FILE: 1997/98-04

IN THE MATTER OF THE DISCIPLINARY TRIBUNAL OF THE UNIVERSITY OF TORONTO

IN THE MATTER OF a decision by the Divisional Court dated December 4, 1995 directing a rehearing of charges against Mr. K.

AND IN THE MATTER OF the University of Toronto *Code of Behaviour on Academic Matters*

AND IN THE MATTER OF the University of Toronto Act, 1971, S.O. 1971, c. 56. as amended S.O. 1978, c. 88.

B E T W E E N:

THE GOVERNING COUNCIL OF THE UNIVERSITY OF TORONTO

Prosecutor
(Respondent)

- and -

Mr. K.

Defendant
(Moving Party)

Appearances:

For the University of Toronto	Linda R. Rothstein Stephen H. Satchel
For Mr. K.	Eric P. Polten

Reasons for Decision

This proceeding concerns charges brought by the University of Toronto against Mr. K. for various offences under the *Code of Behaviour on Academic Matters* (the "*Code*").

The charges were subject to a prior hearing which resulted in an order purporting to expel Mr. K. for dishonesty when applying for admission. That result was the subject of judicial review by the Divisional Court, which held that the prior proceedings were the subject of errors which went to the root and the essential fairness of the proceedings.[1] The Court quashed the prior decision and remitted it to the Tribunal to be heard again.

Mr. K. has brought a number of preliminary objections to the re-hearing of the charges on the merits. My decision on those matters was communicated to the parties on September 26, 1997. These are my reasons.

The *Code*

During the course of the proceedings the University made certain amendments to the *Code*. However, on the consent of both parties the rehearing is to proceed pursuant to the provisions of the *Code* as it existed at the time the charges were initially laid.

The specific provision of the *Code* which is engaged in this case provides:

B.I. 1. It shall be an offence for a student intentionally:

(a) to forge or in any other way alter or falsify any document or evidence required by the University, or to utter, circulate or make use of any such forged, altered or falsified document, whether the record be in print or electronic form;

History of Current Proceedings

Based on the agreed statement of fact in the prior proceedings and the submissions of counsel during the current hearing, the following matters leading up to these proceedings do not appear to be in dispute.

Mr. K. completed a B.Sc. and a M.Sc. at the University of Toronto. During that period, he applied unsuccessfully to the Faculty of Medicine of the University of Toronto a number of times.

In September 1990, Mr. K commenced studies in Physical and Health Education Science at York University. Mr. K. again applied to the Faculty of Medicine, University of Toronto in

[1]Editor's Note: [1995] O.J. No. 3734.

October, 1991, submitting his grades from York University only. Mr. K. was called for an interview at the Faculty of Medicine in April 1992 and in July, 1992 was accepted to the Faculty of Medicine's 1992 entering class. Mr. K. registered in the Faculty of Medicine at the University of Toronto in September, 1992.

Mr. K. was charged by the Provost in July, 1993, with an academic offence as follows:

> In or around October 1991 you did alter or falsify documents or evidence required for admission to the University contrary to section B.I.(1)(a) of the University of Toronto's *Code of Behaviour on Academic Matters, 1991*.

In August 1993 Mr. K. was charged with a second offence relating to an interview prior to admission to medical school. The charge read:

> On or about April 23, 1992, you did falsify evidence required for admission to the University contrary to section B.I.(1)(a) of the University of Toronto's *Code of Behaviour on Academic Matters, 1991*.

A hearing date was scheduled for October, 1993. Prior to the hearing the University amended the charges and added the words "or uttered, circulated or made use of such forged, altered or falsified documents or evidence" to each charge. Mr. K.' s counsel consented to this amendment.

After several adjournments at the request of Mr. K., who had acquired new counsel, the case was heard on March 9, 1994 and March 10, 1994. Mr. K. was found guilty of both charges and on March 22, 1994 the jury recommended that Mr. K. be expelled from the University with the notation for such an expulsion to be cleared from Mr. K.'s record in three years time.[2] Mr. K. filed an appeal with the Tribunal Appeal's Board which was heard on June 1, 1994. The appeal was dismissed with reasons to follow.

On March 25, 1995 reasons were handed down by the chair of the Tribunal Appeals Board.[3] The expulsion was maintained, but the notation concerning its three year maintenance on his record was removed. The reasons were forwarded to the President of the University in April, 1995 for ultimate presentation to the Governing Council. The President recommended that the expulsion be upheld. On June 1, 1995 the Governing Council, on recommendation of the President, ordered Mr. K. expelled from the University of Toronto.

