

FILE: 2001/02-01

Trial: 2000/01-07

Dated: October 4, 2001

Written Copy Released: November 19, 2001

UNIVERSITY OF TORONTO

DISCIPLINE APPEALS BOARD

B E T W E E N:

Mr. P.

Applicant
(Respondent by cross-application)

- and -

THE UNIVERSITY OF TORONTO

Respondent
(Applicant by cross-application)

Gary E. Shortliffe
for the applicant

Lily I. Harmer
For the Respondent

HEARD: October 4, 2001

REASONS FOR DECISION¹

SENIOR CHAIR KEITH:

[1] This is an application by Mr. P., a student at the University, for an extension of time within which he may bring his appeal from a decision of the University Tribunal that was announced orally at the conclusion of the hearing on October 10th, 2000. Formal written notice dated November 17th, 2000, was delivered to Mr. P. and received by him on November 19th, 2000 and by counsel for the University on November 21st, 2000.

[2] Counsel for the University of Toronto has brought a cross-application pursuant to section E. 10 of the *Code of Behaviour on Academic Matters* requesting that any extension of time not operate as a stay of the decision of the tribunal below.

[3] By the provisions of section E.5 of the *Code of Behaviour on Academic Matters*, an appeal from a decision of the Tribunal shall be made by filing written notice with the Secretary within 21 days after the giving of notice of the decision of the Tribunal. The section goes on to indicate what the contents of the notice of appeal should be. It is common ground that no formal notice of appeal was delivered to the secretary within that time, although it is alleged by Mr. P. in his affidavit that on a number of occasions (which unfortunately cannot be identified) he spoke with the then-Secretary of the Tribunal at the University and that he understood from what he was told in those conversations that he should proceed with his attempts to obtain

¹ Note: Subsequent to the release of this ruling, Mr. Shortliffe withdrew the applicant's appeal.

legal representation and when he had secured that legal representation he should then file a formal notice.

[4] The first *formal* indication of an intention to appeal, that is, an indication in writing, was contained in a letter from Mr. P.'s present counsel dated April 6th, 2001. When that communication was brought to my attention, I indicated to the Secretary that in view of the requirements of section E.5 of the enactment, counsel should be advised to make a formal application so that a hearing could be scheduled. Those requirements are simply that in "exceptional circumstances" the Senior Chair shall have the power to enlarge the time for appeal upon application made either before or after the expiry of that time. There is no further indication in the enactment as to the meaning of the phrase "exceptional circumstances". I have noted that the companion act, the *Code of Student Conduct*, does not contain that phrase nor, indeed, any provision for the extension of time.

[5] The issue before this hearing is therefore whether or not the circumstances described would reasonably fall within the language of the enactment and constitute exceptional circumstances. I have attempted to locate any previous decisions of the Tribunal on this point without success. The general jurisprudence on the issue of administrative tribunals and extensions of time, without going into detail, suggest that the use of imperative language such as appears in this enactment, does not by itself render time limits mandatory, rather that the provisions in question must be construed to take into consideration a number of factors among which are, for example, the

policy basis of the enactment, the practical effect of non-compliance, whether the requirement is intended to protect individual rights, and certainly to some extent the degree to which either party to the procedure will be seriously inconvenienced if the extension is granted.

[6] In these circumstances having considered the relevant chronology of events and the submissions of counsel for Mr. P., and in particular the affidavit evidence which indicates his understanding of what was expected of him as a result of a conversation with an employee representing the University, and the fact that counsel for the University has not seen fit to controvert either by cross-examination or filing additional material, I am prepared to find on the circumstances of this case alone that there were exceptional circumstances upon which I can and have the power under the enactment to enlarge the time for appeal. This is no way to be taken as a general statement that in all similar circumstances such a decision would be reached as I am satisfied that the intention of the enactment is to require those seeking to appeal Tribunal decisions to do so promptly. Although there is no evidence of such before me, I can think of several reasons why the University would wish to have such a scheme in place. An appeal requires the preparation of transcripts. The time taken up by hearing appeals may be extensive. Appeals operate as a stay of the order appealed from unless otherwise ordered and this may have a serious effect upon the status of the appellant party as a student of the University in terms of enrolling in further courses or simply being a continuing part of the University community in the situation such as we have here where the Tribunal of first instance has ordered a

lengthy suspension. It is therefore clear to me that there is a sensible and reasonable basis for such a regulation within the context of the university community and the practical effect of non-compliance with the requirements of the enactment may serve to cause prejudice.

[7] In the present circumstances, however, the University has clearly indicated that it does not oppose the application provided that certain conditions can be incorporated into the order granting an extension of time. Counsel for the appellant has clearly indicated that he does not oppose the nature, or the imposition, of those conditions.

[8] There will therefore be an order granting an extension for the time to appeal, conditional upon the following:

1. Firstly, pursuant to section E.10 of the enactment, the appeal of the decision of the Tribunal of October 10th, 2000 will not operate as a stay of that decision.
2. Secondly, the granting of leave to appeal will not operate so as to prevent the University from raising as an issue on the appeal any practical difficulties which may arise in terms of presenting the necessary witnesses to deal with any new hearing the appellant tribunal might see fit to order. In other words, the granting of this

order sought will not operate so as to prevent or prohibit the Provost of the University from making that submission at the appeal hearing should the appeal go forward.

3. A further condition of the order granting an extension of time is that the parties will abide by a strict timetable, which is imposed as part of this order and which will commence to run from this date:

i. Firstly, the appellant shall forthwith make an application to the court reporting service which has in its custody the tapes or other records of the hearings from the year 2000 for the transcription of such portions of that hearing as are reasonably required for the hearing of the appeal. Counsel may agree between them as to what those portions may be and if there is any difficulty you may speak to me for further assistance. Counsel for the University, if she wishes, may insist upon receiving a certificate or other written evidence that such order has been placed, that the cost of the transcription has been provided or paid, as the case may be, and that the work of proceeding with the transcript is, in fact, proceeding. In the event that the transcript has not been ordered and no satisfactory arrangement concerning payment has been made

within two weeks, the leave to appeal granted by this order will expire.

- ii. The next part of the schedule will deal with the timetable after the transcript, as agreed, of the Tribunal hearing has been received. Within seven days of its receipt by the appellant, copies as necessary will be made available by the appellant to counsel for the University and to the Tribunal. In accordance with the terms of the enactment, providing the necessary number of copies to the University and to the Tribunal and to University counsel will be at the expense of the appellant. With the agreement of counsel, within 30 days of the receipt by the appellant of the transcripts from the court reporter, formal notice of appeal, factum and book of authorities together with any other supporting material as counsel for the appellant may advise, shall be served upon counsel for the University and filed with the Secretary. The University's responding material shall be served and filed within thirty days of receipt of the appellant's material. Upon receipt of the transcript counsel for the University shall initiate the process of arranging for a date of the hearing of the appeal which in any event shall not take place before the time for the delivery of notice of appeal, the appellant's factum and the respondent's material has expired.

[9] It goes without saying that everybody will cooperate to find a date, that's the way this process works.

[10] The only final comment I have is that any submissions as to the costs of this hearing will be reserved to the Chair of the appeal tribunal who shall have the authority to dispose of that issue.

DATED: **October 4, 2001**

WRITTEN COPY RELEASED:

"November 19, 2001"

Date

"C. Anthony Keith"

C. Anthony Keith, Q.C.
Senior Chair