

**NOTE:**

The student, U., was charged under the *Code of Behaviour on Academic Matters* for plagiarizing part of this Ph.D. dissertation. The Tribunal determined that it did not have jurisdiction to hear the charges for the reasons contained in **1978/79-11**. A special “Judicial Board” was created by the Governing Council to hear the charges against U. The Judicial Board ruled that it had jurisdiction to hear the charges: **1979/80-18**. U. applied for judicial review of this decision, however the Divisional Court dismissed the application: [1981] O.J. No. 524. The Judicial Board subsequently rendered a guilty verdict and recommended the revocation of the U.’s degree: **1980/81-19**.

Even though **1979/80-18** and **1980/81-19** are not “Tribunal” decisions under the *Code of Behaviour on Academic Matters*, the decisions have been included here because they concern academic discipline.

The same procedure was employed in **1986/87-07**.

Paul J. Holmes  
Judicial Affairs Officer  
June, 2004

IN THE MATTER OF A JUDICIAL BOARD ESTABLISHED BY THE GOVERNING COUNCIL OF THE UNIVERSITY OF TORONTO TO HEAR AND ADJUDICATE UPON CERTAIN CHARGES ALLEGED AGAINST DR. U.

JUDICIAL BOARD

Ross L. Kennedy Chairman  
Margaret C. Cahoon  
James B. Conacher  
Mary C. D. Kent  
D. A. Brian O'Riordan  
Thomas H. Simpson  
Victor G. Smith

APPEARING FOR THE UNIVERSITY

Kathryn N. Feldman Counsel

APPEARING FOR Dr. U.

Ronald E. Carr Counsel

INTERIM DECISION

ON A PRELIMINARY OBJECTION TO JURISDICTION

By letter dated May 30th, 1979, Dr. U. was given notice that he was charged by the Provost of The University of Toronto with having committed the following alleged misconduct:

- (1) in 1974 while a graduate student at The University of Toronto, you were guilty of infamous conduct in that you did submit a thesis entitled "Field Articulation and Critical Reading and Listening"

for credit in furtherance of a Ph.D. degree in Educational Theory, portions of which thesis were plagiarized. The following are the particulars:

Significant portions of Chapter 2 of your thesis, "The Problem and Its Setting, Review of Literature" are taken without acknowledgement from the work of Dr. J. Kent Davis, entitled "Concept Identification as a Function of Cognitive Style, Complexity and Training Procedures";

- (2) in 1974 while a graduate student at The University of Toronto, you were guilty of disgraceful conduct in that you did submit a thesis entitled "Field Articulation and Critical Reading and Listening" for credit in furtherance of a Ph.D. degree in Educational Theory, portions of which thesis were plagiarized. The following are the particulars:

Significant portions of Chapter 2 of your thesis, "The Problem and Its Setting, Review of Literature" are taken without acknowledgement from the work of Dr. J. Kent Davis, entitled "Concept Identification as a Function of Cognitive Style, Complexity and Training Procedures";

- (3) in 1974 while a graduate student at The University of Toronto, you were guilty of conduct unbecoming a graduate of the University in that you did submit a thesis entitled "Field Articulation and Critical Reading and Listening" for credit in furtherance of a Ph.D. degree in Educational Theory, portions of which thesis were plagiarized. The following are the particulars:

Significant portions of Chapter 2 of your thesis, "The Problem and Its Setting, Review of Literature" are taken without acknowledgement from the work of Dr. J. Kent Davis, entitled "Concept Identification as a Function of Cognitive Style, Complexity and Training Procedures".

By letter dated January 25th, 1980, Dr. U. was advised that he was further charged by the Provost as follows:

1. In 1974 while a graduate student at The University of Toronto you were guilty of plagiarism in that you did submit a thesis entitled "Field Articulation and Critical Reading and Listening" for credit in furtherance of a Ph.D. degree in Educational Theory, portions of which thesis were plagiarized. The following are the particulars:

Significant portions of Chapter 2 of your thesis, "The Problem and Its Setting, Review of Literature" are taken without acknowledgement from the work of Dr. J. Kent Davis, entitled "Concept Identification as a Function of Cognitive Style, Complexity and Training Procedures".

2. In 1974 while a graduate student at The University of Toronto you were guilty of seeking a Ph.D. degree by false pretenses by submitting for credit towards your Ph.D. degree in Educational Theory a thesis entitled "Field Articulation and Critical Reading and Listening", portions of which thesis were plagiarized. The following are the particulars:

Significant portions of Chapter 2 of your thesis, "The Problem and Its Setting, Review of Literature" are taken without acknowledgement from the work of Dr. J. Kent Davis, entitled "Concept Identification as a Function of Cognitive Style, Complexity and Training Procedures".

