News

The Kajouji Case: A Recent Tragedy Focuses Renewed Attention on Managing Students at Risk

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The tragic recent events involving 18-year old Carleton University student Nadia Kajouji have once again called attention to universities' responsibilities when managing students who are at risk of harming themselves or others.

As is now well known from media reports, Ms. Kajouji's body was recovered from the Rideau River in Ottawa in late April, and it appears from the evidence available that she may have taken her own life. In the aftermath of this incident, a number of questions have been raised regarding Carleton University's handling of her case. Ms. Kajouji's parents have reportedly raised concerns about the fact that they were not informed by the University that she was experiencing mental health issues. Carleton has spoken publicly in defence of its handling of the Kajouji case, and our comments here are not intended in any way to second guess their approach. However, the case does highlight the complexities and sensitivities of properly managing students at risk and, as such, has been a source of discussion on many university campuses across the province.

As most universities recognize, the lively public debate over whether or not universities play – or should play – a parental role vis-à-vis their students is largely beside the point. Quite apart from questions of legal duty, most universities have long since put measures in place to promote a safe campus environment. In conjunction with these measures, most universities have also taken up the challenge of seeking an appropriate balance between protecting student privacy and human rights, on the one hand, and taking all reasonable steps to ensure a safe and secure campus, on the other hand. It can be a difficult balance to strike, but universities have become increasingly expert in doing so.

As we have communicated previously, neither privacy law nor human rights law precludes universities from effectively managing students at risk. There are often opportunities through counselling or accommodation processes to obtain the student's consent to disclosure of information to individuals both internal and external to the university who may be in a position to assist the student. Even if consent is not forthcoming, Ontario privacy legislation permits disclosure to law enforcement officials, parents and others in cases where specified statutory prerequisites are met. Many universities have now adopted the model of a multi-disciplinary assessment team to ensure that the right information is communicated to the right individuals at the right time in order to permit timely intervention which will avert (to the extent reasonably possible) a catastrophic event on campus.

One of the policy questions highlighted by the Kajouji incident concerns the expectations parents may have of the university when it is engaged in managing a student with mental health issues. This is not a new concern; in many cases where a student has harmed him- or herself or others on campus, it has subsequently come to light that the student's parents were unaware that the student was experiencing any issues at school. In the United States, this dynamic has sparked lawsuits by aggrieved parents, alleging that educational institutions acted improperly in failing to make them aware of the risks to their child's well-being.

One can certainly appreciate the heartbreak that parents may experience in this situation. However, the fact remains that, as long as the student is 16 years of age or older, the student's parents have no legal right to expect disclosure of personal information about that student. Universities can assist in managing parents' expectations by communicating with them in information sessions, orientations, and in other appropriate settings about the limits on the university's authority to share information about the student's progress or well-being. According to media reports, there was communication of this kind in the Kajouji case. While that communication did not prevent the parents' reaction, nor did it prevent a certain amount of public scrutiny of the University's handling of the matter, it is nevertheless a prudent strategy which will serve universities well in most cases.

Managing students at risk can be very complex. Each case is different, and the university will need to vary its approach to reflect the dynamics of individual cases. For those of you seeking further information, we invite you to contact your regular Hicks Morley lawyer. We would also invite you to review our May 15, 2007 Client Update, Students at Risk – Maintaining Balance after Virginia Tech, which provides a more detailed discussion of this topic.

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