# Claims Against Educational Institutions – It's Not Just Academic Anymore

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This paper seeks to explore an emerging area in education law, specifically, the right and ability of students to sue educational institutions in court for a compromised education.

What historically was considered an internal administrative law issue (at best) is now a recognized claim in tort and/or contract – ***universities, professors and teachers, beware.***

In this paper we canvas the law as it relates to such academia based claims and then consider the kinds of situations and allegations which may support such a claim in court. Lastly, we provide some takeaways in terms of dealing with these issues going forward.

## *Background*

Historically, it was believed that students would have to pursue the internal administrative process of a university to seek redress for any grievances of an academic nature.

However, given recent developments in the law, it is now clear that students can sue an academic institution in a civil action for breach of contract and/or tort.

The evolution of this process, starting with the presumed jurisdiction of the court, as compared to that of academic institutions, is worthy of review.

## *Jurisdiction of the Court and Academic Institutions*

The Superior Court is a court of inherent jurisdiction. As such, its powers and scope may be limited only by clear and express legislative or contractual provisions to that effect.[1]

An academic institution such as a university, however, derives its powers and jurisdiction from an enacting statute which bestows the university with the power to internally manage and control the institution's affairs.

For example, the enacting statute of the University of Western Ontario states:

> Except in such matters as are assigned by this Act to the Senate or other body, **the government, conduct, management and control of the University and of its**

> **property and affairs are vested in the Board, and the Board may do such things as it considers to be good for the University and consistent with the public interest** [emphasis added].[2]

As such, courts have held that universities enjoy "**broad discretion**" in respect of academic affairs.

Further, the Ontario Court of Appeal ("ONCA") in *Gauthier v. Saint-Germain* held that by enrolling at a university, it is understood that the student implicitly agrees to be subject to the university's discretion in resolving academic matters, including the assessment of the quality of the student's work and the organization and implementation of university programs. [3]

The scope of this "broad discretion" is what drove the traditional view that academic institutions enjoyed exclusive jurisdiction over academic affairs. This traditional view has been challenged of late and, as such, the question of what role a court may play in resolving academic disputes requires greater scrutiny.

Can the court adjudicate civil claims arising from academic decisions?

The Supreme Court of Canada has long held that a contractual relationship exists between a university and its fee-paying students, giving rise to duties in both contract and tort.[4]

Nonetheless, courts have historically been hesitant to accept jurisdiction for actions arising out of disputes regarding academic decisions or activities of a university where no external legislative authority such as the *Child Protection Act*[5] or *Consumer Protection Act*[6]apply.

As such, Ontario universities often enjoyed success on early dispositive motions to have a plaintiff's claim struck on the ground that it discloses no reasonable cause of action or that the court lacks jurisdiction over the subject matter.

Recent developments, however, reveal that a properly crafted claim will survive such motions going forward and should also support a successful claim for damages at trial.

In *Lam v. University of Western Ontario*, the ONCA recently held that so long as a plaintiff alleges the constituent elements of a cause of action based in tort or breach of contract while claiming monetary damages, the court will have jurisdiction even if the dispute stems from the scholastic and academic activities of the university in question.[7]

The court clarified that the "broad discretion" enjoyed by academic institutions did not provide exclusive jurisdiction over academic affairs, as long as damages are sought and a tort or breach of contract is asserted.

However, if the remedy sought by the plaintiff is the reversal of an academic decision, he or she must first exhaust the internal remedies available through the dispute resolution system

of an academic institution before resorting to the courts and may then only do so by way of judicial review.

What constitutes a claim in breach of contract or negligence against an academic institution?

As indicated, it has been held that there exists an implied agreement between an institution and its students, a term of which is that the students agree to be subject to the institution's discretion in resolving academic matters.

As such, a student will need to do more than argue that an academic result is wrong or that a professor is incompetent to successfully advance a breach of contract (or tort) claim against a university.

In other words, our courts have found that students have essentially agreed as a matter of contract law, that there are certain academic issues (like a bad grade) that you cannot sue over. As such, it is clear that the broad discretion enjoyed by institutions extends to basic academic decisions.

