

Ensuring Consistency and Accuracy in Program Descriptions

The overarching legal relationship between a university and its students is “complex and multifaceted,” and cannot be fully defined or explained by a single area of law.¹ Focusing specifically on the university-student *academic* relationship, courts have found this relationship to be primarily based in contract law, which creates reasonable expectations among students and gives rise to obligations in both contract and tort.² Given the contractual underpinning to the university-student academic relationship, an interesting question becomes “what are the terms of that contract?”

The main terms of the contract will generally flow from those provisions included in the university’s official calendar. As courts in Ontario have suggested, “it is reasonable for students to rely on statements contained in course calendars, because these calendars are published with the intention that students read them and rely on the information contained therein in order to decide which academic program to pursue.”³

However, the university calendar **may not be the only document a court looks at** when trying to determine the terms of the contractual relationship between a university and student. Courts may also be inclined to look beyond the calendar to other university documents relevant to the program, including promotional material, information included on university and faculty websites, offer letters, and/or faculty handbooks. For example, in *Olar v Laurentian University*,⁴ the Ontario court found the terms of the contract to flow from both the university calendar and from additional promotional material about the Laurentian engineering program the student was enrolled in.

Given that a contractual relationship may be founded on many different university documents (and not just the university calendar), it is critically important for faculties to ensure that the information included in all program-related documents is accurate, consistent, and does not create unreasonable expectations among current or prospective students. To this end, it has been suggested that when preparing such material, universities should be “cautious to avoid aspirational

¹ Theresa Shanahan, Michelle Nilson & Li-Jeen Broshko, eds, *Handbook of Canadian Higher Education Law* (Montreal & Kingston: McGill-Queen’s University Press, 2015).

² *Young v Bella*, 2006 SCC 3 at para 31, citing *Central & Eastern Trust Co v Rafuse*, [1986] 2 SCR 147.

³ *Ramdath v George Brown College of Applied Arts and Technology*, 2013 ONCA 468 at para 6.

⁴ [2007] OJ No 2211, aff’d 2008 ONCA 699 [*Olar*].

statements,” and focus only on content “for which they are prepared to be held accountable.”⁵

Failing to ensure accuracy and consistency can be costly for a university. In *Olar*, the student decided to attend Laurentian’s two-year engineering program based on terms indicating that students completing the program would be able to transfer into third year programs at other Ontario universities.⁶ When Olar attempted to transfer, he discovered that a seamless transition would not be possible, and he was ultimately required to take an additional year of courses in order to complete his degree. As a result, Olar sued Laurentian for negligent misrepresentation and breach of contract. The court ultimately decided the case in favour of Olar, concluding:

- Laurentian’s promotional material was misleading, and “ambiguous in the sense of being doubtful and equivocal”;⁷
- Laurentian knew of the program’s shortcomings and that the constant evolution of curricula in Ontario engineering programs “made the potential for a seamless transfer from Laurentian at the end of second year ... difficult if not impossible”;⁸
- The calendar information and other promotional material was “published with the intention that students would read them and rely upon the information included in order to become informed about the academic programs offered and to assist them in their decision about the academic program that they wanted to pursue”;⁹ and
- Laurentian owed Olar a duty to disclose the potential difficulties related to transferring, and “ought reasonably to have foreseen that students would rely on the statements included in the Student Guide and Calendar.”¹⁰

In finding the university liable, the court concluded that Olar was not just entitled to damages associated with the additional costs he incurred from his additional year of school, but that he was also entitled to both loss of past income associated with the delay, and loss of future income. The total damages, which were subsequently upheld on appeal, totaled more than \$120,000.

⁵ Gillian Tuck Kutarna & Greg Bush, “Court of Appeal finds contract between university and student”, (19 March 2019) online: Miller Thomson LLP <<https://www.millerthomson.com/en/publications/communiques-and-updates/education-law-newsletter/march-19-2019-morning-recess/court-of-appeal-finds-contract-between-university-and-student/>>.

⁶ *Olar*, supra note 4 at para 11.

⁷ *Ibid* at para 43.

⁸ *Ibid* at para 46.

⁹ *Ibid* at para 70.

¹⁰ *Ibid*.

While this appears to be the only trial decision addressing the accuracy of program descriptions and the contractual terms created by such descriptions, other courts have found the existence of a contractual relationship within the context of decisions certifying class action law suits against post-secondary institutions.¹¹

So, what does this all mean? The following list of considerations provides a non-exhaustive outline of some of the things that faculties should have regard for in relation to describing their academic programs for existing and potential students:

- Courts are likely to find a contractual foundation to the academic relationship between a university and its students;
- Faculties need to be cognizant that the key terms of that contractual relationship will be inferred not only from the university calendar, but also from offer/appointment letters and other university/faculty documents describing the program;
- When marketing and/or promoting programs, faculties should ensure that calendar descriptions are accurate, and that the information included in other documents (including website information) is both accurate and consistent with the language in the calendar;
- Faculties should be particularly vigilant in situations where they are providing students with additional documentation such as an offer or appointment letter that further sets out the terms of their program of study;
- Other areas of potential concern include situations where a faculty is outlining transfer requirements, or where an academic program could lead to the possibility of a post degree professional designation; and
- In situations where the granting of such benefits is not in the university's control, particular care should be taken in not making commitments that could be seen as creating contractual obligations.

The University of Alberta's Office of General Counsel is available to assist if additional, or more specific, advice is required. For more information, please contact Darin McKinley at darin.mckinley@ualberta.ca

Darin McKinley
Legal Counsel

¹¹ See *Ramdath*, supra note 3 and *Hickey-Button v Loyalist College of Applied Arts & Technology*, [2006] OJ No 2393. See also *Lam v University of Western Ontario*, 2019 ONCA 82.

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