

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:)	
)	
Rachel Obita)	Rachel Obita, acting on her own behalf
)	
– and –)	
)	
Laurentian University)	Eric Blain, counsel for the Defendant
)	
Defendant)	
)	HEARD: August 6, 2025, by
)	videoconference at Sudbury

DECISION ON MOTION

A.D. KURKE, J.

[1] The plaintiff was a student at Laurentian University (“Laurentian” or the “University”) and has brought this action in negligence, breach of contract and deceit against Laurentian, alleging the University’s unfairness towards her in the grading and maladministration of two of her classes and her grade appeals in those classes. She seeks recovery of the cost of those classes, punitive damages, deletion of the grades in those two classes, and injunctive relief to effect policy changes relating to academic decision-making and appeals.

[2] Laurentian moves to strike the Statement of Claim (the “Claim”), without leave to amend, on the bases that: the Claim in pith and substance concerns matters of academic decision-making and policy that fall within Laurentian’s discretion and that lie beyond the discretion of this court; the Claim discloses no reasonable cause of action; the Claim is frivolous, vexatious, or otherwise an abuse of process; and the plaintiff’s claims are statute-barred, as the limitation period set out in the *Limitations Act, 2002* has run on them all.

[3] For the following reasons, I dismiss the plaintiff’s Claim without leave to amend.

Law

Lack of jurisdiction

[4] Laurentian relies on r. 21.01(3)(a) of the *Rules of Civil Procedure*, arguing that the plaintiff’s action should be dismissed because the court has no jurisdiction over the subject matter of the action.

[5] Post-secondary institutions such as Laurentian generally enjoy a broad discretion with respect to academic issues such as evaluating the quality of a student's work, and the structure and implementation of university programs. If a student is dissatisfied with their treatment by the institution with respect to an academic decision, the appropriate route is for the student to seek internal review, and, if necessary, judicial review: *Gauthier v. Saint-Germain*, 2010 ONCA 309, at para. 8.

[6] However, when a student seeks more than simply to alter an internal decision made by the institution and pleads a tort or breach of contract and seeks damages, a court must consider whether the action is simply an indirect attempt to appeal an academic decision for which judicial review would be appropriate, or whether the tort and/or contract claims are legitimate causes of action. In circumstances where tort or contract breach is alleged, the court must consider whether the claim discloses details that establish that the institution's conduct constituted the tort or breach of contract, and whether that conduct brought it outside the broad discretion in which a university and its professors operate: *Gauthier*, at para. 46; *Jaffer v. York University*, 2010 ONCA 654, at paras. 28-29, 56; *King v. Ryerson University*, 2015 ONCA 648, at para. 8.

[7] Accordingly, a claim may be struck where it is untenable or unlikely to succeed in that it is simply an indirect attempt to appeal an academic decision, or the pleadings fail to disclose details sufficient to remove the institution's conduct beyond the appropriate exercise of its discretion.

Rule 21.01(1)(b)

[8] Laurentian also argues pursuant to r. 21.01(1)(b) of the *Rules of Civil Procedure*. By this rule a statement of claim may be struck if: 1) a plaintiff pleads allegations that do not give rise to a recognized cause of action, 2) a plaintiff fails to plead the necessary elements of a recognized cause of action, or 3) the allegations in the pleading are simply conjecture, assumptions, or speculation unsupported by material facts, or mere conclusions of law are asserted, though drafting deficiencies must be given generous accommodation: *Hunter v. Bravener*, [2003] O.J. No. 1613 (C.A.), at paras. 3-5; *Deep v. Ontario*, [2004] O.J. No. 2734 (S.C.J.), at paras. 33-34, aff'd [2005] O.J. No. 1294 (C.A.); *Smith v. Ontario (Attorney General)*, 2018 ONSC 993 (Div. Ct.), at para. 12.