What is less clear, however, is the type of academic issues or matters students did not implicitly agree would be subject to the institution's discretion pursuant to the implied student/university contract.

A review of the impugned conduct of academic institutions as alleged in recent cases is illustrative of this point.

Gauthier v. Saint-Germain

In *Gauthier v. Saint-Germain*, Ms. Gauthier, a graduate student, brought an action against the University of Ottawa alleging that the university breached its contract with her by failing to provide an appropriate thesis supervisor.

Ms. Gauthier alleged that her first thesis supervisor acted inappropriately towards her and made false representations about available funding.

Ms. Gauthier was subsequently assigned a replacement supervisor; however, she alleged the replacement was incompetent which delayed her studies further.

The decision in *Gauthier* was the first time an appellate court in Canada definitively stated that a court will have jurisdiction to hear a claim against an academic institution if the claim is framed in tort or breach of contract, **even if the dispute arises out of the scholastic or academic activities of the institution**.[8]

Jaffer v. York University

In *Jaffer v. York University*, a student with a developmental disability received a grade point average during his first year of studies which was below the minimum required to continue attending the university. [9]

The student sued the university for breach of contract for failing to provide proper academic accommodations.

The ONCA, following the reasoning of *Gauthier*, determined that the real issue in such cases is not whether the dispute is academic in nature, but rather whether the pleadings support a cause of action in either contract or tort.[10]

Lam v. University of Western Ontario

Mr. Lam, a former doctoral science student at the University of Western Ontario, alleged that he was knowingly misled as to the details, amount, and duration of his financial support in regards to his doctoral thesis, in breach of the university's handbook and in violation of honest performance.

Mr. Lam argued that, contrary to the handbook, the institution agreed to supervise his project despite not having sufficient familiarity with the field of research or a willingness to gain it.

Mr. Lam also alleged that the university, through its faculty supervisors, purposefully pressured him to drop out of the PhD program.

The Court of Appeal found that the contract between Mr. Lam and the university consisted of a number of documents, including the university's Graduate Student Handbook.

Additionally, the contract between Mr. Lam and the university was said to be subject to the general provisions of the law, including the general duty of honesty in contractual performance, as per *Bhasin v. Hyrnew*.[11]

The court held that an abuse of power, whereby an institution pressures a student to drop out of a PhD program, is not a matter that fits within the institution's broad discretion and, as such, is not something that a student can be seen to have agreed to as part of the contract between the student and the institution.

Accordingly, the sort of conduct alleged in *Lam*, if proven, would support a claim in breach of contract with resulting damages.

Another case which demonstrates actionable conduct on the part of an academic institution is *Tapics v. Dalhousie University.*[12]

Tapics v. Dalhousie University

In *Tapics*, the plaintiff, a doctoral student at the defendant university, was working on her PhD thesis with an adjunct supervisor who left the university and took data essential to the research.

The student subsequently undertook to complete a different topic for her thesis with her faculty supervisor. However, the faculty supervisor withdrew from the project and the university was unable to find a suitable replacement.

This delayed the process associated with the student obtaining her PhD. The student sued the university as a result of these developments.

The Nova Scotia Supreme Court found that the University had contractual obligations to the student, a term of which was a "conflict of interest policy" found within the Dalhousie Faculty of Graduate Studies Handbook.

The court found that the University had breached its contract with the student by failing to enforce the conflict of interest policy and the student lost the opportunity to complete her PhD within the expected timeframe as a result.

The court quantified this loss at $48,750 and awarded damages to the plaintiff accordingly.

***Current State of the Law – What the Case Law Tells Us***

To be tenable at law, and subject to the jurisdiction of the court, the following must be satisfied as it relates to a claim arising from an academic dispute against an academic institution:

(1) The action must be grounded in breach of contract or tort;

(2) The plaintiff (i.e. the student) must be seeking monetary damages;

(3) The alleged wrong must fall outside of the broad discretion enjoyed by the academic institution over basic academic affairs; and

(4) The statement of claim must be pled with such particularity and clarity that the court is informed of the express or implicit contractual provision that has been breached and/or the way in which the tortious act exceeds the academic institution's broad discretion.