Mr. K. commenced an application for judicial review of the decision to expel him from the University in July, 1995. On July 19, 1995 Mr. K. obtained a stay of his expulsion pending the hearing of his application for judicial review of his expulsion. In November of that year, the application for judicial review was heard before a full panel of the Divisional Court. The decision was reserved. On December 4, 1995 the Divisional Court released its judgment

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[2] 1993/94-09
[3] 1994/95-09

quashing the expulsion of Mr. K. and ordering a rehearing into the allegations against him.[4] As part of its decision, the Divisional Court awarded Mr. K. $5,000 in costs.

On January 10, 1996 Mr. K. was advised that the University would be retrying him on the following charges:

1. In or around October 1991, you did alter or falsify documents or evidence required for admission to the University contrary to section B.1.(1)(a) of the University of Toronto's *Code of Behaviour on Academic Matters, 1991*.

2. On or about April 23, 1992, you did falsify evidence required for admission to the University contrary to section B.1.(l)(a) of the University of Toronto's *Code of Behaviour on Academic Matters, 1991.*

These charges differed from the original charges under which Mr. K. was tried and which the Divisional Court had directed to be re-heard. Due to inadvertence, they did not include the words "or uttered, circulated, or made use of such forged, altered or falsified documents or evidence". When this difference was brought to its attention by Mr. K., in late August of 1996, the University amended the charges to include those words. The charges are now identical to the charges originally heard by the Tribunal.

The Academic Appeal

In the meantime, Mr. K. has also been involved in a dispute over his academic standing to continue with his studies at the Faculty of Medicine.

In the fall of 1995, the Board of Examiners of the Faculty of Medicine made a series of decisions concerning Mr. K.'s academic status. The effect was that Mr. K. failed his Third Year Paediatrics rotation and would not be allowed to repeat Third Year until he had undergone psychiatric, professional and medical assessment and the results of those assessments had been received, discussed and a recommendation made by the Board of Examiners.

Mr. K. appealed that decision to the Appeals Committee of the Faculty of Medicine, and then to the Academic Appeals Committee. Mr. K. also made four unsuccessful attempts to have the Divisional Court stay the decision of the Board of Examiners, and reinstate him as a student in the Faculty of Medicine.

At the commencement of the hearing of this proceeding, Mr. K.'s appeal of the decision of the Board of Examiners was pending before the Academic Appeals Committee of Governing Council.

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[4] *Supra*

Since that time, the Academic Appeals Committee has released its decision. In Reasons for Decision dated January 9, 1997, the Appeals Committee set aside the recommendation that Mr. K. undergo medical assessment.[5] The Appeals Committee further ordered that Mr. K. be afforded an opportunity to take a further supplemental rotation in Paediatrics as part of his Third Year program in the Faculty of Medicine. If Mr. K. passes that rotation he will be deemed to have passed Third Year. In such event the Faculty will make all reasonable efforts to permit Mr. K. to enter upon his Fourth Year program as soon as possible thereafter.

The Present Proceeding

Commencing in early March of 1996 attempts were made to find a date for his hearing. Such attempts were delayed by Mr. K.'s change of counsel and then by a dispute as to how an apparent challenge by Mr. K. to the jurisdiction of the Tribunal should be dealt with. To resolve these issues the Tribunal met on September 6, 1996 and a schedule for the delivery of materials dealing with preliminary matters of law and a hearing date of November 18, 1996 were set. Subsequently the latter date was adjourned to November 25, 1996 at the request of Mr. K.'s counsel. At the completion of that hearing, counsel agreed to provide the Tribunal with further information on certain matters. In the result and partly as a consequence of the decision of the Academic Appeals Committee, further written submissions were filed, the last such submission being received in late March, 1997.