[9] Where it is "plain and obvious" that the claim has no reasonable prospect of success, it may be struck: *Tran v. University of Western Ontario*, [2015] O.J. No. 2185, at para. 16; *Hunt v. Carey Canada Inc.*, 1990 SCC 90, at paras. 33-36; *Lee v. Magna International Inc.*, 2019 ONSC 102, at paras. 28-29.

[10] In a motion under r. 21.01(1)(b), no evidence is admissible. The facts in the claim are accepted as proven, unless they are patently ridiculous or incapable of proof. The court is left to consider the legal sufficiency of the plaintiff's claim as pleaded, except that conclusory statements of fact and allegations of legal conclusions unsupported by material facts are not assumed to be true: *Darmar Farms Inc. v. Syngeta Canada Inc.*, 2019 ONCA 789, at para. 11. A

claimant must clearly plead the facts on which she relies in making her claim: *R. v. Imperial Tobacco Canada Ltd.*, 2011 SCC 42, at paras. 19-22.

The Claim

[11] In her Claim the plaintiff seeks: \$1500 for each of two classes (ECON 2107 and MGMT 3006); \$50,000 in punitive damages; an injunction requiring Laurentian to create an online system “where the status of requests for grade appeals can be tracked”; an injunction requiring that Laurentian change its grade appeal policy, including a requirement that professors on the grade appeal committee be impartial and “not have committed the same offence as the Professor in question”; and the removal from the plaintiff’s transcripts of grades that she received in the two courses in question.

[12] The plaintiff sets out that she has attended Laurentian since 2021 and is in her final semester in the Bachelor of Business program. She took intermediate economics (ECON 2107) and international management (MGMT 3006) in the fall of 2021.

[13] The plaintiff describes how, in her view, feedback by professors about graded assignments is supposed to be provided in spaces marked “attached files” or “submissions” on the “feedback” page of Microsoft documents within the “Brightspace” learning management system used by the University. She asserts that feedback was given improperly by her professor in the ECON 2107 course, Professor Russell. The plaintiff describes that, contrary to how her other professors and a teaching assistant provided their comments about the plaintiff’s work, Professor Russell left her comments in a document in the space called “attached files” among Microsoft documents, without clearly describing that location.

[14] The applicant quotes section 3.2.6 of Laurentian’s Grade Appeal Policy, which offers as a ground of appeal that the instructor did not provide feedback “within a reasonable time to assist a student with the graded work ... that depended upon it”.

[15] In para. 12 the plaintiff asserts that Professor Russell “acted negligently and failed to meet the standard duty of care that other professors met.” As a result, the plaintiff failed ECON 2107 because she “could not access feedback” that she could have used to improve future assignments.

[16] The plaintiff explains that she sent an e-mail to Professor Russell, asking her for a feedback “rubric” for an assignment she had turned in. The professor answered that there were instructor comments “on what was wrong” for every question the plaintiff had lost marks on. When the plaintiff denied getting any comments, Professor Russell directed her to the information technology department (“IT”) for their assistance in recovering her comments. When the plaintiff told Professor Russell two weeks later that she did not receive a grade, the professor directed her to her comments, and where they could be found. The professor again suggested getting help from IT.

[17] The plaintiff goes on to explain that the professor's comments were indeed available and located in an appropriate place, "attached files", but that the plaintiff did not recognize the listed form of the file as being appropriate as a container for comments. She states (para. 21):

"I never thought to click on the Microsoft document under Attached Files because I was unaware that it was a Microsoft document. I thought this was a link to the submissions page, where assignments are submitted and can be retrieved."

[18] Before finding the professor's comments, the plaintiff contacted IT and told them that she could not see the professor's comments for ECON 2107. IT notified the plaintiff that it "needed" further information, and then asked the plaintiff whether the comment she was looking for was in an assignment or a quiz. The plaintiff chose not to respond to this question, as "there were no quizzes in [ECON 2107] and IT would find this out as they tried to find a solution for my problem." Two weeks after the plaintiff chose not to provide the information that IT had asked for and needed, IT closed the plaintiff's request.

