



Education Law eBulletin

A newsletter for educators

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Academic Honesty Fundamental to Integrity of Universities

Educational institutions at all levels continually struggle to impress upon students the importance of academic integrity. Cheating on exams, plagiarism on assignments, fabrication of data and or sabotaging other students' efforts to complete work are all forms of academic dishonesty against which education administrators battle in order to provide a level playing field for all students. Problems are often encountered with respect to dealing with students who violate the principles of academic integrity. In *Mohamed v. University of Saskatchewan*, the Saskatchewan Court of Queen's Bench made it clear that academic dishonesty is not to be taken lightly and that expulsion may be appropriate even for first time offenders.

In *Mohamed*, the student involved was a 90-percent-plus high school student and had maintained grades in the 85-percent-plus range during his first two and one-half years of university. In the middle of his third year, the student had applied to dental college but was turned down as, contrary to his belief, he did not have the sufficient prerequisites. Despondent, the student left the university for a few days, and upon his return realized that he was supposed to write an exam the following day. The student did not attend this exam; he e-mailed the professor, falsely indicating that he was absent from the exam due to a flight delay from Halifax to Saskatoon. The student repeated this behaviour, using the same excuse, with respect to two other exams scheduled in April 2004. When the student appeared to write a make-up exam for a geography course, the professor issued him an exam that had been significantly altered from the original; however, the student turned in a completed copy of the original exam, and not the altered version. By way of letter in May 2004, the student was informed that three geography professors were alleging academic dishonesty against him. The student vehemently denied any wrongdoing.

At a subsequent hearing held by the University, the student admitted to having been dishonest with respect to his requests to write make-up exams for three of the courses. In addition, the committee presiding over the hearing found that he had also cheated by submitting a previously completed copy of the original exam, and not the alternate exam that had been issued to him on the day of the re-write. The committee found that, notwithstanding his claim that depression motivated his behaviour, he should receive a grade of "0" for each of the three geography courses and be expelled from the University of Saskatchewan. The student appealed to the Student Academic Appeal Panel, which upheld the decision. Subsequently, the student requested intervention by the Lieutenant Governor who asked that a Superior Court Judge intervene on her behalf. Justice Laing, acting on behalf of the Lieutenant Governor, dismissed the application to overturn the expulsion on the grounds that the student had cheated on one exam and had been "serially dishonest" over a prolonged period of time in gaining deferments under false pretenses.

Justice Laing held that the defence of depression advanced by the student, whether as a defence to the charges or used to mitigate the penalty, did not justify the dishonesty given that the student had options other than lying and cheating (e.g., seeking extensions from the instructor, deferred examinations, appeals on medical or compassionate grounds). Justice Laing recognized that a policy that determines the penalty for academic dishonest acts "on the nature and quality of the dishonest acts, as opposed to the psychological factors which prompted the person to commit the acts, is a sound and reasonable policy" in a university setting. Further, Justice Lang's statement that, "it is fundamental to the integrity and academic purposes of a university that academic dishonesty not be tolerated" demonstrates that academic honesty is truly a cornerstone of any educational institution and infractions thereof should be dealt with accordingly.

Thus, students and parents should be reminded that academic dishonesty is a serious issue and that sanctions for such behaviour need not be lenient, even with respect to first time occurrences.

Recreational Drug Use Not a Disability

The Divisional Court recently held that “recreational” use of marijuana is not a disability through which an individual can invoke protections pursuant to the *Human Rights Code*.

The employee in *Weyerhaeuser Company Ltd. v. Ontario Human Rights Commission* had received an offer of employment for a “safety-sensitive” position which was conditional on, *inter alia*, passing a drug screening. When the employee tested positive for marijuana, the employer withdrew the offer of employment. The would-be employee then brought a human rights complaint against the company alleging that the drug screening was discriminatory and that he had been discriminated against on the basis of disability. The Company asked the Human Rights Tribunal to dismiss the complaint without a hearing; the Company justified the withdrawal due to serious issues regarding honesty as the employee had continually denied using the drug before finally admitting to it. The Tribunal dismissed the motion, at which time the Company applied for judicial review of this decision.

On judicial review, the employee’s complaint was dismissed. The Court held that although the Tribunal is required to hold a hearing where a protected right is infringed, there was no infringement in this case as the employee did not claim that he was addicted to marijuana or that he suffered a disability. In fact, the employee continually claimed he was only a recreational user. Accordingly, the Court held that the Tribunal erred by failing to dismiss the complaint as the claim did not fall within the definition of “disability” in the *Human Rights Code*. In addition, the Court held that no case could be made that the Company discriminated against the employee on the basis of perceived disability as the Company’s policy provided that an employee could start work after providing a negative drug test and signing an agreement that they could be dismissed if he or she engaged in conduct involving alcohol or illicit substances at work.

As reported in our January 2007 eBulletin, arbitrators are recognizing that employees and/or unions must establish a causal connection between an employee’s disability and his or her behaviour at work. In cases of alcohol or drug use, it is often the case that employers start offering accommodative measures due to the arbitral case law in this area. However, the *Weyerhaeuser* decision recognizes and reminds us that a complainant must establish an actual disability and that mere recreational use of drugs or alcohol does not, in and of itself, satisfy this requirement.

CASES

The British Columbia Human Rights Tribunal dismissed a complaint of sexual discrimination brought by an employee because the employee was unable to prove on a balance of probabilities that any negative effects she suffered were related to gender. *Taylor v. Selkirk College*, [2007] B.C.H.R.T.D. No. 146.

The British Columbia Supreme Court ordered that a dismissed teacher who attempted to relitigate several issues already decided in other proceedings could not institute further applications or proceedings related to the matter without leave of the court. *Stark v. Vancouver School District No. 39*, [2007] B.C.J. No. 427.

The British Columbia Supreme Court dismissed the Plaintiff’s action, finding that no contract arose between the University of British Columbia and the plaintiff, nor did a duty of care exist, with respect to the publishing of an invitation to apply for the position of Assistant Professor in UBC’s Creative Writing Department. *Roback v. University of British Columbia*, [2007] B.C.J. No. 484.

The British Columbia Supreme Court dismissed the appeal by a dentist of a decision by the College of Dental Surgeons regarding unprofessional conduct on the basis that there was no merit to the dentist’s claims and the College’s actions were reasonable. *McRudden v. College of Dental Surgeons of British Columbia*, [2007] B.C.J. No. 570.

We welcome your comments and questions. Send them, and any updated contact information, to bryce.chandler@shibleyrighton.com. If you wish to unsubscribe to this eBulletin, please send a blank e-mail to unsubscribe@shibleyrighton.com

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