The material and submissions delivered by Mr. K. in support of a number of preliminary objections were voluminous. Among the preliminary issues raised by Mr. K. were the following:

(1) the Tribunal lacked jurisdiction because the necessary authority was not delegated under the applicable legislation, the *University of Toronto Act* (the "*Act*");

(2) the Tribunal lacked jurisdiction because Mr. K. was charged with events which occurred prior to his becoming a student of' the University;

(3) the Tribunal lacked jurisdiction because at the time of hearing (as a result of the matters which were the subject of the academic appeal process described above) Mr. K. was not a student;

(4) there was a conflict of interest because the firm appearing as counsel for the University "appears to act for and control the activities of the Tribunal". This assertion was not pursued at the hearing;

(5) the proceeding was invalid because the charges which were the subject of the hearing were not the same as those directed to be re-heard by the Divisional Court (because, prior to amendment, they did not include the words "or altered, circulated, or made use of such forged, altered or falsified documents or evidence");

[5]Report Number 218 of the Academic Appeals Committee of Governing Council

(6) the proceedings comprising the charges, the first hearing, the appeal process, the judicial review and the rehearing constitute a delay which amounts to a breach of the rules of natural justice;

(7) the Tribunal should order the University to disclose certain information said to be relevant to Mr. K.' a position that the laying of the charges was an act of discrimination or retaliation. Mr. K.'s position was that if there was a *prima facie* case of discrimination or retaliation, the Tribunal should adjourn these proceedings pending the results of a complaint which has been made to the Ontario Human Rights Commission. During the hearing Mr. K.'s counsel acknowledged that the information sought to be disclosed was unnecessary to any of the jurisdictional or other preliminary legal issues which he had raised. This issue was accordingly deferred to be heard, if necessary, at a later stage. At the time, I made it clear that if this issue is to be pursued, the Tribunal would want a clear indication of what Mr. K sought to have disclosed, why, and with what legal authority in support;

(8) even if the Tribunal lacked jurisdiction to conduct a rehearing into the charges against Mr. K., it had jurisdiction to award him costs for the proceedings to date, and should do so, apparently on a solicitor and client basis.

Issues

(1) The Tribunal lacks the jurisdiction to administer and enforce the *Code of Behaviour on Academic Matters*

The assertion that the Tribunal lacks jurisdiction has not previously been raised by Mr. K. and therefore has not been dealt with in the prior proceedings, including those by the Divisional Court. If Mr. K. intended to deny the Tribunal's jurisdiction to hear these charges, he ought to have raised the issue before the Divisional Court. However, since he did not, I deal with this issue first.

This Tribunal was originally established by an Enactment of the Governing Council Respecting the Disciplinary Tribunal of the University of Toronto, 1974. That enactment described the previous body responsible for discipline, the Caput, and provided for the Tribunal's authority in terms set out in the enactment and in the *Code*.

Mr. K. objects to the jurisdiction of the Governing Council to pass the enactment.

It is accepted by both parties that under sections 79 to 82 of the original *University of Toronto Act*, S.0. 1947, jurisdiction over discipline in the University was conferred upon the Councils of certain faculties and schools, and upon the Caput.

The dispute in this case arises over the issue of whether or not these disciplinary powers have been legitimately delegated by the Governing Council to the Tribunal, given the provisions of the *University of Toronto Act*, S.0. 1971.

It is Mr. K.' s position that the University has no statutory jurisdiction to delegate disciplinary authority to the Tribunal, and that, therefore, the Tribunal has no jurisdiction to hear disciplinary matters regarding Mr. K., or any student attending at the University.

The relevant statutory provisions are set out as follows:

University of Toronto Act, 1947

33. The Board [which means "The Governors of the University of Toronto"] may modify, alter and change the constitution of any body constituted or continued by this Act, except the Senate and the Committee of Election, and create such new bodies as may be deemed necessary for the purpose of carrying out the objects and provisions of this Act and also confer upon the bodies constituted or continued by this Act or any of them and upon any new body hereafter constituted, such powers as to the Board may seem meet, but nothing herein shall authorize any abridgement of the powers conferred upon the Senate by section 48 or the powers conferred upon the Committee of Election by sections 62 to 67.

41. 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.

83. As respects the conduct and discipline as students of the University of all students registered in the University to whatsoever federated university, federated college, college, faculty or school they belong and as respects all students enrolled in University College the provisions of sections 79 to 82 [the discipline provisions] may be abrogated or changed by the Board.

