

**IN THE MATTER OF THE DISCIPLINARY TRIBUNAL OF THE
UNIVERSITY OF TORONTO**

IN THE MATTER OF the Disciplinary Tribunal of the University of Toronto

AND IN THE MATTER OF a decision by the Divisional Court dated
December 4, 1995 directing a rehearing of charges against *Mr. K.*

AND IN THE MATTER OF the University of Toronto Code of Behaviour on
Academic Matters

AND IN THE MATTER OF the University of Toronto Act, 1971, S.O. 1971,
c. 56 as amended S.O. 1978, c. 88

BETWEEN:

THE GOVERNING COUNCIL OF THE UNIVERSITY OF TORONTO

Prosecutor
(Respondent)

- and -

Mr. K.

Defendant
(Moving Party)

Appearances:

For the University of Toronto Linda R. Rothstein
 Stephen H. Satchel

For Shakeel Aziz Khan Eric P. Polton

REASONS FOR DECISION

On July 29, 1998, a jury in the Trial Division of the University Tribunal
unanimously found *Mr. K.* guilty of the following charges:

1. in or around October, 1991 you did alter falsified documents or evidence required for admission to the University, or uttered, circulated or made use of such forged, altered, or falsified documents or evidence, contrary to Section B.I.(1)(a) of the University of Toronto's Code of Behaviour on Academic Matters, 1991; and

2. on or about April 23, 1992, you did falsify documents or evidence required for admission to the University, or uttered, circulated or made use of such forged, altered, or falsified documents or evidence, contrary to Section B.I.(1)(a) of the University of Toronto's Code of Behaviour on Academic Matters, 1991.

The jury unanimously recommended that Mr. K. be expelled from the University and that the decision and sanction imposed be reported to the Vice President and Provost for publication in the University newspapers, with the name withheld.

The jury provided the following reasons:

Mr. K.'s offence involved several conscious decisions over an extended period of time to intentionally deceive the University. We believe he understood his actions and the possible consequences. No evidence of mitigating circumstances was offered or discovered. We feel that anyone admitted to the University through dishonest means should not be allowed to continue their studies. The integrity of the University is based on its commitment to its Code of Behaviour on Academic Matters. We recommend to the Governing Council that Mr. K. be expelled from the University of Toronto. We also recommend that the Provost publish a notice of the decision of the Tribunal and the sanction imposed in the University newspapers, with the name of the student withheld.

On October 14, 1997, I gave reasons for my decision to reject Mr. K.'s submissions that this Tribunal did not have jurisdiction over this case. At that time, I reserved the question of both the jurisdiction and propriety of his request for an award of costs for the then current and previous proceedings until the completion of the hearing. Following the jury's rendering of its verdict, Mr. K. requested a period of 30 days to file written submissions on costs. His request was granted.

At the end of August, Mr. K. filed lengthy written submissions in which he:

- submitted that "costs should and must be awarded in order that the defendant pursue his cause";
- put forward a claim "for interim compensation in order to complete the litigation"; and

- requested costs in disciplinary matters arising out of the charges brought against him in 1993, the appeal to the University Tribunal in 1994, the review before the Ontario Divisional Court, the proceedings before this Tribunal regarding jurisdiction and costs, as well as such other relief as might seem just.

In response to those submissions, the prosecution:

- questioned the jurisdiction of the Tribunal to award the costs sought;
- argued that any discretion in the Tribunal to award costs should be exercised in accordance with the principles applicable to the awarding of costs in criminal cases, namely that costs should only be awarded in the rarest of cases where there is conclusive evidence that the prosecution acted maliciously or thoughtlessly, or acted without a reasonable foundation; and
- submitted that even if the civil standard for the awarding of costs applied, which was denied, Mr. K. would not be entitled to costs in that the University has been successful in all respects.

These submissions prompted further lengthy submissions in reply from Mr. K. In particular in response the position that there was no basis for an award of costs according to the principles in criminal cases, Mr. K. for the first time advanced the position that there was evidence that the prosecution acted maliciously or thoughtlessly or without a reasonable foundation. The "evidence" cited for this submission was an exchange which took place at the outset of the hearing in connection the marking of the charges referred to above as Exhibit 1. In the first instance, an incomplete version of the charges was marked as Exhibit 1. When the error was drawn to the prosecutor's attention, she immediately corrected it and the correct version of the charges, namely the version of the charges cited at the outset of this decision, was replaced as Exhibit 1. Those are the same charges upon which Mr. K. was originally tried by an earlier panel of this Tribunal, and which were before the Divisional Court when it remitted the matter to the Tribunal to be heard again. At the outset of the proceedings before the original panel of the Tribunal, the charges had been amended, and the words "uttered", "circulate", and "made use of" were added. Before the original panel of the Tribunal, there was an issue as to whether that was

done with or without the consent of Mr. K. That issue was heard and determined by the original panel of the Tribunal and was not, as I understand it, raised again.

On this basis, Mr. K.'s reply submissions suggested that the charges upon which he was tried, which he concedes are the charges that were sent back by the Divisional Court for a re-hearing, were not the charges as originally laid by the prosecutor and that this in some fashion indicates that the prosecutor placed the defendant's conviction ahead of her professional duties to the Tribunal.