By the letter dated May 30th, 1979, Dr. U. was also informed that the Governing Council of The University of Toronto would determine how the charges against him would be heard, and that the hearing would be held under the authority of Section 2(14) of The University of Toronto Act, as amended.

For the purpose of hearing and adjudicating upon the charges against Dr. U., the Governing Council established this Judicial Board and purported to give to this Board full authority to hear the case against Dr. U. and render judgment. In a

preliminary objection, Mr. Carr, the solicitor for Dr. U, has asked the Board to rule on its jurisdiction to deal with this matter.

By Section 2(14)(e) of The University of Toronto Act, 1971 Stat. Ont. c.56, as amended (henceforth referred to as the "1971 Act"), the Governing Council is given authority to appoint committees or bodies and to delegate to such bodies power and authority to act for the Governing Council with respect to any matter. The question which is therefore posed by Mr. Carr's preliminary objection is whether the Governing Council, itself, has authority to hear and adjudicate upon the charges brought against Dr. U. It cannot be disputed that if the Governing Council has no authority to deal with such charges, this Judicial Board, which is a mere creation of the Governing Council, cannot have any jurisdiction.

Both counsel for Dr. U and for The University of Toronto have submitted extensive written arguments on the question of the jurisdiction of the Governing Council to hear and adjudicate upon the charges brought against Dr. U. The initial submissions were received by a prior Judicial Board differently constituted from the present Board, but subsequent to our constitution by Governing Council, the representatives of the parties agreed that the submissions were to be considered as having been properly filed with us. Subsequent to the letter of January 25th, 1980, further written submissions were received from each counsel, and a hearing of the Judicial Board was convened at Toronto on

April 3rd, 1980 to hear oral argument from counsel on the preliminary objection. In dealing with the arguments put forth by the parties we propose, generally, to follow the breakdown adopted by Mr. Carr in his initial written submission to the Board.

I

Mr. Carr submitted that the Governing Council, as a creation of statute and as a domestic tribunal purporting to interfere with the rights and interests of other parties, has no powers other than those expressly set out in the legislation creating it. He further submitted that such powers must be construed restrictively and that wherever there is a doubt or ambiguity, such doubt or ambiguity must be resolved in favour of the accused. As authority for these propositions, Mr. Carr referred to Frobisher Limited v. Oak, Canadian Pipelines and Petroleums Limited, Chief Mining Recorder et al, (1956) 20 W.W.R. 345, Gruen Watch Company v. Attorney General (Canada), (1950) O.R. 429 and R. v. Cope and Sons, (1970) 2 O.R. 518. In the Board's view, authorities for the above propositions are plentiful.

Mr. Carr then examined the legislative source of the Governing Council's disciplinary jurisdiction. He pointed to Section 2(14) of the 1971 Act, which provides as follows:

The government, management and control of the University and of University College, and of the property, revenues, business and affairs thereof, and the powers and duties of The Governors of The University of Toronto and of the Senate of the University under The University of Toronto Act, 1947 as amended are vested in the Governing Council...

Mr. Carr then suggested that the only disciplinary jurisdiction vested in the Governing Council by Section 2(14) was the jurisdiction of the Senate under The University of Toronto Act, 1947 Stat. Ont. c.112, (henceforth referred to as the "1947 Act") and pointed to Section 48(c) of the 1947 Act as setting forth the entire jurisdiction of the Senate over discipline.

Section 48(c) provided in part that the powers and duties of the Senate were to:

provide for the cancellation, recall or suspension of and cancel, recall or suspend the degree, whether heretofore or hereafter granted or conferred, of any graduate of the University heretofore or hereafter convicted in Ontario or elsewhere of an offence which, if committed in Canada, would be an indictable offence, or heretofore or hereafter guilty of any infamous or disgraceful conduct or of conduct unbecoming a graduate of the University...

