

Office of the Vice-President, Academic

MEMORANDUM

TO: Senate

FROM: J.M. Munro
Vice-President, Academic

RE: International Students -
Policies

DATE: January 21, 1992

The attached statement is a summary of legal opinions received concerning the University's policies towards international students.



International Students - legal advice

Do the University's practices toward international students constitute illegal discrimination under federal or provincial laws?

"International students" refers to students who are foreign nationals without the legal right to be resident in Canada. "Domestic students" refer to students who are or have the legal right to be residents of Canada.

Under the *University Act* the Senate has the power to "determine all questions relating to academic and other qualifications required of applicants for admission as students to the University." (emphasis added) And the Board of Governors has the authority to "determine and collect fees, to determine the number of students and make rules for limiting the admission or accommodation of students to the number so determined." On the face of it, the University, by virtue of Board and Senate powers, has the right to limit international student admissions, and to require of such students both higher grade point averages and higher fees.

What are the possible sources of a challenge to these practices, on the grounds of discrimination? The Supreme Court of Canada has held, in effect, that the *Canadian Charter of Rights and Freedoms* does not apply to universities' practices in the area of human rights.

The only source of challenge to the relevant University's practices is the *Human Rights Act of British Columbia*, section 3, which reads as follows:

"No person shall

- (a) deny to a person or class of persons any accommodation, service or facility customarily available to the public, or
- (b) discriminate against a person or class of persons with respect to any accommodation, service or facility customarily available to the public, because of race, colour, ancestry, place of origin, religion, marital status, physical or mental disability or sex of that person or class of person unless the discrimination relates, in the case of sex, to the maintenance of public decency or, in the case of sex or physical or mental disability, to the determination of premiums or benefits under contracts of life or health insurance."

It is clear that "place of legal residence" does not appear in the Act's list of prohibited grounds for discrimination. However, the list is not necessarily considered to be exhaustive. The general intent of the Act must also be taken into account.

The object of the *Human Rights Act* is to protect persons and groups who have been historically disadvantaged by having the opportunities, benefits, and advantages available to other members of society either circumscribed or denied to them.

How do these considerations apply to the University's treatment of international students? Of the prohibited grounds listed in the Act, only "place of origin" could be construed as relevant; therefore the crucial question is whether or not "place of residence" is synonymous with or is sufficiently close to the meaning of "place of origin" to sustain a challenge. First of all, "non-residents of Canada" does not describe a group of people who have been historically victims of discrimination. The category of non-residents of Canada includes both rich and poor; those with access to excellent educational opportunities and those with limited educational opportunities; those who enjoy and those who are denied political freedom. Secondly, a pertinent case explicitly recognizes a significant distinction between place of residence and place of origin as a ground for differential treatment. In *Solin v. B.C. Amateur Hockey Association*, the Human Rights Council held that in prohibiting a visa student from playing on a local hockey team, the Association was applying a rule which restricted students from playing on a team if their parents did not reside in the local community. The Council was satisfied that the differential treatment was not based on place of origin, which would have been prohibited, but was based on place of residence, which was allowed. Third, all domestic students who are either naturalized Canadian citizens or landed immigrants are originally from outside of Canada. Therefore those whose place of origin is outside of Canada may be either domestic students or international students. It follows that the University's differential treatment of international students is not based on place of origin.

Since the differential treatment is based on the place-of-residence criterion which is not prohibited either by the letter or by the general aims of the Human Rights Act, and since no other anti-discrimination statute applies, it may be concluded that the University's differential treatment of international students does not constitute illegal discrimination under any federal or provincial law.