Shortly after filing these submissions, Mr. K.'s counsel wrote to withdraw them. Still later, he wrote again to indicate that the withdrawal was itself withdrawn.

Mr. K. has chosen to make a serious allegation, to advance it for the first time in his reply argument, and to do so, in my view, without any proper evidentiary foundation. The confusion to which he refers in the marking of Exhibit 1 at the outset of the hearing was clearly no more than an administrative error. Moreover, any resulting confusion, even if it had not quickly been corrected (which it was), cannot in my view be construed as material or significant in relation to the conduct or outcome of this hearing. Finally, there is absolutely no basis upon which this could be construed as reflecting on the prosecution in the way that Mr. K. advances. I reject those suggestions. I am satisfied that in every aspect of the proceedings before me, the prosecution behaved in accordance with the highest standards of fairness and propriety.

I doubt that the Tribunal has the jurisdiction to make a costs award of the breadth of the one sought by Mr. K. extending, as it does, to prior proceedings, and proceedings in front of other panels of this Tribunal and other bodies. However, I have concluded that even if the Tribunal had such jurisdiction, this is not an appropriate case in which to exercise it.

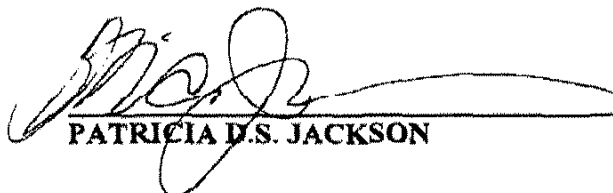
I accept that the proceedings have been lengthy, and therefore, likely, costly to Mr. K. Insofar as I can judge from the proceedings before me, much of the length of the proceedings relates to the way that Mr. K. has chosen to conduct his defence. The jurisdictional challenge launched at the outset of the re-hearing before the Tribunal was lengthy, prolonged the proceedings, and was unsuccessful. Even when that jurisdictional challenge was resolved, Mr. K. declined to cooperate with the Tribunal in the fixing of timely dates for the continuation of the hearing. In the end, the Tribunal set dates for the continuation without Mr.

K. 's cooperation. On the first of those dates, Mr. K. and his counsel simply did not attend, requiring an adjournment, and further delays in scheduling. During the course of the hearing, Mr. K. advanced a large number of lengthy legal arguments in the absence of the jury which were unsuccessful. Ultimately it is for Mr. K. and his counsel to determine how his case should be conducted, but to the extent that the decisions taken prolong the proceedings, in my view it is inappropriate to claim that the resulting cost amounts to an injustice.

At the end of the day in this case I consider it appropriate, as did the Tribunal in the case of [1982/83-05], to dispose of the requests for costs by analogy to the principles applicable in criminal cases. Specifically, even if there had been an acquittal - and there was not - an award of costs should only be made in the most unusual circumstances. The proper administration of the University's Code of Behaviour on Academic Matters, including a decision to prosecute, is an important element of the academic integrity which is vital to the University community. When deciding whether or not to commence a prosecution, the University should not be constrained by a fear that there will be a financial penalty if the prosecution, or any part of it (for example, those matters which were the subject of judicial review proceedings in this case) is unsuccessful unless there are extraordinary circumstances, such as some prosecutorial impropriety.

In this case Mr. K. has been found guilty of a serious academic offence and the jury has concluded his conduct warrants a penalty of the most serious nature. Moreover, there was no conduct on the part of the prosecution or the University or any other unusual circumstances which in my view would merit an award of costs even if Mr. K. had been acquitted, which he was not. In the result, even if my discretion to award costs did extend in the manner suggested by Mr. K., I would not exercise that discretion on the facts of this case. There will be no order as to costs.

December 4, 1998


PATRICIA D.S. JACKSON

Chronology of Discipline Proceedings in the Case of Mr. “K”

1993/94-09	March 23, 1994	University Tribunal recommends expulsion
1994/95-09	April 24, 1995	Tribunal Appeals Board dismisses the student’s appeal
	June 1, 1995	Governing Council confirms the expulsion
[1995] O.J. No. 3734	December 4, 1995	Divisional Court quashes the decision of Governing Council to expel and orders a new trial before the University Tribunal
1997/98-04	October 14, 1997	University Tribunal issues written ruling on jurisdictional objections raise by the student (2 nd trial)
1998/99-06	July 31, 1998	University Tribunal recommends expulsion (2 nd trial)
1998/99-07	December 4, 1998	Chair of the Tribunal panel rules on the student’s request for costs (2 nd Trial)
1998/99-08	April 20, 1999	The student’s appeal is dismissed by the Discipline Appeals Board (2 nd Appeal)
	May 13, 1999	Governing Council confirms the expulsion (2 nd Expulsion)
[1999] O.J. No. 2944	July 16, 1999	Divisional Court dismisses application for judicial review
1999/00-14		Discipline Appeals Board Rules on Student’s request for cost at the 2 nd Appeal