CITATION: Nazik Amdiss and University of Ottawa, Ltd., 2010 ONSC 4738
COURT FILE NO.: 10-49202
DATE: 20100831

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:		
NAZIK AMDISS	Plaintiff	Peter G. Hagen, for the plaintiff
– and –		
UNIVERSITY OF OTTAWA	Defendant	Debbie Orth and Louise Morel, for the defendant
		HEARD: (Ottawa) August 20, 2010

HACKLAND R.S.J.

REASONS FOR DECISION

Introduction

[1] The plaintiff seeks a mandatory injunction, on an emergency basis, requiring the defendant University of Ottawa to retract its withdrawal of her earlier acceptance to the French language faculty of medicine MD program and to reinstate her as a student in that program. In the alternative, the plaintiff seeks to amend her notice of motion to seek judicial review of the decision of the University to revoke her admission to the program, and in this regard, relies on s.6 (2) of the *Judicial Review Procedure Act*. This relief is

[5] The plaintiff was subsequently provided with a student number and instructions on how to register for courses, and she proceeded to register for the courses that were available to her as a student in the Faculty of Medicine. She was also advised as to the date of the "white coat ceremony", which is a traditional event introducing new students into the Faculty of Medicine. The plaintiff was advised that she could invite family or guests to this event.

[6] On July 30, 2010 the plaintiff received by e-mail, a letter from the Associate Dean of the Faculty of Medicine advising her that her offer of acceptance was being withdrawn. The stated grounds were that the plaintiff had failed to maintain a weighted grade point average (WGPA) of 3.60.

[7] The plaintiff's position is that at no time during the application process or the interview process was she advised that she would be required to maintain and WGPA of 3.60. Her offer of acceptance did not indicate that it was conditional on her maintaining this or any specified grade point average. The plaintiff's action is based on the allegation that the defendant, by purporting to retract its offer of acceptance, is in breach of contract.

[8] The defendant takes the position that maintenance of a WGPA of 3.60 was a continuing requirement, including maintaining this average on an applicant's final grades and when it was identified that the plaintiff fell below that standard on her final marks, the university was entitled to revoke her admission.

[9] It does not appear to be contested that in her final year of the psychology program, the plaintiff earned a D on one course and a D+ on another, which had the effect of reducing here WGPA to 3.35. Her WGPA at the time of the initial offer of admission was 3.73.

[10] The university argues that this Court does not have jurisdiction over the subject matter of this action, pursuant to Rule 21.01 (3) (a) or alternatively, that the statement of claim does not disclose a reasonable cause of action, pursuant to Rule 21.01 (1) (b). In the further alternative the university alleges that the three part test in *R.J.R. MacDonald* for the granting of a mandatory injunction, pursuant to Rule 40, has not been established.

The Issues

[11] I would state the issues as follows:

(1) Does this court lack jurisdiction over the claims put forward by the plaintiff or alternatively, does the statement of claim fail to disclose a reasonable cause of action?

(2) Is there a substantial issue to be tried as to whether the university is in breach of its published admission requirements or procedures in revoking the plaintiff's admission to medical school? If so, does the balance of convenience favour the granting of a mandatory injunction re-instating the plaintiff to the first year medical program.

Analysis

[12] The university seeks an order striking the statement of claim, pursuant to Rule 21.01 (3) (a), on the basis that the allegations, although framed in contract, are in substance of an academic nature and for that reason are in the exclusive jurisdiction of the university and not within the jurisdiction of the court.

[13] In my opinion the recent case law does not support such a broad proposition. There is authority for the proposition that decisions relating to admissions can be characterized as academic in nature, see *Mulligan v. Laurentian University* 2008 ONCA 523. However, I observe that here the plaintiff does not contest the nature or content of the admission requirements, but rather whether she complied with them as they were established and promulgated by the medical school.

[14] Guidance on the scope of the court's jurisdiction in the academic affairs of universities can be taken from a recent decision of our Court of Appeal in *Gauthier v. University of Ottawa,* 2010 ONCA 309 In that decision Rouleau J.A. speaking for a unanimous court, reviewed and explained the scope of a number of recent decisions of the Court of Appeal and stated several principles relevant to this case, as follows:

(1) The Superior Court is a court of general jurisdiction and its jurisdiction may only be delimited by clear and express legislative or contractual provisions. If there are no such provisions, the court is competent to rule on the dispute (i.e. even in matters of an academic nature), (paragraph 29);

> certain travail, de refuser l'admission à un programme ou de ne pas octroyer un diplôme), la radiation s'offrira à la cour. Deuxièmement, si la plaidoirie ne fournit pas les précisions nécessaires pour démonter que l'université ou ses employés ont outrepassé la discrétion étendue dont ils jouissent, la cour pourra radier la cause d'action.

[17] In view of the Court of Appeal's decision in *Gauthier*, it appears to be required that in order to make out a cause of action for breach of contract, the plaintiff must show that the university has failed to perform an express or implied contractual duty assumed by the institution in relation to the plaintiff's admission. In this regard, I accept that the university is contractually bound to adhere to its published admission requirements and is not entitled to revoke an admission otherwise than in compliance with such admission requirements and procedures. I am not persuaded that this legal obligation varies according to whether the student has been admitted and the issue is revocation (as in this case) or initial admission to the educational program.

[18] The statement of claim pleads that a binding contract occurred between the parties and that the revocation of the plaintiff's admission was in contravention of that contract. Following the principles set out in *Gauthier*, I hold that this court does have jurisdiction to decide this matter either directly or through its judicial review jurisdiction and therefore the defendant's motion under Rule 21.01 (3) (a) is dismissed. The case law requires that the court assume the truth of the facts stated in the pleading on a motion such as this, unless the pleaded facts are preposterous or incapable of proof, thereby leaving the merits of the matter to trial. According I would dismiss the defendant's motion under Rule 21.01 (1) (b) because, assuming the truth of the allegations in the statement of claim, a proper claim in contract is pleaded.

[19] Considerable argument was directed to the merits of the plaintiff's claim. The essential factual issue is whether the plaintiff's admission to the medical school remained conditional until her final transcript was received i.e. conditional on her final WGPA remaining 3.60 or higher. The university argues that this was indeed the requirement so that its revocation of the conditional admission was justified when the plaintiff's final WGPA turned out to be 3.35. The plaintiff argues that on a fair view of the

irreparable harm if denied admission to the medical school, at least considering the personal impact on her and her personal plans and expectations and the inadequacy of monetary damages. In my opinion, the difficult issue is the balance of convenience, particularly in the broader public policy sense. This invokes the same principles of caution or deference which disincline the courts to intervene in the academic decisions of universities. In matters of admission and academic standards relevant to admission decisions, universities are entitled to significant deference because they are in the best position to decide these issues. Is it appropriate that a university be required to accept a student who does not meet their admission requirements based on academic standards, because they may have become contractually bound due to contractual issues of offer and acceptance resulting from deficiencies in the communication of their admission criteria? The importance of academic excellence in the recruitment of students in medical faculties is a self evident proposition. I am also heavily influenced by my conclusion that the medical school was acting in this instance in good faith in enforcing the standards they believed they had in place, and which they followed, communication issues aside. Allowing the plaintiff to commence medical studies while this litigation proceeds would place both the university and the plaintiff in a very untenable position.

[32] While this is a difficult decision, the court will exercise its discretion to refuse relief by way of interlocutory injunction or by way of judicial review.

[33] This is a case of mixed success as between the parties and for that reason there will be no order as to costs.

Mr. Justice Charles T. Hackland

Released: August 31, 2010