Reinforced by authorities which would require the Board to give a restrictive scope to the powers of the Senate where the extent of those powers is not clear, Mr. Carr submits that the jurisdiction conferred by Section 48(c), which refers to a graduate of the University heretofore or hereafter convicted in Ontario or heretofore or hereafter guilty of any infamous or disgraceful conduct or of conduct unbecoming a graduate of the University, should be restricted to the disciplining of graduates of the University for misconduct occurring while they were graduates of the University. Accordingly, Mr. Carr concludes that since the charges brought against Dr. U. relate to alleged misconduct occurring while he was a student and not a graduate of

The University of Toronto, the Senate, and therefore the Governing Council, would have no authority under Section 48(c) to deal with these charges. As further support for this view, Mr. Carr pointed out that the jurisdiction to discipline students for their misconduct while students lay with the Caput and the local councils of The University of Toronto, and in the context of the 1947 Act that jurisdiction clearly ceases upon the students' graduation.

It is our view that in construing the language of Section 48(c) the words "heretofore or hereafter" must be taken to refer to the date upon which the Act came into force and that the Section therefore focuses upon degrees whether granted before or after the enactment of the Section and further considers conduct or convictions, whether taking place before or after the enactment of the Section. We would therefore not be prepared to give effect to the argument of counsel for the University that those words were specifically intended to relate to the date of graduation and therefore specifically include pre-graduation conduct. However, the more substantive portion of Mrs. Feldman's argument is that the use of the word "graduate" in Section 48(c) does not indicate the point of time at which the conduct took place but rather describes the particular type of individual who is to be made subject to the Section. The specific language makes reference to infamous or disgraceful conduct or to conduct unbecoming a graduate, and it is only with respect to the last of those three descriptions of conduct that the word "graduate" is attached. Even in that context, the word is intended to describe a standard of conduct (i.e. conduct that is unbecoming anyone with the status of a graduate) rather



than to define the point in time that the conduct must take place. The conduct, as such, would be unbecoming of a graduate whether or not the particular individual guilty of the conduct was, in fact, a graduate at the time. In summary, the reference to graduate within the Section defines only the particular type of individual who is to be subject to the Section and the standard of conduct that is to be considered. That conduct can have taken place either before or after the enactment of the Statute, and it is immaterial to the jurisdiction created by the Statute whether the conduct took place before or after the actual date of graduation. It is the opinion of this Board that counsel for the University has correctly interpreted the jurisdiction created by the plain language of Section 48(c) of the 1947 Act and, therefore, by virtue of the provisions of Section 2(14) of the 1971 Act, that jurisdiction is vested now in the Governing Council.

It has been pointed out to the Board by Mrs. Feldman that in the only precedent for this type of situation, the Court of Discipline, a body of the Senate, assumed jurisdiction in a 1948 case to discipline a graduate of The University of Toronto for misconduct committed by him while he was a student. While it is not entirely clear, it appears that the Court of Discipline assumed jurisdiction on the basis of the opinion of the University Solicitor. The 1948 case is the only direct precedent which we have before us, and Mrs. Feldman suggested that this Board is entitled to take guidance from the Court of Discipline's decision that it had jurisdiction. However, the reasoning of the University

Solicitor was not available to us in the materials filed, and we have no way of knowing to what extent, if any, the issue as it was argued before us was considered by the Court of Discipline. Accordingly, we cannot find significant assistance from that source.

However, it is unnecessary for the purposes of Mr. Carr's preliminary objection to the jurisdiction of the Governing Council to rely exclusively on jurisdiction under Section 48(c) to deal with this matter. If the Senate did have such jurisdiction, then it is clear that the Governing Council was given such jurisdiction by Section 2(14) of the 1971 Act. If, on the other hand, the Senate did not have such jurisdiction, then, as submitted by Mrs. Feldman, the Governing Council was still given jurisdiction to deal with such a matter by virtue of Section 41 of the 1947 Act and Section 2(14) of the 1971 Act. Section 41 of the 1947 Act provided as follows:

All the powers over, in respect of, or in relation to the University and University College which are not by the terms of this Act directed to be exercised by any other person or body of persons, are hereby, subject to the provisions of this Act, vested in the Board.

Section 2(14) of the 1971 Act provides initially:

The government, management and control of the University and of University College and of the property, revenues, business and affairs thereof, and the powers and duties of the Governors of The University of Toronto and of the Senate of the University under The University of Toronto Act, 1947 as amended are vested in the Governing Council and without limiting the generality of the foregoing, the Governing Council has power to,

- (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.

The effect of the foregoing sections is that the Governing Council is vested with the powers of the Board of Governors under the 1947 Act, and Section 41 of that Act appears to vest all powers that are not under the Act specifically allocated elsewhere in the Board. In addition, under Section 2(14) of the 1971 Act, the government, management and control of the University, in very general terms, is vested in the Governing Council; and then, in subsection (o), very wide, general and residual powers are expressed.

