

UNIVERSITY OF TORONTO
UNIVERSITY TRIBUNAL

B E T W E E N:

THE UNIVERSITY OF TORONTO)	Counsel:
"The University")	John Laskin
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- and -)	
)	
<i>Mr. R.</i>)	Paul Bennett
"The Student")	

REASONS FOR DECISION OF RODICA DAVID, Q.C.
CO-CHAIR, UNIVERSITY TRIBUNAL

By letter dated March 5, 1990, the Student was informed that he was charged with the following offenses under the University of Toronto Code of Behaviour on Academic Matters:

1. You are hereby charged that in or about February of 1989, you did use or possess an unauthorized aid, being an essay ordered from Custom Essay Service, contrary to section E.1.(a)(i) of the University of Toronto Code of Behaviour on Academic Matters. The essay was ordered on or about February 13, 1989, and was used or possessed in connection with an essay entitled "Failure of Ideals in Federico Fellini's 8 1/2", submitted for credit in ITA 240Y in or about February, 1989.

2. You are hereby charged that in or about February, 1989, you did submit for credit in the course ITA 240Y an essay entitled "Failure of Ideals in Federico Fellini's 8 1/2", which essay was purchased by you from Custom Essay Service. You therefore, represented as your work the work of Custom Essay Service, contrary

to section E.1.(a)(ii) of the University of Toronto Code of Behaviour on Academic Matters.

The matter was adjourned from time to time and finally came on for hearing before this tribunal on January 29, 1991. The Student pleaded not guilty to the second count. With respect to the first count, his counsel brought a motion to strike the first count on the following two bases, namely:

1. That Section E.1.(a)(i) the University of Toronto Code of Behaviour on Academic Matters "(Code)" is void under the Charter of Rights and Freedoms in that it offends the principles of fundamental justice guaranteed in the Charter.
2. Apart from the Charter, there is a residual common-law power in this Tribunal to strike any portion of the Code as being void for vagueness.

The Canadian Charter of Rights and Freedoms provides in Section 7 as follows:

"Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice".

There is ample case authority that, where a criminal statute or a municipal by-law contains a provision that is vague, it

offends the principles of fundamental justice. See for example, Reference re ss. 193 and 195.1(1)(c) of the Criminal Code (1990), 56 C.C.C. (3d) 65 (S.C.C.); Regina vs. LeBeau, (1988) 41 C.C.C. (3d), 163. In my view, the Code, does not deal with a person's right to life, liberty or security of the person and therefore, s.7 of the Charter of Rights and Freedoms has no application to this case.

Counsel for the Student submits that apart from the Charter, there is a common-law principle that a person should not be deprived of any right except in accordance with the principles of fundamental justice. Counsel for the University referred me to only one case in which the doctrine of Void for Vagueness was applied in a case that dealt with neither the Criminal Code nor a municipal by-law, namely, re: Milstein vs. Ontario College of Pharmacy (1976) 13 O.R. (2d) 700 (Divisional Court), (1978), 20 O.R. (2d) 283, (Ontario Court of Appeal). As stated by Lamer, J. in Reference re: 193 and 195.1 (1)(c) of the Criminal Code, supra, at pages 85 and 86, there is substantial jurisprudence in the United States that vague laws are void as they constitute a denial of due process of law. This principle from United States case authority was cited with approval by Lamer, J. when he made the following statement:

"It is essential in a free and democratic society that citizens are able, as far as is possible, to foresee the consequences of their conduct in order that persons be given fair

notice of what to avoid, and that the discretion of those entrusted with law enforcement is limited by clear and explicit legislative standards: See Professor L. Tribe, American Constitution Law, Second Edition (1988), p.1033. This is especially important in the criminal law where citizens are potentially liable to a deprivation of liberty if their conduct is in conflict with the law."

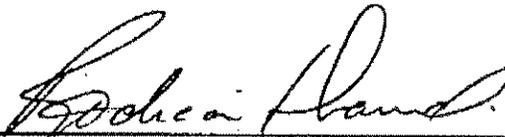
In my view, if it is "especially important in the criminal law", it is also important in civil or quasi criminal law. Although the degree of importance of the application of the principle may be held to vary depending on the consequences to the individual of any given law, it is my view that all laws must conform to the principles of fundamental justice.

Section E.1.(a)(i) of the Code provides, inter alia, that the use or possession of an unauthorized aid constitutes an offence under the Code. Terms "use" and "possess" are terms of common usage and, in addition, are amply interpreted in case authority. Not only are they not vague in my view, but are capable of clear and precise interpretation. I had more difficulty with the term "unauthorized aid". This term is not defined anywhere in the Code. The section does not provide by what mechanism an aid would become "unauthorized". However, this term is not to be interpreted in isolation, but, in the context of the Code as a whole, and as it has been interpreted and applied in judicial decisions: R. v. LeBeau, supra, at page 173. This provision has in fact been applied and interpreted in numerous decisions of the University

Tribunal, and in addition has been analyzed at length in the decision of my brother Charles Anthony Keith in the case of *Case 1989/90-05*, May 31, 1990. I have little doubt that the Student would have no difficulty in comprehending that an essay acquired from Custom Essay Service would be an "unauthorized aid" and the use or possession thereof in connection with an essay of his own would fall within the ambit of the section of the Code.

The preliminary objection is therefore dismissed and the hearing will proceed on the merits.

April 4, 1991


Rodica David, Q.C.
Co-Chair University Tribunal