University of Toronto Act, 1971

2(14) 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,
>
> ….
>
> (j) provide for the granting of and grant degrees, including honorary degrees, diplomas and certificates;
>
> (n) determine and regulate the standards for the admission of students to the University, the contents and curricula of all programs and courses of study and the requirements for graduation;
>
> (na) delegate such of its powers under clauses *g*, *h* and *n* as it considers proper to any academic unit or council;
>
> (nc) determine whether any person is a member, or any class of persons are members, of the administrative staff or the teaching staff or the alumni or is or are a student or students, and if a student or students, whether full-time graduate, part-time graduate, full-time undergraduate or part-time undergraduate;
>
> (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.
>
> 9(1) Unless and until otherwise provided by the Governing Council, the councils and the Caput under *The University of Toronto Act, 1947* and their respective powers are continued.

As described above, the Tribunal and the *Code* which defines disciplinary offences and penalties including the procedure under which the Tribunal operates are creations of the Governing Council.

a) Argument of Mr. K.

Mr. K. claims that judicial authority, such as the disciplinary authority exercised by the Tribunal, may be delegated to a body only through express statutory provision. He submits that the Governing Council was not expressly authorized to delegate disciplinary power to the Tribunal because s. 79(3) of the 1947 *Act* vested such authority in the Caput.

Mr. K. argues that the adjective "continued" in s. 9(1) of the 1971 *Act* contemplates that the Caput and its powers remained in existence upon the introduction of that *Act*, unchanged from its previous state, neither altered, nor expanded, nor reduced. While the words "unless and until otherwise provided by the Governing Council" permit the Governing Council to

discontinue the Caput, they do not provide for the creation of new or different powers for the Caput.

In addition, section 83 of the 1947 *Act* permits the disciplinary provisions found in s. 79 to s. 82 to be *either* abrogated or changed. Mr. K. submits that the University is not authorized to abrogate *and* change these provisions, as he says the University did in the 1974 *Enactment.*

b) Argument of the University

The University, by contrast, alleges that the Governing Council does in fact have authority to replace the Caput with a new body or structure, and to confer or delegate jurisdiction in matters of discipline over either students, or academic staff in either academic or non-academic areas.

Counsel for the University has claimed, I think rightly, that judicial authority can in fact be delegated by necessary implication (see *Barnard* v. *Dock Labour Board*, [1953] 2 Q.B. 18, *R*. v. *College of Physicians and Surgeons of B.C.* (1970), 18 D.L.R. (3d) 197 (B.C.C.A.) at 202.)

In any event, according to the University, the *Act* does in fact expressly authorize Governing Council to delegate disciplinary power to the Tribunal

This power arises by virtue of s. 2(14) of the 1971 *Act*, which vests all of the powers of the Board and the Senate of the University under the 1947 *Act*, in the Governing Council. Therefore, the powers in s. 33 and s. 83 of the 1947 *Act* which allowed the former Board to "modify alter and change" the constitution of bodies such as the Caput, and to delegate to such bodies as may seem proper, are now vested in the Governing Council.

In addition, s. 2(14) of the 1971 *Act* gives the Governing Council a general power to govern, manage and control" the affairs of the University.

In support of its argument, the University cites the decision in [1978/79-11] where the issue of whether the Governing Counsel could delegate disciplinary authority to the Tribunal was specifically considered. Stanley Fisher, in that proceeding, decided that:

> Between these two sections. [s. 33 and s. 83] the Board had a clear statutory mandate to create a new body or Tribunal and to confer upon it jurisdiction over discipline. That power has been carried forward by section 2(14) of the 1971 *Act* and was vested in the Governing Counsel. *The University of Toronto Act, 1971* as amended by 1978, c.88.

I see no reason to depart from the conclusion reached by Mr. Fisher. Therefore, the Tribunal does have jurisdiction to administer and enforce the *Code*.

(2) The Tribunal Exceeded any Jurisdiction that it might have been delegated because the *Code* does not apply specifically to Mr. K. or to actions taken in connection with, but prior to, his admission to the University.

In any event, Mr. K. argued, even if the Tribunal generally does have jurisdiction over disciplinary matters, the Tribunal could not have jurisdiction over Mr. K. because Mr. K. was when the hearing commenced not a "student" at the University. Moreover, he says, the Tribunal cannot assert jurisdiction over conduct connected to his admission to the University which occurred prior to his becoming a student.

The assertions concerning jurisdiction have not previously been raised, and accordingly were not considered by the Divisional Court.

