Case In Point

Court Reaffirms Broad Academic Discretion of Universities

Date: April 8, 2016

In Tran v. University of Western Ontario, the Ontario Superior Court recently considered both the ability of an institution to shield itself from civil action on the basis of “academic discretion” and the liability of the individual employees of the institution in exercising such discretion.

Justice Dunphy accepted that universities enjoy broad discretion in respect of academic decisions. However, he also noted that academic discretion ought not to be used as a “guillotine” to avoid civil actions that relate to academic decisions. He accepted that there are a range of decisions made by an academic institution, some of which are clearly within the broad discretion afforded to the institution but others which may not fall so clearly within such discretion. As the court is obligated to permit novel claims to be tested, the decisions which do not fall clearly within the institution’s academic discretion are those ones that must be examined before being struck from a statement of claim.

In this motion, Western sought to strike allegations pertaining to: mentoring, supervision and training; maintenance of academic records; evaluation; and the internal investigation process, on the basis that each of the allegations related to the exercise of its academic discretion. After examining each claim, Justice Dunphy found they ultimately fell within the broad discretion afforded to Western and struck them. While not suggesting that the plaintiff do so, the Court granted leave to amend the claims relating to academic discretion.

Justice Dunphy also struck the claims made against various employees of Western. In doing so, he accepted that each of the employees was acting in his or her capacity as a member of the applicable faculty at Western. As the university may only act through its employees, the Court accepted that the actions of the employees were truly those of Western. The claims against all of the individual defendants were struck.

Although this decision seems to suggest that courts will engage in a more rigorous examination of the allegations which are sought to be struck on the basis of “academic discretion”, the integrity of the institution to make academic decisions was upheld and the broad discretion afforded to these institutions remains intact.