[19] The plaintiff appealed on the basis of grade appeal policy section 3.2.6, as described above, and also on the basis of section 3.2.8, that "the process for determining a final grade was unfair to, or inequitable across, students in the course." The plaintiff offered no facts about the manner in which final grades were determined in ECON 2107, or how it was unfair or inequitable.

[20] The appeals committee denied the appeal. The Chair of the committee noted that the committee of three faculty and two students felt that the professor did provide feedback for assignments and posted instructions. The plaintiff also states that there were spaces for five signatures on the second page of the decision letter of the appeals committee, but no signatures.

[21] The plaintiff goes on to offer as a fact that the composition of the grade appeals committee, three faculty members and two students, "compromises its independence" (para. 53), because faculty members are "not impartial" and "may be subjected to reprisals if they vote in favor of the student" (para. 54). A third faculty member was added to ensure "a favorable outcome for the University" (para. 59). The plaintiff suggests that faculty members "may also have a stake in the outcome" of the grade appeal, as they may also not have directed students to the files that contain comments (para. 55). In a self-standing paragraph, the plaintiff adds that "Additionally, I took classes where professors would provide no feedback at all", with no further explanation.

[22] In preparation for an appeal to the Senate Committee, the plaintiff "accidentally" clicked on the document that was in the "attached files" space and found Professor Russell's comments. On January 31, 2022, the plaintiff sent her professor an email explaining that she had been used to seeing comments in a different location than Professor Russell had used. The professor did not respond.

[23] The plaintiff further states that after she received a decision in her grade appeal in ECON 2107 on January 27, 2022, access to ECON 2107 and MGMT 3006 was “revoked”. While her access to ECON 2107 was restored after the plaintiff complained and pointed out that she had an appeal underway, she did not receive back access to MGMT 3006. The plaintiff was told by Daniel Giroux to contact her MGMT 3006 professor directly, but the plaintiff refused, arguing that her professor may not be willing to provide her with information that “would be used against her in [the] grade appeal” (para. 63).

[24] The plaintiff had also appealed her grade in the International Management course (MGMT 3006), after she and her teammates received a late penalty grade deduction for their final group project. Students had been directed to submit their “group report on the day of” their presentation. Presentations were made between November 24 and December 1. A due date also indicated in the instructions was December 1, 2021. The plaintiff never provided the date of her group’s presentation in her claim, though it was presumably before December 1. The plaintiff and her group submitted their report by the listed due date, December 1, 2021, which the plaintiff acknowledges “was strictly for students who presented on December 1, 2021” (para. 42). She and her colleagues were penalized for turning the assignment in late.

[25] The plaintiff’s appeal of her grade in ECON 2107 to the Senate Committee was denied. Serge Demers, Associate Vice-President of Student Affairs explained that:

“The course instructor did provide the student with all the information required not only on the course and evaluation procedures, but also provided details on the students’ responsibility for submitting their work and the requirements for success in the course” (para. 38).

Mr. Demers also noted that “the professor did his job very well and ... there is no reason to review the committee’s decision” [emphasis added]. The plaintiff points out that Professor Russell is a woman.

[26] The plaintiff appealed her result in MGMT 3006 under section 3.2.4 of the grade appeal policy, which states, “instructions for an assignment were excessively unclear and/or contradictory.” She does not give the date of her appeal, and states that she never had any response about her appeal in MGMT 3006.

[27] On February 9, 2022, Mr. Giroux provided the plaintiff with a document containing student discussions and a grade breakdown for MGMT 3006. The plaintiff states that this shows that the information was available, but Laurentian did not want the plaintiff to access the course (para. 65). The plaintiff then states that Laurentian only provided her with irrelevant information of its choosing. The plaintiff states that Laurentian’s restriction of the plaintiff’s access to information and non-response to the plaintiff’s grade appeal in MGMT 3006, “proves that the University sabotaged my grade appeal” for that course.

