



# Claim Case Studies & Legislation

## Accurate Delivery of Course Curriculum is Required

### Alvin Olar v. Laurentian University, 2007, ONSC & 2008, ONCA

Increased competition for students has led some educational institutions to establish partnerships or transfer agreements with other educational institutions to expand their course curriculum. The inability to deliver on newly expanded curriculum has been the subject of litigation in Canada. The following case outlines an action brought by a student against Laurentian University for negligent misrepresentation.

#### Background

In the spring of 1994, the Plaintiff elected to attend Laurentian University. He chose Laurentian University because it was close to where he lived and he would save on travel and living expenses. Based on the information he received from the University, he would be able to attend the first two years of a Civil Engineering program at Laurentian and then transfer elsewhere to complete his third and fourth years. Laurentian University did not offer full-degree Civil, Mechanical or Chemical Engineering programs.

On June 21<sup>st</sup>, 1994, the Plaintiff accepted Laurentian's Offer of Registration. He then went on to achieve academic success at the University in his first and second year. The Plaintiff also decided to switch his two non-technical elective courses to technical courses to give him a better chance for a successful transfer to another University.

The Plaintiff was able to transfer to the University of Windsor, but he required five years to complete his four year degree program. He later achieved a Master's degree in Civil Engineering at the University of Windsor. The Plaintiff alleged that he was not made aware by Laurentian of the difficulties he would face in transferring elsewhere. The Plaintiff alleged negligent misrepresentation against the University.

#### Issues

1. Did the Defendant owe a duty to the Plaintiff to disclose the potential difficulties involved in the transfer?
2. If yes, did it breach this duty?

3. If the Defendant did breach its duty, did this result in a delayed entry of the Plaintiff into the workforce?
4. If so, did the Plaintiff suffer damages and if so, what is the measure of those damages?

## Facts

Laurentian University obtained a Transfer Agreement in April, 1988, with the University of Toronto (U of T). The agreement was in place to enable students' transfer directly to third year of U of T's relevant Engineering programs. However the agreement was cancelled by U of T in the fall of 1994. This disclosure was never made by Laurentian to the Plaintiff while he was planning his transfer in the fall of 1995, after completing his second year. There was virtually no communication of this critical information between the Defendant and the Plaintiff and the other affected students.

It was not until April, 1998, that the Laurentian Liaison Office was instructed to remove any further reference to it from their promotional materials - almost four years after the Transfer Agreement was cancelled.

## Analysis

The Judge reviewed the University's Calendar and Student Guide for the relevant period and noted that it consistently stated that a student "may transfer elsewhere" or, in the case of this Transfer Agreement that it would enable students to transfer "directly to" third year at U of T.

The Judge reviewed the Plaintiff's academic record during his two years at Laurentian and was satisfied that the Plaintiff had achieved a "good academic standing". However the Plaintiff's efforts to transfer to U of T as well as Queen's and Waterloo in his third year were made difficult when he was told that he needed to take an extra full year of engineering courses to complete his degree. This student was accepted at University of Windsor but he had to negotiate with them to increase his course credits from Laurentian and it still took an extra year to complete his degree.

## The Law

The Judge found that the Defendant owed a duty to the Plaintiff to disclose the potential difficulties the Plaintiff would encounter when transferring from Laurentian after his second year as opposed to seeking a four year degree

elsewhere. The relationship between the Plaintiff and the Defendant was found to be contractual in nature because of the Plaintiff's acceptance of registration, payment of tuition and attendance of classes. The Judge believed that the representations by the University "were deficient to the point of being inaccurate or misleading".

The Judge also stated that Laurentian University was not behaving within its own duty of care when it continued to publish information in its Liaison Department Brochure making reference to the Transfer Agreement that no longer existed.

## Court's Ruling

The Court ruled that the Plaintiff's claims against Laurentian are based on misrepresentation caused by its promotional material and its failure to disclose highly relevant information to the student on this transfer issue. The Court also concluded that there was a negligent misrepresentation by the Defendant and it caused delay for the Plaintiff to enter the workforce. The Court then awarded \$120,620 in damages for lost income, extra expenses for tuition and books. The Court also awarded costs to the Plaintiff.

The Defendant appealed the decision however the Ontario Court of Appeal ruled in 2008, that there was ample evidence to support the conclusion that representations in the University's promotional material related to the transfer issue were misleading. The appeal was dismissed.

## Lessons Learned

1. When providing a Course Curriculum that relies on a transfer to another institution, it is important to make clear that there is a chance that extra courses may be needed to complete the requirements at the other institution. The changes need to be conveyed in writing as well and the wording should be clear, concise and bolded so there is no misunderstanding.
2. It is important to review the Course Curriculum regularly so important changes such as cancelled Transfer Agreements between institutions can be properly noted. Those changes need to be reflected in the new Course Curriculum.

3. Current students that are affected by the changes need to be notified in writing to make them aware. Relevant staff must also be made aware of the changes so they can reinforce the message with students.
4. Provide students enrolled in these programs with the printed curricula of these other institutions.
5. Disclose information regarding transfers and transfer requirements at registration and orientation sessions.
6. Align your curriculum with those Universities that are part of your Transfer Agreements.
7. Meet with students considering a transfer in their final year to review the transfer process and its requirements.
8. Report the incident immediately to your Errors & Omission insurer.

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