

Norton Rose Fulbright Canada LLP
45 O'Connor Street, Suite 1500
Ottawa, Ontario K1P 1A4 CANADA

F: +1 613.230.5459
nortonrosefulbright.com

Sally Gomery
613.780.8604
sally.gomery@nortonrosefulbright.com

January 9 , 2015

Ms. Anne Forrestall
Vice-Provost, Student Affairs
Dalhousie University
Henry Hicks Academic Administration Building
6299 South Street, PO Box 15000
Halifax, NS B3H 4R2

Dear Ms. Forrestall,

Admissibility of complaint under Code of Student Conduct

You have asked me to confirm legal advice with respect to the admissibility of a complaint submitted under Dalhousie University's Code of Student Conduct on December 22, 2014. The complaint alleges that male students in the fourth year dental class who belonged to a Facebook group (The "DDS 2015 Gentlemen") made derogatory on-line comments about women and that this conduct constitutes an offence under the Code.

The Code sets out procedures that the University must follow with respect to a complaint. Under paragraph 4 of section D entitled "Procedures", the Vice-Provost Student Affairs must, on receipt of a complaint, determine whether or not it has been properly brought:

Upon receipt of a complaint, the Vice-Provost, Student Affairs, or designate shall determine whether or not the complaint has been properly brought under the Code or whether the material supports a *prima facie* case that an offence has been committed under the Code. The Vice-Provost, Student Affairs, may request more information from the complainant before any further steps are taken. If no *prima facie* case is made out, no further steps are taken in relation to the complaint, and the complainant will be so advised in writing.

In order to determine whether the material submitted with the complaint supports a *prima facie* case that an offence has been committed under the Code, the Vice-Provost, Student Affairs needs to consider both Section B of the Code, entitled "Application", and Section C, which sets out particular types of offences under the Code. The determination of whether the Code applies under Section B involves two steps. First, the Vice-Provost, Student Affairs must consider whether the alleged offence is conduct which falls under the jurisdiction of the Code. Second, she must consider whether the complaint is nonetheless inadmissible because it falls within one of the exceptions to the Code's jurisdiction in the second part of Section B.

Based on the allegations in the complaint, the comments posted by the DDS 2015 Gentlemen arguably constitutes conduct which falls under the jurisdiction of the Code, because it is "alleged to adversely affect, disrupt, or interfere with another person's reasonable participation in Dalhousie University programs or activities" (subpara. (a) of the first part of Section B). The complaint therefore meets the first part of the jurisdictional test in Section B.

The second part of Section B, however, states that the Code will not apply to conduct that "is subject to action as an alleged failure to meet standards of professional conduct as required by a college, faculty or school"

(subpara. (ii) of the second part of Section B). We must therefore consider whether the conduct alleged in the complaint is subject to action as a failure to meet standards of professional conduct required by the Faculty of Dentistry.

The 2013-14 Academic Policy Manual for the Faculty of Dentistry contains a Student Code of Professional Conduct. Under this Code, dental students are required to respect their fellow students, in academic, clinical and social situations. In particular, they are required to “respect all races, ethnicities, religions, genders, beliefs and values of fellow students”, “never harm or intend to harm other students by verbal, physical, emotional or physiological means”, and “respect the rights and needs of others while pursuing personal advancement”. The very first section of “General Information” in the Policy states, under the heading “Professionalism”, that:

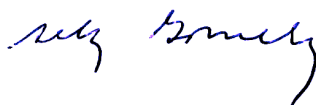
All students in the Faculty are expected to act in a professional manner in their dealing with other students, staff, faculty members and the public as defined by the Faculty of Dentistry. Repeated or blatant unprofessional behaviour may result in a temporary suspension or permanent dismissal from the Faculty.

The “Interpretive Guidelines for Currently Accepted Grading Categories” states that Faculty members and the Academic Standards Class Committee have the overall responsibility for evaluating students on professionalism.

On December 22, 2014, the Assistant Dean, Clinics of the Faculty of Dentistry suspended the DDS 2015 Gentlemen from clinical activities on the basis that their Facebook postings demonstrated poor judgment and blatantly unprofessional behaviour. The Assistant Dean, Clinics notified the Academic Standards Class Committee of the interim suspension. On January 6, 2015, the Academic Standards Class Committee confirmed the suspension.

The conduct at issue in the complaint filed under the Code of Student Conduct is the same conduct that is currently subject to action as an alleged failure to meet the standards of professional conduct required by the Faculty of Dentistry. As a result, in my opinion, the complaint falls under the exception to the Code’s jurisdiction set out in subparagraph (ii) of the second part of Section B of the Code and is therefore inadmissible.

Yours very truly,



Sally Gomery