The University again relied on [1978/79-11] for Mr. Fisher's consideration of the question of whether the Tribunal could claim jurisdiction over a person who, although not longer a student, was a student at the time of an alleged offence. Mr. Fisher decided that the *Code* did in fact apply to "former" students:

> I am quite comfortable with the conclusion with the *Code* and Enactment were intended to include a person who is a student at the time of the alleged offence. To accept Mr. Cant's submission on this point would render nugatory the whole thrust of section E-2 out of the *Code of Behaviour* and would make the application of the whole legislation seasonal, I therefore respectfully reject this objection to jurisdiction.

However, since the Court of Appeal's decision in *Chalmers* v. *Toronto Stock Exchange* (1989), 70 O.R. (2d) 532 (C.A.), leave to appeal refused (1990), 37 O.A.C. 399n the proposition that disciplinary tribunals with statutory jurisdiction over members of an association or body may retain jurisdiction over persons who are no longer members of the association or body is more problematic.

(1) Definition of Student

The statutory definition of student is found in section l(l)(l) of the *Act*.

> (1)(1) "Student" means any person registered at the University far full time or part time study in a program that leads to a degree or post secondary diploma or certificate of the University or in a program designated by the Governing Counsel as a program of post secondary study at the University.

The University argues that the definition of student is in fact broader than what is implied by the above definition, and points to the definition set out in the *Code*.

Appendix A

> 2(s) "student" means that type of member of the University currently or previously (1.) engaged in any academic work which leads to the recording and/or issue of a mark, grade, or statement of performance by the appropriate authority in the University or other institution; and/or (2.) registered in any academic course which entitles the member to the use of a university library, library materials, library resources, computer facility or data set.
> (Emphasis added)

While it is true that the definition in the *Code* appears to embrace a former student, it is not clear that this definition is consistent with the statutory authority which defines "student". The Respondent argues that the definition in the *Code* is not inconsistent with the statutory definition because paragraph 2 (14)(nc) of the 1971 *Act* gives the Governing Council power to:

> determine whether any person is a member, or any class of persons are members, of the administrative staff or the teaching staff or the alumni or is or are a student or students, and if a student or students, whether full time graduate, part time graduate, full time undergraduate or part time undergraduate;

I accept that there are significant policy reasons in support of the agreement advanced by the University. The University should be able to ensure that the record of a student's or former student's entitlement to registration, academic performance, and graduation is accurate. An accurate record of these matters is vital to the University's academic integrity. In circumstances where there is reason to conclude the record is inaccurate because the student does not or did not comply with the University's requirements for such qualifications and therefore does not in fact possess the qualifications the University should have jurisdiction, with appropriate procedural protections for the student, to correct the record. However, in light of the statutory definition of "student" in the *Act*, and in light of the *Chalmers* case, I think there is at least a serious question as to whether the University does possess such jurisdiction over someone who has, when the proceedings commence, ceased to be a student as defined by the *Act*. Legislative clarification of this point appears called for.

However, I have concluded that I need not decide the question of the jurisdiction of this Tribunal over former students since, in my view, Mr. K. was a student within the meaning of the *Act* when these proceedings commenced.

In my view, a registered student must include anyone who has become registered (as Mr. K. did) and whose entitlement to continued registration has not been removed by a final decision of the relevant authorities. In this case, at the time the proceeding commenced there was no such final termination of Mr. K.'s entitlement to registration. The University's appeal process, invoked by Mr. K., was ongoing and in fact ultimately led to a decision which continued Mr. K.'s status as a registered student, able to pursue his studies as a student in Third Year.

Mr. K. is accordingly someone over whom the Tribunal can exercise jurisdiction.

Furthermore, such jurisdiction extends to conduct (if specified in the *Code*) which occurred prior to his becoming a student if such conduct is within the matters which are the subject of the University's jurisdiction. The University is given a specific statutory power to "determine and regulate the standards for admission of students to the University" (s. 2(14) of the *Act*, *supra*). It is clear that the University may specify what evidence it requires that a student has met those standards. It is also clear that the University's disciplinary authority extends to students who have gained admission through the falsification of such evidence,

(2) Consent of the Applicant

There is another basis upon which the Tribunal may exercise the jurisdiction under the *Code* in this case. Mr. K. agreed, when he signed his application for admission to an Ontario medical school, to be bound by the *Code*.