Accordingly, it is the view of the Board that unless the authority to discipline graduates for misconduct committed while students was directed by the terms of the 1947 Act to be exercised by some other person or body of persons, such power was vested in the Board of Governors and was, by the 1971 Act, vested in the Governing Council. The bodies which were directed by the 1947 Act to exercise disciplinary jurisdiction were the Senate, the Caput and the local councils. It is clear from an examination of the 1947 Act that, while the Caput and the local councils were given disciplinary jurisdiction over the misconduct of students, they were not given any jurisdiction to discipline graduates. In other words, it is clear from the 1947 Act, that neither the Caput nor the local councils had jurisdiction to discipline a graduate for misconduct occurring while he was a student. Accordingly, if we assume that the jurisdiction of the Senate under Section 48(c) of the 1947 Act was restricted to the disciplining of graduates

for misconduct occurring after graduation, it must necessarily follow from that and the fact that the jurisdiction of the Caput and the local councils was restricted to the disciplining of students, that no body was specifically directed to exercise disciplinary jurisdiction over graduates for misconduct occurring while they were students. Accordingly, by virtue of Section 41, such authority must necessarily have been vested in the Board of Governors, and subsequently, by virtue of Section 2(14) of the 1971 Act, would necessarily have been vested in the Governing Council.

We would consider it self-evident that the granting of degrees is perhaps the basic and fundamental purpose of the University. It is clearly a matter of crucial importance to the University to maintain the integrity and reputation of the degrees that are issued, and it would be our view that such activities on the part of Governing Council would clearly come within the classification of actions that are necessary or expedient for the conduct of the affairs of the University. We would readily accept that in evaluating the charges which have been referred to this Board, there will be a serious onus on the University to establish its case by clear, convincing and cogent evidence, and that Dr.

U. is entitled, in the proceedings before us, to procedural safeguards and a full and fair hearing consistent with the seriousness of the allegations from his point of view. We believe that, insofar as Dr. U. is concerned, these proceedings are properly characterized as disciplinary in nature, but we are satisfied that within the provisions of the 1947 and 1971 Acts, we have a jurisdiction to proceed with the charges.

II

In the alternative, Mr. Carr submitted that if jurisdiction was vested in the Governing Council by Section 2(14) of the 1971 Act to discipline graduates for misconduct occurring while they were students, the entirety of this jurisdiction was irrevocably transferred to the Disciplinary Tribunal, a tribunal established by enactment of the Governing Council for the purpose of administering and enforcing the Code of Behaviour. Both the Enactment and the Code of Behaviour came into force on October 1st, 1975, and it has already been decided by Mr. S. G. Fisher, Q.C., the Chairman of the Tribunal, that the Tribunal has no jurisdiction over alleged misconduct, such as that of Dr. U. , which occurred before October 1st, 1975.

Section 4(2) of the Enactment provides that the Disciplinary Tribunal shall have "exclusive jurisdiction in all matters of discipline within and over the members of the University with respect to any act or conduct in the nature of or which may constitute an academic offence...occurring or committed either before or after the date of the coming into force hereof..."

Section 6 of the Enactment provides as follows:

Nothing contained herein or in the Code of Behaviour on Academic Matters shall limit or restrict or be construed as limiting or restricting the powers and authority of,

- (a) the Governing Council or any committee, officer or employee thereof, duly authorized, to revoke, withdraw, cancel, recall, suspend, withhold or deny registration, enrolment, degrees, diplomas, certificates, academic standing, transcripts of results or marks obtained or privileges to use the facilities of the University, including any

residence or library, for failure to pay fees, fines or levies properly due to the University or for any other cause (other than an offence or alleged offence against the Code) for which such jurisdiction, powers and authority may properly be exercised;

Section E(2) of the Code of Behaviour provides:

In order to protect the integrity of the degrees, diplomas and certificates granted by the University, the Tribunal shall have power to recommend to the Governing Council the cancellation, recall or suspension of any degree, diploma or certificate obtained by any graduate who, while a member, committed any offence, which if detected before the granting of the degree, diploma or certificate, would, in the judgment of the Tribunal, have resulted in a conviction and the application of a sanction sufficiently severe to lead to the loss of credit in any course or programme of study pursued by that graduate, so that the degree, diploma or certificate would not have been granted.

It is clear from the above provisions, and the decision of Chairman Fisher, that if the alleged misconduct of Dr. U had occurred after October 1st, 1975, the University Tribunal would have had exclusive jurisdiction to deal with the matter. However, it is the view of the Board that the Governing Council retains disciplinary jurisdiction to deal with alleged misconduct, such as that of Dr. U, which occurred prior to October 1st, 1975. In coming to this conclusion, the Board has relied upon two arguments put forth by Mrs. Feldman.

