Appellant had conducted himself throughout the proceedings. He had been lacking in vindictiveness, given how personal the matter had become. He had given his evidence in a manner which had indicated ongoing compassion for the Appellant and his well being. He had given his evidence in a way that had communicated to the jury that he was deeply committed to the success of his African students. She remarked that the jury's findings on sanction, therefore, were a testament that the professor had been extremely credible and that there had been no evidence to suggest that any of his practices had been governed by racial motives. Accordingly, she believed that however strongly the Appellant held his beliefs, they were entirely unfounded and this could be seen from a review of the trial transcript.

Finally, Counsel for the Respondent addressed the Appellant's chronology of events. He had said that he knew of an unprosecuted case after the first paper but he had not acted until after the evaluation of the second essay paper. His mark for that second paper had been reduced and she put it to the Board that this had caused him to be angry, thereby giving him a personal motive for plagiarism. Secondly, the Appellant told the Board that he had notified the professor of his intentions. On page 92 of the trial transcription she had submitted to the jury that the Appellant had not been clear when the telephone conversation had taken place. On page 95, the Appellant had submitted to the

jury that that conversation had taken place after the final examination, in other words, after the third essay had been submitted.

Counsel for the Respondent concluded that the jury had reviewed the case from both sides and had determined that the Appellant was guilty of the offence.

Discussion took place concerning the jury's suggestion in their reasons for sanctions that the Appellant seek professional counselling. In answer to questions from the Board, Counsel for the Respondent replied that the jury had not been given evidence on this issue but had decided to add the suggestion itself. She added that the Appellant had been quite emotional and at some times irrational during the trial.

REASONS FOR DECISION OF THE TRIBUNAL APPEALS BOARD
(DELIVERED ORALLY BY D.S. AFFLECK)

We have read all the materials - the transcript, the materials that you brought today, Mr. S. , the materials that were introduced at the Trial and your letter of May 8, 1992. We have considered your argument and the argument of Counsel for the University and those have been helpful to us. After considering all the evidence and those arguments, we are unanimously of the view that there is no basis for us to impose a decision that is different from that of the jury which heard all the persons who were called before it. However, we see no support in the transcript of the proceedings for the recommendation that you seek professional counselling. We do not see any basis for that recommendation and we do not think that it should be part of any report or part of the reasons for the sanctions that were meted out to you. We, as I say, can see no basis upon which we should alter the sanctions that are set out on page 115 of the transcript. We so find.

Donald Affleck | John Browne | Brian Procter

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