> I understand that the discovery that any information is false or misleading or that any material information has been concealed or withheld will invalidate this application and will result in immediate rejection, or in revocation and cancellation of my admission and/or registration if I have been admitted. I agree that this information may be used by OMFAF, its member institutions and other Canadian Medical Schools for research and development purposes intended to improve the Medical Education and Admissions Programs, *and that my application for admission to the Ontario Medical Schools constitutes acceptance on my part of the admission requirements, policies and procedures of those schools* and of the methods by which Applicants are chosen for their programs. [emphasis added]

Even if Mr. K. would not otherwise be subject to the *Code* on the basis set out above, through his application to medical school he agreed that he would be subject to the *Code*.

Mr. K.'s counsel has claimed that "consent cannot confer jurisdiction" and has pointed to several authorities in support of this argument.

I do not agree that in circumstances such as this, a person cannot confer jurisdiction over himself by contract. Indeed, the cases involving University students appear to accept that a student may agree to be bound by the authority vested in the University.

In *Re Polten and Governing Council of the University of Toronto* (1975), 8 O.R. (2d) 745, a doctoral student requested that the court intervene, and grant him a Ph.D. degree which had not been approved by the University. Since there was no failure to comply with the rules of

natural justice, or the *Statutory Powers Procedure Act*, the Court found that there was no basis for interference by the Courts with the decision of the subcommittee on academic appeals. Weatherston J. stated, with regard to the procedure followed by the University in the assessment of his thesis:

> Although these rules have no statutory basis, Polten must be taken to have agreed, when he entered the school, to be bound by the procedural rules *supra* at 754.

Mr. K.'s counsel has attempted to distinguish *Polten* from the Applicant's situation on the basis that because in the earlier case there was no *statutory* basis for the University's jurisdiction over the student, the relationship was merely a contractual one established through the University Calendar. By contrast, be submits, any contractual relationship which might have existed between Mr. K. and the University of Toronto was ousted by the statutory definition of "student", which restricts the authority of the University to the persons who meet that description.

With respect, I cannot see any reason to accept this argument. Nowhere in the *Act*, is it indicated that the authority of the University must be restricted to those person who meet the definition of "student", to the exclusion of any person who agrees to be bound by that authority.

In *Wong* v. *University of Toronto* (1989), 79 D.L.R. (4"') 652 (Ont. Dist. Ct.), affirmed (1992). 4 Admin. L.R. (2d) 95 (C.A.), the thesis supervisor of the plaintiff, a doctorate student, had resigned. A reasonable substitute was found; however, the plaintiff applied to the Applications and Memorial Committee and then to the Academic Appeals Board who refused to hear the matter as "no academic regulation or requirements [had] been invoked from which an appeal [could] be made". The plaintiff rather than seeking judicial review, then sought damages in tort and breach of contract. The court found that since the essence of the dispute between the plaintiff and the University was an academic matter, the University had jurisdiction to decide it.

Further, the court found that even if the University did not have visitatorial and exclusive powers to decide such matters, the plaintiff was bound, by the terms in the contract as contained in the University calendar, to proceed through various hearings and reviews available to him before seeking relief in the civil courts. Lang, D.C.J. stated (at 666-7):

> Where the University has the authority to determine matters relating to its role in education, admission standards, assessment of academic progress and qualifications *and where the student has agreed to be bound by that authority*, a court should refrain from conducting an inquiry except in cases of breaches of the rules of natural justice. (Emphasis added.)

Clearly, the Court in *Wong* contemplated that the University's authority related to the regulation of academic standards, and any person who agreed to be bound by this authority, would be subject to the rules established by the University.

Even the Court of Appeal's decision in *Chalmers* itself does not support the proposition that "consent cannot confer jurisdiction". In *Chalmers*, Finlayson, J.A., in finding that the by-law purporting to confer jurisdiction on the Exchange was *ultra vires*, specifically found that the authority of the Exchange "was restricted to those who have *voluntarily submitted to that authority*" [emphasis added].

Mr. K.'s counsel has argued, in the alternative, that even if Mr. K. may have agreed to be bound by the University's authority, he only agreed to be bound by the "admission requirements. admission policies, and admission procedures" of that University. I see no merit in that argument. In my opinion, Mr. K. agreed to be bound by the general policies and procedures of the Faculty of Medicine at the University of Toronto. The *Code* is such a policy and procedure.

(3) Incorrect charges

The charges sent to Mr. K. on January 10, 1996 after the Divisional Court ordered that the matter be heard again were slightly different from the charges before me.

I agree with counsel for the University that this error, which was due to inadvertence and corrected as soon as it was recognized by the University, caused no hint of prejudice to Mr. K. The charges now before the Tribunal are precisely those which the Divisional Court directed the Tribunal to re-hear.

