

Gauthier v. Saint-Germain: A Forthcoming Lesson from the Supreme Court of Canada on Educational Malpractice?

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Canadian courts have traditionally been reluctant to wade into disputes between schools and their students, deferring academic matters to internal school procedures. This approach was recently reconsidered in the Court of Appeal for Ontario decision *Gauthier c. Saint-Germain, Boudreau et L'Université d'Ottawa*,¹ with the Court finding that courts, in certain circumstances, have the jurisdiction to adjudicate matters of an academic nature.

The University of Ottawa and two of its professors are seeking leave to appeal the decision at the Supreme Court of Canada given the conflicting provincial and appellate court decisions. The Appellants want the Supreme Court of Canada to overturn the Court of Appeal decision and restore the decision of a motions judge who had struck out the student's Statement of Claim for lack of jurisdiction.

The case started when Manon Gauthier, a graduate student in the Faculty of Education at the University of Ottawa, brought an action against her two thesis supervisors and the University. She alleged that her initial supervisor promised her an admissions scholarship, acted inappropriately, negligently supervised her studies, and caused her mental distress. Gauthier was given a new supervisor and alleged that he was not competent in that role. Finally, she alleged that the University breached the contract between them by failing to provide competent staff for her studies.

The University brought a motion to strike the claim arguing that the court did not have jurisdiction because it was primarily an academic issue. The motions judge found in favour of the University, holding that "it is well settled in law that if the gist of a dispute is academic in nature the proper forum for dealing with it is not a court but the university's internal procedure" and noted the "internal autonomy" enjoyed by universities.

The Court of Appeal overturned the decision of the motions judge finding that a court will have jurisdiction when the cause of action is framed in tort or breach of contract even if the dispute arises out of the scholastic or academic activities of the University. The Court also noted that the Superior Court's jurisdiction can only be limited by clear and express legislative or contractual provisions. The Court of Appeal rejected that there was a broad rule that if the gist of a dispute is scholastic in nature, a court had no jurisdiction even if the underlying cause of action is framed in tort or breach of contract and the compensation claimed is the recovery of damages.

The Court of Appeal's decision is arguably at odds with many other decisions and does not provide a clear test for lower court judges to determine when an academic matter should proceed through the judicial process. Courts of Appeal in Manitoba, Alberta and Québec have upheld the

¹ 2010 ONCA 309 (CanLII).

exclusive jurisdiction of universities in academic matters, while the British Columbia Court of Appeal has held that courts do have jurisdiction over such disputes. The Court of Appeal for Ontario has ruled both ways. The result is that courts have inconsistently applied various factors including breaches of natural justice, the essential character of the dispute, availability of judicial review, and the independence of universities in deciding whether or not to decline jurisdiction in these matters.

The Appellants in *Gauthier* contend that the correct approach to determine whether a court has jurisdiction is to look to the “essential character” of the dispute. They argue that if it is academic in nature, then the court lacks jurisdiction, regardless of whether damages are claimed in tort or contract.

The Respondent, in attempting to deny the leave to appeal, downplays the controversy and conflict in the caselaw and relies on the 2006 Supreme Court of Canada decision *Young v. Bella*² about a plaintiff reporting a professor to Child Protection Services as a potential sex offender.

Leave to appeal materials have been filed by the parties and were sent to a panel of judges for review on October 4, 2010. While a decision regarding leave can sometimes take as little as a month, *Gauthier* will likely be delayed in part due to the recent Court of Appeal decision *Jaffer v. York University*,³ which was released on October 7, 2010. *Jaffer* also addresses the issue of the court’s jurisdiction to hear claims relating to academic matters and relies on the *Gauthier* decision. An application for leave to appeal in the *Jaffer* case was filed with the Supreme Court of Canada on November 15, 2010.

In addition to *Jaffer*, the *Gauthier* decision was also followed recently by the Ontario Superior Court in *Nazik Amdiss v. University of Ottawa*,⁴ demonstrating its potential effect as a precedent. Given the conflicts in the caselaw and impact of this decision, leave will likely be granted in *Gauthier* in order for the Supreme Court of Canada to provide direction on the court’s jurisdiction to hear educational malpractice matters.

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² 2006 SCC 3.

³ 2010 ONCA 654 (CanLII).

⁴ 2010 ONSC 4738 (CanLII).