[28] The plaintiff emailed someone named Renee Renaud for some reason on March 16, 2022 about her appeal in MGMT 3006, and was directed to the Dean’s office. On March 24, 2022, the plaintiff emailed Amanda McTiernan, assistant to the Dean, respecting her grade appeal. She

received no response. The plaintiff states that, on December 6, 2022, nearly nine months later, Ms. McTiernan emailed her about an unrelated matter, and therefore the plaintiff somehow concludes, “so she received my [appeal email] but ignored the email.”

[29] The plaintiff adds that she had spoken to other unnamed students who had requested “academic appeals” and that “their requests have also been ignored” (para. 50). The plaintiff states that it “appears that the University has a deliberate habit of ignoring students’ requests for grade appeals” (para. 51). She then states that the university “may be motivated by the fact that it can be costly to accommodate students once they have successfully appealed” (para. 52).

[30] In para. 67, the plaintiff summarizes that she is suing Laurentian for negligence in that her professor in ECON 2107 did not direct her to the feedback in the attached Microsoft documents. She is suing for deceit and breach of contract in relation to her appeal of MGMT 3006.

Analysis

Negligence

[31] To succeed on a claim in negligence a plaintiff must prove that the defendant owed the plaintiff a duty of care, that the defendant’s conduct breached the standard of care, that the plaintiff sustained damage, and that the damage was caused in fact and in law by the defendant’s breach: *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27, at para. 3.

[32] The claim for negligence in this action is based on Professor Russell’s failure to properly direct the plaintiff to the professor’s feedback on her work.

[33] In the Claim, there is no reference to the requisite standard of care owed by the defendant, or to breaching of that standard of care. Not only does the Claim not plead facts that support the breach of a standard of care, but the plaintiff in fact describes in the Claim that Professor Russell did direct the plaintiff to her feedback and explained to the plaintiff how to access her comments or to contact IT if she continued to have problems. It was the plaintiff who failed to recognize Professor Russell’s comments, which apparently were in the correct place, and the plaintiff who did not carry through with seeking assistance from IT.

[34] It is plain and obvious that the claim in negligence does not disclose a reasonable cause of action and has no reasonable prospect of success. This claim must be struck.

Deceit

[35] In *Amertek Inc. v. Canadian Commercial Corp.*, [2005] O.J. No. 2789, at para. 63, the Ontario Court of Appeal discussed the pleading requirements for deceit. For a claim in deceit, a plaintiff must plead five elements: a false representation of fact by the defendant to the plaintiff; the defendant’s knowledge that the representation is false, or the absence of belief in its truth, or recklessness as to its truth; an intention that the plaintiff act in reliance on the representation; that the plaintiff acted on the representation; and that the plaintiff suffered a loss thereby.

[36] In such a claim, careful particularity in pleading is essential. The plaintiff must set out what was the alleged misrepresentation; when, where, how, and by whom it was made; its falsity; the inducement; the intention that the plaintiff should rely on it; the alteration by the plaintiff of their position as a result of relying on the misrepresentation; and the resulting loss or damage to the plaintiff: *Filler Depot v. Copart Canada Inc.*, 2024 ONSC 466, at paras. 40-41.

[37] The Claim does not clearly plead any of the constituent elements of deceit. Rather, the plaintiff makes sweeping statements of conjecture, assumption and speculation that cannot support such a claim. To name a few, the plaintiff asserts: that the 3:2 ratio of professors to students “compromises the independence of the grade appeal committee; that faculty members are “not impartial”, “may be subjected to reprisal” from Laurentian if they vote in favour of a student, and “may have a stake in the outcome” of grade appeals; that Laurentian has a “deliberate habit of ignoring students’ requests for grade appeals” and may be motivated by the potential costs of accommodating successful appeals, are all cynical conclusions pleaded as fact that do not ground the claim.

[38] It is plain and obvious that the deceit claim does not disclose a reasonable cause of action and has no reasonable prospect of success. The claim in deceit must be struck.