(4) Delay

Mr. K.'s counsel has argued that it is an "abuse of process" and a "breach of the rules of natural justice" to try him on charges relating to events which, while discovered more recently, occurred five to six years ago.

However, any issue of delay which occurred prior to the decision of the Divisional Court in December 1995 should have been raised in that forum. Mr. K. has stated that the Divisional Court was not fully apprised of all of the circumstances of his situation, particularly with respect to the proceedings against him with respect to the academic situation, and the further delay which Mr. K. would experience in his appeal of the decision of the Board of Examiners. To the extent that this is true, I find that this concern should have been raised before the Divisional Court, and is not before me.

Any delay which may have occurred between the ruling of the Divisional Court and the date for this proceeding are due to scheduling complexities, which were raised on the part of both the University and Mr. K. In any event, I do not think that Mr. K. has been significantly prejudiced by the "delay" between the Divisional Court decision and these proceedings.

I am conscious of the fact that the submissions in this matter were completed in late March. However, Mr. K. raised a number of substantial issues some of which, if raised earlier, would have been addressed in the earlier proceedings so that their resolution would not have delayed the hearing of the charges. Moreover, in support of his position Mr. K., through his counsel, has filed six separate volumes of lengthy written submissions (in addition to lengthy post-hearing submissions) and referred the Tribunal to more than 125 cases. It must have been evident that fair and due consideration of this substantial volume of material and multiple issues would require a significant amount of time.

(5) Costs

The Appellant has requested that I make a ruling regarding the costs of this proceeding, as well as all previous proceedings against hint on a solicitor and client basis. The issue of whether this Tribunal has the jurisdiction to make such a ruling has been much debated throughout this proceeding. Similarly, the parties have argued over whether the issue of costs would be *res judicata* with respect to the proceedings which have taken place at the initial Tribunal hearing, the Appeal, and before the Divisional Court.

I find that it is unnecessary to make a finding with respect to the issues of jurisdiction, and *res judicata* set out above. Even if a Tribunal does have jurisdiction to make such an order, and even if the issue is not *res judicata* with respect to the earlier proceedings, this would not be an appropriate case in which to make such an order. I have no record of prior proceedings on which to make an award of costs. Consequently, I prefer to defer this decision to the completion of these proceedings.

(6) Conclusion

In summary, the decision of the Tribunal may be set out as follows:

1. The Disciplinary Tribunal was properly delegated the authority to administer and enforce the *Code*.

2. The Tribunal does have jurisdiction to rehear the charges which were laid against Mr. K. pursuant to the *Code*, as directed by the Divisional Court both because he is a "student" as defined by the *Act* and because Mr. K. agreed to be bound by the *Code*.

3. The clerical error which caused incorrect charges to be asserted against Mr. K. has caused him no prejudice, and therefore has no effect on the legitimacy of the proceedings against him. The charges now before the Tribunal are in the terms directed to be heard by the Divisional Court.

4. The proceedings ought not to be stayed on the basis of delay.

5. The issue of the jurisdiction and propriety of an award of costs for the present and previous proceedings will be dealt with at the completion of the proceedings.

October 14, 1997 "Patricia Jackson"

Chronology of Discipline Proceedings in the Case of Mr. "K"

1993/94-09	March 23, 1994	University Tribunal recommends expulsion
1994/95-09	April 24, 1995	Tribunal Appeals Board dismisses the student's appeal
	June 1, 1995	Governing Council confirms the expulsion
[1995] O.J. No. 3734	December 4, 1995	Divisional Court quashes the decision of Governing Council to expel and orders a new trial before the University Tribunal
1997/98-04	October 14, 1997	University Tribunal issues written ruling on jurisdictional objections raise by the student (2nd trial)
1998/99-06	July 31, 1998	University Tribunal recommends expulsion (2nd trial)
1998/99-07	December 4, 1998	Chair of the Tribunal panel rules on the student's request for costs (2nd Trial)
1998/99-08	April 20, 1999	The student's appeal is dismissed by the Discipline Appeals Board (2nd Appeal)
	May 13, 1999	Governing Council confirms the expulsion (2nd Expulsion)
[1999] O.J. No. 2944	July 16, 1999	Divisional Court dismisses application for judicial review
1999/00-14		Discipline Appeals Board Rules on Student's request for cost at the 2nd Appeal