

THE UNIVERSITY TRIBUNAL**THE UNIVERSITY OF TORONTO**

- and -

Mr. M.

RULING ON A PRELIMINARY MOTION¹

This is an application to the Tribunal to ask that it disqualify itself from hearing the case commenced against the accused Mr. M. by a letter dated September 20, 1983 from the Assistant Provost D.B. Cook. The basis of the challenge to the Tribunal's authority is set out most cogently in a letter from Mr. Garry Smith of Weir and Foulds to the University's counsel Kathryn N. Feldman dated November 21st, 1983. I think that, for clarity, it will be helpful if I have the copy of that letter made Exhibit 1 to this hearing.

I am of the opinion that the Tribunal does have the jurisdiction to proceed, although it seems to me that the various documents that have been passed by the Governing Council, particularly the Code and the Enactment, perhaps lack some precision of draftsmanship. It seems to me that in the University of Toronto Act 1971, in section 2(14), particularly in its general part and in subparagraph (o), a very broad grant of power to the Governing Council has been given. I am particularly impressed by the words

“The Government, management and control of the University and University College, and of the property, revenues, business and affairs thereof are vested in the Governing Council, and without limiting the generality of the foregoing, the Governing Council has the power to,....”

and then in paragraph (o)

“do all such acts and things as are necessary or expedient for the conduct of its affairs and the affairs of the University and University College.”

It seems to me that in that statement a general grant of power to deal with academic offences has been given.

The question then becomes whether the Governing Council has exercised its power in a way that can affect a person who was a student at one time and is not a student at the present time. It

¹ The Chair, K.D. Jaffary, handed down this ruling orally at the hearing on November 28, 1983. It was later reduced to writing and edited. The Tribunal file contains no clear record that the ruling, in its written form, was ever released however the subject-matter of the ruling warranted including it in this compilation of Tribunal decisions. Judicial Affairs Officer – May 2004.

appears to me that the Code of Behaviour and the Enactment, taken together, are an attempt by the Governing Council to arrive at a complete Code of Behaviour to deal with academic offences of all sorts, by all persons whose behaviour can be supervised by the University. The question that I asked Mr. M., as to whether the University could deal with a case of plagiarism, for example, if it were discovered after a student had ceased to be registered but before the student had graduated seemed to me to create a ridiculous situation if Mr. M.'s interpretation were correct. If the University has the power to take a degree away from a former student if it finds out that the degree was obtained by submitting plagiarized course work, it seems to me that it must also have the right to disallow course work even if a student has not graduated or is not at the time the offence is discovered a student.

I think that much that is contained in the Code and the Enactment is not directed to the question of the time of commission or discovery of an offence. I would adopt Ms. Feldman's suggestion that Section 23 of the Enactment, providing that withdrawal of a student from a course or program of study or resignation of a staff member shall not preclude or affect any proceedings at the departmental level or prosecution before the Tribunal, is appropriate to these proceedings. I think that those words are the Governing Council's wisdom on the question of the timing of a person being a student and an offence being alleged. I think "withdrawal" from a program can be achieved by a failure to renew a registration in that program, and on the basis of that conclusion it is my ruling that this proceeding should continue.

I think any other result would leave the University without power to deal with a student who did not continue to register but who the University alleged had done improper things while registered. I note that the sanctions that can be imposed are arranged starting with caution and going to a recommendation for expulsion from the University. A sanction such as suspension or expulsion might be inappropriate for someone who is not a member of the student body at the time that the decision was made, except to the extent that such a sanction would prevent further registration. Some of the other sanctions that are permissible ones such as failure in or cancellation of credit for a course might be appropriate in the same way as a restriction on future registration might be appropriate. We don't know any of the evidence in the case as yet, and we don't know whether any would be appropriate.

It is my opinion that the Governing Council has attempted to deal with the question of persons who have ceased to be a student and I believe that its Enactment and Code should be interpreted in such a way as to give effect to that intention. The motion to disqualify the Tribunal is therefore dismissed.

November 28, 1983

Karl D. Jaffary