Breach of contract

[39] For a claim in breach of contract by a student against a university, the plaintiff must: plead the existence of a contract between herself and the university; describe the nature of that contract and provide the basic facts upon which the plaintiff claims that the university breached the terms of the contract. The pleadings must contain sufficient particularity and clarity so as to avoid bald assertions of liability: *Stuart v. University of Western Ontario*, 2017 ONSC 6908, at para. 15.

[40] None of these matters has been pleaded in the circumstances of this case. On what contract does the plaintiff rely in the circumstances here? What are its terms? Although the Claim refers repeatedly to University policy, how, if at all, do those statements of policy fit into the contractual matrix? In what manner did Laurentian breach its contract with the plaintiff? Without any of these matters pleaded, what is left is nothing more than bald assertions of Laurentian’s bad faith and liability, with no reasonable prospect of success.

[41] The claim in breach of contract must also be struck.

Leave to amend and other issues

[42] For the reasons that follow, I do not grant the plaintiff leave to amend the Statement of Claim.

[43] I begin with the court’s reluctance to interfere in matters of the exercise of academic discretion in the university setting, an argument raised by Laurentian as an independent basis for striking the plaintiff’s Claim. I have found that the plaintiff has not pleaded any cause of action that has a reasonable prospect of success. While the plaintiff has complaints about the manner in

which Laurentian handled her course evaluation and grade appeals, her pleadings have not demonstrated that her issues should be corrected through a statement of claim in the courts.

[44] The plaintiff's focus is on her dissatisfaction with her grades in two courses. Accordingly, she seeks reimbursement for these courses, expungement of the grades from her transcripts, and injunctive relief to effect policy change, without any sufficient description of the policy context. Punitive damages seem to have been added as an afterthought. Hearsay claims concerning other students whose grade appeals had not been considered by Laurentian seem to have been added to make the issue appear more widespread. With so many gaps in the pleading, I am left to conclude that the plaintiff's action is simply an indirect attempt to appeal academic decisions by Laurentian and would improperly trench on legitimate areas of university discretion. Bald requests for injunctive relief and punitive damages do not alter that assessment.

[45] Concerning the claim in negligence, in the Claim itself the plaintiff appears to have answered and subverted her own claim. It was she who missed the feedback that was present on the university site, she who did not follow the professor's directions to find the feedback, and she who did not follow up with IT. No amendment can convert this allegation into a tort by the university.

[46] Some of the underlying issues are incomprehensible without more. The context of the MGMT course appeal is vague to the point of unintelligibility. Details that are necessary to sense and flow are missing. I am unable to conclude that amendment would assist in focusing allegations of deceit and breach of contract into justiciability for such claims.

[47] Although Laurentian has submitted that this court should rely on limitations arguments as an alternative basis for dismissing the plaintiff's claims, I decline to do so. It is a very rare case in which it is appropriate to dismiss a claim on a limitations defence when the defendant has not yet filed a Statement of Defence, as is the case here: *Metropolitan Toronto Condominium Corporation No. 1352 v. Newport Beach Development Inc.*, 2012 ONCA 850, at paras. 114-116.

[48] It is also unnecessary, in my view, to assess Laurentian's argument that the plaintiff's Claim is frivolous and vexatious and should be struck for that further reason.

Conclusion

[49] Accordingly, for the above reasons, the plaintiff's Statement of Claim is struck in its entirety without leave to amend. The action is dismissed.

[50] If the parties are unable to agree on costs, they may submit written submissions of 3 pages, double-spaced, with necessary attachments, within 15 days.

The Honourable Mr. Justice A.D. Kurke

CITATION: Obita v. Laurentian University, 2025 ONSC 5021
COURT FILE NO.: CV-24-11800
DATE: 2025-09-08

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

Rachel Obita

Plaintiff

– and –

Laurentian University

Defendant

DECISION ON MOTION

A.D. Kurke J.

Released: September 8, 2025