

1981/82-10

Note on the Appeal of Mr. S.

Mr. S's appeal was heard on November 19, 1981 by a three-personal panel of the Appeal Division of the University Tribunal. The panel was not in agreement on the disposition of the appeal. Attached here are the dissenting reasons of Mr. Jaffary. A search of the Tribunal files reveals that the reasons of the majority were apparently issued orally but never reduced to writing.

Paul J. Holmes
Judicial Affairs Officer
Secretary to the University Tribunal & the Discipline Appeals Board

May 11, 2004

UNIVERSITY OF TORONTO

-and-

Trial: 1981/82-01

Mr. S.

Reasons of K.D. Jaffary.

Mr. S. was convicted by a jury of an offence under Section E1(c) of The University of Toronto Code of Behaviour. The panel hearing his appeal regrets that it is not in agreement. At the conclusion of argument we gave brief oral reasons disposing of the appeal, and advised that we would reduce our reasons into writing. I disagree with the majority of the panel in that I would have dismissed the appeal from conviction. These are my reasons:

The facts are that the appellant submitted an application for admission to the Faculty of Dentistry in December of 1978. In that application he was required to set out, in detail, his "academic record" and to certify that the contents of the application were "true and correct". The instructions on the form made it clear that records from "all colleges or universities attended for any period of time" were required.

Mr. S. entirely omitted any reference to his enrolment in the Faculty of Dentistry, University of Western Ontario during the 1976-77 year, and his failure to obtain a passing grade there. The evidence was that, had he so disclosed, he would in all probability have not been admitted to the University of Toronto and some other, qualified student would have been given a place.

The Appeal turned on two points. It was the submission of the appellant that the words in section E1(c) of the Code "to forge or in any other way falsify any academic record of the University..." did not apply to

the document he submitted (Exhibit 1). He argued that it was not a record " of the University".

I agree that the words, out of context, could bear two meanings. "of" Could mean "emanating from" or "produced by". It could also mean "belonging to" or "relied upon by". I prefer the second meaning, and am of the view that the entire context of the enactment supports it. It is of note that when left to a jury of members of the University, that jury found this document to be such a record. Mr. Laskin advised the tribunal that in February 1979 the University Governing Council had enacted a policy statement on access to academic records and had included applications for admission in the definition of such "academic records". It seems to me perfectly proper to use that definition as an illustration of the meaning attributed by the Council to the words.

When I refer to the context of The Code, I am conscious that it is a short document. It does not model itself upon the Criminal Code. It tries to set out principles, rather than specific, detailed offences, and in Section C it provides that "offences under The Code relate to the honesty and fairness of the teaching and learning relationship especially with respect to evaluation". I cannot believe that the principle set forth is intended to exclude a dishonest, unfair deceit of an admissions committee. If it were up to me to decide it, I would hold the application for admission, with its attached "academic record" page, to be an academic record of the University. I would also hold that the document was capable of being so characterized and that the question was therefore a proper one for the jury, which so found it.

The second issue was whether Mr. S. could be convicted since he was not a "student" at the time he filed the application. Section C provides that the Code "applies only to students and members of the teaching staff". Section D2 provides that "unless the context otherwise requires, 'student' means a member of the University engaged in any academic work...". The argument is that at the time of the offence, Mr. S. was not yet a "student".

I read Section C as saying that proceeding shall only be brought against students - not that they must have been students at the time of the alleged offence. I would also be prepared to hold that the context of Section E1(c) requires that if section C is taken to mean that an accused must be a student at the time of an offence, then "student" includes applicant for admission as a student. The section speaks of "falsifying any academic record of another educational institution used for the purposes of the University of Toronto, or to utter or make use of such forged or falsified records". That section really refers to forged transcripts. Most transcripts are submitted by applicants, not students. To read the section as creating an offence for only accepted enrolled students gives it little meaning.

I believe that, in the context of students who admit they have cheated, the days of sporting justice are over. Must the University either amend its Code or be deemed to tolerate deceitful applications?

I think the University ought to be assumed to have intended to be governed by the principles it sets out, and to have "intended" to use its words so as to regulate sorts of behaviour that everyone would agree on. My colleagues would excuse fraud because they are not sure that the University

used its words clearly enough to punish this fraud. If there is ambiguity I think it should be resolved by interpreting the words in such a way as to assume that the University does not condone mis-statements of fact in applications for admission. Any other interpretation would reduce fundamental matters of morality and academic standards to the level of interpreting a taxing statute.

The University has enacted a Code and set up a Tribunal to conduct jury trials of alleged offences. This accused has been found, by such a jury, to have falsified an application form, deprived some person of a place in the Faculty of Dentistry, and a punishment has been ordered. The accused and ~~my~~ colleagues say that the Code does not contemplate such behaviour being an offence. I say that it is an offence, and a fair reading of the Code says so.

We heard no submissions on the accused's appeal from sentence or the University's cross appeal. I think that the guilt of this accused should be confirmed and the questions of sentence addressed.