

SIMON FRASER UNIVERSITY

S. 75-65

MEMORANDUM

To SENATE

From H. M. EVANS, REGISTRAR AND

SECRETARY OF SENATE

Subject LEGAL OPINIONS - SECTION 84,
UNIVERSITIES ACT - FOR INFORMATION

Date MARCH 20, 1975

SIMON FRASER UNIVERSITY

MEMORANDUM

To..... Mr. Harry Evans,

From..... Pauline Jewett,

..... Registrar

..... President

Subject.....

Date..... March 20, 1975.

At its meeting held on March 18, 1975 the Board passed the following motion:

That the legal opinions relating to Section 84 of the Universities Act, dated February 24, 1975, be received for information and be forwarded to Senate.

PJ.
Pauline Jewett

/set

C.C. Dr. B. G. Wilson
Mr. D. H. M. Ross

MAR 24 1975

SIMON FRASER UNIVERSITY

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MEMORANDUM

To Geo. Suart, Esq.
Vice-President, Administration

From Donald H.M. Ross
Bursar

Subject Universities Act
Section 84

Date March 3 1975

I referred to the University's Solicitors for interpretation, in two aspects, of Section 84 of the Universities Act, passed June 20 1974. The letters of opinion are forwarded herewith.

:at
Encls.

Donna Wilson

GORDON B. SHRUM
L. KEITH LIDDLE
SHOLTO HEBENTON
R. PAUL BECKMANN
WINTON DERBY
MITCHELL H. GROPPER
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SHRUM, LIDDLE & HEBENTON

BARRISTERS & SOLICITORS, EIGHTEENTH FLOOR, 505 BURNARD ST., VANCOUVER, CANADA V7X 1G1

February 24, 1975

Simon Fraser University
Burnaby, B.C.

Attention: Donald H.M. Ross, Bursar

Dear Sir:

Re: Universities Act - Section 84

You have inquired as to the general meaning and application of Section 84. Because there has been no judicial interpretation of this or similar provisions, we have experienced a great deal of difficulty in arriving at an opinion as to the meaning and effect of this section.

Section 84(1)

"No action or proceedings shall be brought against a member of a board, senate, or faculties, or against an officer or employee of a university, in respect of an act or omission of a member of a board, senate, or faculties, or officer or employee, of the university done or omitted in good faith in the course of the execution of his duties on behalf of the university."

In reference to Section 84(1), it is clear that the Legislature intended to relieve officers and employees of the University (and other individuals named in the section) from direct liability for their acts, provided they were acting in good faith in the execution of their duties. In this section relief is provided for the individual wrongdoer as opposed to the University. The section only goes so far as to prohibit an action or proceeding from being brought against such persons. The statutory provision is thus only a procedural bar; it does not abolish the cause of action. Therefore while the injured party could not sue the wrongdoer, he could still sue the University on the basis of the University's vicarious liability for the acts of its employees.

Vicarious liability is the liability of an employer for the wrongful acts of his employees. The employer need have done no wrong himself. He is liable if the employee performs a wrongful act in the course of his employment. The phrase "in the course of employment" is a broad concept which has not been precisely defined by the Courts. However, the employer is clearly not liable when the employee, instead of acting in the furtherance of his employment, indulges in an unrelated, independent activity on his own.

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Therefore Section 84(1) offers no additional protection to the University and the University continues to be liable as before for the acts of employees, on the basis of common law principles of vicarious liability.

Section 84(2)

"In an action against a university, if it appears that the university acted under the authority of this Act or any other Act, the court shall dismiss the action against the university."

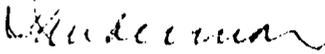
The meaning of Section 84(2) is also unclear. Section 84(2) creates a defence to an action against the University where the University was acting under the authority of the Universities Act or any other statute. This section could be broadly interpreted so as to protect the University from any suit where the act complained of was generally within the University's wide powers. However, Courts in general prefer a narrow construction of such attempts to remove the liability of a public body for its wrongful acts.

It is difficult for us to advise as to the scope which the Courts are likely to give to this section, except to point out that, as a matter of policy, Courts favour giving remedies to plaintiffs even in the face of statutes denying such remedies where the injured party would otherwise be without relief. While Section 84(2) could be raised as a defence in most actions in which the University is involved, it is likely that the section will only be applied to the actions arising from matters directly related to the University's powers. For example, a suit relating to the acts of a tenure committee would more likely attract the protection of this section than a motor vehicle action relating to a University vehicle.

Therefore it is our opinion that Section 84(2) would be narrowly construed so as to protect the University only where the act of the University was specifically contemplated and authorized by the Universities Act or other statutes.

Yours truly,

SHRUM, LIDDLE & HEBENTON

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Jack J. Huberman

JJH:mlw

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February 24, 1975

Simon Fraser University,
Burnaby, B. C.

Attention: Donald H. M. Ross, Esq.,
Bursar

Dear Sir:

Re: Universities Act - Section 84(1) -
Professional Discipline

You have asked whether an employee of the University who is a member of a professional society is protected from liability under the code and bylaws of the professional society to which he may belong, by virtue of Section 84(1) of the Universities Act, SBC 1974, Ch. 100.

In answering your question, we have looked into the meaning of the phrase, "no action or proceeding" in Section 84(1). If the phrase "no action or proceeding" applies only to judicial proceedings in a Court of Law, Section 84(1) would not protect an employee from professional discipline proceedings. The Act itself does not define these words and there has been no judicial interpretation of this phrase in a similar context. The word "action" has been interpreted by the Courts to mean a proceeding in which a party seeks to enforce some right in a Court of Law. The word "proceeding" has not been defined by Court decisions. However, we believe that taken in the context of the phrase as a whole, "proceeding" refers only to judicial proceedings as contemplated by the word "action", and not to proceedings before a professional body. It is therefore our opinion that Section 84(1) does not exempt an employee of the University who is a member of a professional Society from disciplinary proceedings of that society.

In reaching this opinion we also looked to general principles of statutory interpretation, as a Court might do in the absence of precedent. These principles are at best guidelines only. One principle is that a Court must look at the statute as a whole in determining the remedial effect intended by the Legislature. As a rule, particular

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legislation takes precedence over general legislation. A Court interpreting a general act, such as the Universities Act, would likely not imply an intention by the Legislature to remove an obligation imposed by a particular act, such as a professional society's act. The specific intention of the Legislature in the professional society's act to protect the public from unprofessional conduct, we believe, would outweigh the general intention to protect University employees from the consequence of their wrongful acts.

There are several other general principles of statutory interpretation, such as implying a reasonable conclusion or requiring precise language to remove obligations, which also tend to support a narrow construction of this section.

On the basis of all of the foregoing, we conclude that Section 84(1) would not either prevent a professional society from inquiring into the conduct of one of its members or from imposing sanctions which it is otherwise permitted to impose upon one of its members.

Yours very truly,

SHRUM, LIDDLE & HEBENTON



Jack Huberman

JH:jj