

FILE: 1980/81-12

APPEAL

Trial's 1980/81 9

IN THE MATTER OF THE DISCIPLINARY TRIBUNAL  
APPEAL DIVISION

THE UNIVERSITY OF TORONTO

Appeal heard March 12, 1981

Between: The University of Toronto

(Respondent)

- and -

Mr. B.

Accused  
(Appellant)

Appearances: For the Appellant,  
Rhea Persad

Mr. B.

For the Respondent, The University  
of Toronto  
Kathryn Feldman

DECISION

This is an appeal by Marmud Bharwani from his conviction and sentence by the Trial Division of the University Tribunal dated October 29, 1980 following a trial before Co-Chairman Karl D. Jaffary and a jury on a charge that:

"on May 5th, 1980, you did knowingly attempt to use unauthorized aids to obtain unauthorized assistance in the final examination in COMAOLY at Scarborough College, in that you did collaborate with others and use text books and other source materials to prepare answers to the examination questions on official examination booklets outside the examination room, with the intent of handing in the said examination answers for credit, contrary to ss. G7, E.1(a) (i) and G.6(a) (ii) of the Code of Behaviour of the University of Toronto."

It was the recommendation of the jury that the following sanctions be imposed:

1. that the Appellant receive a failure (i.e. grade of zero) in COMAOLY and
2. that the Appellant be expelled from the University of Toronto, this sanction to be recorded on his academic transcript for a period of three years from the date of expulsion.

The jury gave the following reasons for its recommendations:

"We judge this to be among the most serious of academic offences involving an elaborate conspiracy over a period of time to submit an examination written on the basis of unauthorized aids. No evidence has been brought forward to suggest mitigating circumstances. We believe that this most serious offence requires the most severe penalty and recommend to the Governing Council that you be expelled from the University."

The Appellant by Notice of Appeal dated November 20, 1980 appealed to the Appeal Division pursuant to Section 11 of *The Discipline Structures and Procedures, 1980*.

On the hearing of the Appeal on March 12, 1981, the Appellant appeared on his own behalf and was accompanied by one Rhea Persad who assisted him in the presentation of the argument.

The Appellant pursuant to Section 12(2) of *The Discipline Structures and Procedures, 1980* purported to proffer a document indicating that he had in fact attempted to resign from Commerce A01Y at Scarborough College sometime prior to the final examination which was held on May 5, 1980. It would however appear that the Appellant had only formulated an intent to resign but in fact did not do so. In any event he did not see fit to appear at his trial on October 29, 1980 although duly notified thereof and this evidence, if at all relevant, could have, had he appeared, been adduced in evidence before the Trial Division. No circumstances of any kind have been shown within the meaning of Section 12(2) of *The Disciplines Structures and Procedures, 1980* which would warrant the reception of this evidence at this time and we so ruled at the conclusion of the argument.

The Appellant submits that he has been improperly convicted and that the sentence imposed was unreasonable in all of the circumstances.

We have carefully reviewed the transcript of evidence taken before the Trial Division as well as the findings and recommendations of the jury. It is sufficient to say that the evidence before the Trial Division was entirely uncontradicted and was consistent with the guilt of the Appellant on the charge he faced and inconsistent with any other reasonable conclusion. The trial was conducted with the utmost fairness and in accord with all principles of natural justice. The jury was properly directed by the presiding Chairman as to all questions of law and fact and had ample evidence before it on which the conviction could be made. Nothing whatever has been shown which would warrant interference with the decision of the Trial Division and the appeal from conviction must accordingly be dismissed.

As to the appeal from sentence the governing principles in this regard are set forth in the decision of the Appeal Division in the matter of Mr. R. (1980/81-08) which need not be repeated.

No error in principle or in approach on the part of the Trial Division has been demonstrated and the sanctions and recommendations of the jury were amply warranted by the evidence. We have not been persuaded that we should disturb the sentence and the appeal in this regard must accordingly be dismissed.

"P. John Brunner"

P. John Brunner, Co-Chairman

I. ayue

G.W. Brigden

George W. Brigden, Q.C., Co-Chairman

"Gloria R. Klowak, J.C."

Gloria R. Klowak, Co-Chairman