The first argument is based upon the cases of Re Yat Tung Tse and The College of Physicians and Surgeons, (1978) 18 O.R. (2d) 546 and R. v. Coles, [1970] 1 O.R. 570 and upon Section 14(1) of The Interpretation Act of Ontario. These authorities establish

the proposition that acts occurring before the repeal of a statute may, and in fact must, be dealt with under the provisions of that statute and not under the provisions of any subsequent statute. Accordingly, the Board accepts the view of Mrs. Feldman that any alleged misconduct which occurred before October 1st, 1975, the effective date of transfer of jurisdiction from the Governing Council to the Disciplinary Tribunal, may be dealt with by the Governing Council.

Mrs. Feldman's second argument is based upon Section 6(a) of the Enactment which continues the disciplinary jurisdiction of the Governing Council for any cause other than an offence or alleged offence against the Code of Behaviour. The Board agrees with Mrs. Feldman's view that misconduct which would otherwise constitute an offence under the Code of Behaviour, such as the alleged misconduct of Dr. U., which occurred prior to the coming into force of the Code of Behaviour, cannot be interpreted to be an offence or an alleged offence against the Code. In other words, the coming into force of the Code must, by necessity, predate offences against it. Accordingly, the Governing Council retains its jurisdiction to hear and adjudicate upon the charges brought against Dr. U. for alleged misconduct occurring while he was a student at The University of Toronto in 1974.

### III

The only question which remains to be dealt with by the Board is that of the validity of the service which has been made upon Dr. U.. Thus far, all notices have been served upon Dr.

U. in California through the mail. It is Mr. Carr's submission that the Board can have no jurisdiction in this matter unless personal service is made upon Dr. U. in Ontario. In support of his submission, Mr. Carr purports to rely on The Statutory Powers Procedure Act, 1971, to which the Board is subject.

The only requirement imposed on statutory tribunals by The Statutory Powers Procedure Act is the requirement in Section 6 thereof that the parties to any proceeding be given reasonable notice of the hearing. There is no indication given in the Act as to what constitutes reasonable notice. Mr. Carr suggests that the Board should consider Section 12 of the Act as setting forth the standard to be followed in giving notice. Section 12 authorizes a tribunal to require any person to give evidence on oath or to produce documents in evidence at a hearing. It also provides that a summons issued under the Section shall be served personally on the person summoned. Furthermore, in subsection 3 of Section 12, authority is given for the apprehension anywhere within Ontario of persons who have been properly summoned and who have failed to appear. It is the Board's view that there is a fundamental distinction between giving notice to a person, whose interests might be detrimentally affected by a hearing, for the purpose of providing that person with an opportunity to defend or protect his interests, and compelling a person to appear before a tribunal against his wishes. Accordingly, Section 12 and its requirements are entirely irrelevant in determining the reasonableness of the notice to Dr. U.. Furthermore, the Board has no doubt that



reasonable notice has been given to Dr. U. . Though perhaps unnecessary, the Board refers to Section 24(1) of The Statutory Powers Procedure Act, 1971 for authority that at least in certain circumstances, notice of a hearing may be given by public advertisement or otherwise as the tribunal may direct. It may well be argued that if the University wishes to compel Dr. U. to appear on any hearing, personal service upon him in Ontario would be required. However, for the purpose of proceeding with the charges, it is only necessary that reasonable notice be given to him, and we are satisfied that such notice has been given by way of the letters forwarded to him by the University by registered mail.

Accordingly, and for the reasons outlined, the Board rules that we have jurisdiction to hear and adjudicate upon the charges brought against Dr. U.; and, for that purpose, we direct that the hearing of evidence and of argument shall proceed commencing on Tuesday, May 13th, 1980 in the Board Room, Simcoe Hall, University of Toronto, commencing at 9:30 a.m. The members of the Board have set aside the dates of May 13th, 14th and 15th for the purpose of the hearing.

DATED at Toronto this 17th day of April, 1980.

I concur Margaret C. Cahoon  
Margaret C. Cahoon

I concur Mary C. D. Kent  
Mary C. D. Kent

I concur Thomas V. Simpson  
Thomas V. Simpson

I concur James B. Conacher  
James B. Conacher

I concur D. A. Brian O'Riordan  
D. A. Brian O'Riordan

I concur Victor G. Smith  
Victor G. Smith