Further, a review of the case law reveals that the following conduct would likely be actionable as falling outside of the student/university contract:

- Harassment by a thesis supervisor and broken promises regarding academic funding.[13]

- Failing to provide academic accommodations as implicitly or explicitly agreed to by the university as part of the university/student contract.[14]

- False representations regarding the type and scope of support to be provided as part of an academic program which are relied on to the student's financial detriment.[15]

- Agreeing to supervise a student's studies without sufficient familiarity in the field or a willingness to gain it.[16]

- An abuse of power, such as pressuring a student to drop or switch out of an academic program which the university no longer wants, or has the resources, to support.[17]

***Take-Aways***

- Academic institutions may be sued in court for claims arising from academic affairs. Claims by students with respect to academic decisions or activities are actionable, in certain circumstances, when the remedy sought is monetary damages.

- Based on the terms of an implied student/university contract, a student will need to prove something beyond incompetence by a professor or a grade given below what was properly deserved, as the parties are seen to have agreed that such academic issues would be remediated through the institution's internal dispute process.

- Thus, in order to maintain an action and prove damages in court, a student will need to allege and eventually prove more. ***How much more*** **is a new and developing area of the law.**

- The facts of *Gauthier*, *Jaffer, Lam* and *Tapics* reveal the nature of conduct which would, if proven at trial, likely support a claim in contract or tort against an academic institution.

- Academic institutions should carefully consider what documents could be held to constitute the express or implied contract between the institution and its students. The courts have determined that terms within the institution's student handbooks are contractual documents, the breach of which can give rise to a claim for monetary damages.

- Academic institutions should consider which disputes are governed by their internal appeals processes. It may be worthwhile to consider including an express provision that states that claims for breach of contract (or tort) can be remediated only through the institution's internal dispute resolution process.

- In short, academic institutions may want to consider broadening the privity clause in the policy that governs their internal academic appeals process, so as to provide exclusive jurisdiction over said disputes to an administrative tribunal.

- Indeed, it may be beneficial to consider incorporating an obligation to pursue arbitration under the *Arbitrations Act*, *1991* rather than resort to the courts in circumstances where monetary damages are being claimed by a student.

- Such a provision would need to be carefully considered and drafted. For example, a court is likely to refuse to enforce an arbitral award against a minor and, as such, a clause requiring arbitration would likely not be open in the context of secondary schools or high school institutions.

- Similarly, academic institutions must be careful to not make an arbitration clause so overreaching that arbitration would be, for all practical purposes, inaccessible and thus 'unconscionable', as a court will strike such a clause down.[18]

- Nevertheless, universities and other academic institutions would be wise to consider this very recent and important development in education law and give careful consideration to the (express and implied) terms of the student/institution contract.

- We hope this paper provides some assistance in that regard.

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[1] *Gauthier v. Saint-Germain*, 2010 ONCA 309, para 29.
[2] *An Act respecting The University of Western Ontario*, Bill PR14, 1982, as revised by Bill Pr37, chapter Pr26, S.O., 1988, s.18.
[3] *Supra,* note 1 para 47.
[4] *Young v. Bella*, 2006 SCC 3, para 31.
[5] *Ibid.*
[6] *Ramdath v. George Brown College*, 2014 ONSC 3066.
[7] 2019 ONCA 82.
[8] *Supra* note 1 para 46.
[9] 2010 ONCA 654.
[10] *Jaffer v. York University*, 2019 ONCA 654, para 31.
[11] *Supra* note 9, para 41.
[12] 2018, NSCC 53.
[13] *Supra* note 1, para 58.
[14] *Supra* note 10.
[15] *Ibid.*

[16] *Supra* note 7.
[17] *Supra* note 7.
[18] The ONCA in *Heller v. Uber Technologies* (2019 ONCA 1) found the arbitration clause in the service agreement between Uber and its drivers to be unconscionable as it was inaccessible for drivers to commence an arbitration pursuant to the language of the clause.