1978 CarswellNS 222, 30 N.S.R. (2d) 423, 49 A.P.R. 423, 95 D.L.R. (3d) 95

Acadia University v. **Sutcliffe**

Gregory William **Sutcliffe**, Appellant v. The Governors of **Acadia University**, Respondent

Nova Scotia Supreme Court, Appeal Division

Coffin, Cooper, Pace

Judgment: December 21, 1978
Docket: Doc. S.C.A. 00154

Counsel: *F. V. W. Penick*, for appellant.

James K. Allen, for respondent.

Subject: Public

Education Law --- Colleges and universities — Students — Student fees

***Cooper, J.A.*: (Coffin and Pace, JJ.A., concurring):**

1 The respondent brought action against the appellant claiming payment of $496.95 as the amount due under a contract between the parties entered into when the appellant registered as a second-year student at Acadia University for the academic year 1974-1975. He did not stay for the full year but withdrew at the end of the first term as evidenced by a letter he wrote to the University dated January 4, 1975. The University nevertheless claimed that under the terms of the contract the appellant was obligated to pay a proportion of tuition and student organization fees and room occupancy charges referable to the second half of the academic year. The action was tried before His Honour P. J. T. O Hearn, judge of the County Court of District Number One. He allowed the University's claim in the slightly reduced amount of $449.45 together with costs of the action. The appellant has brought this appeal against Judge O Hearn's decision and the order giving effect to it.

2 The facts are not seriously in dispute. The appellant had during the summer of 1974 been sent certain material, sometimes referred to as a registration kit, which it was the practice of the University to forward to its students. The appellant remembered receiving a copy of the University calendar "and the timetable I needed to fill out my courses and pick the courses, plus there was other stuff which I didn't remember what it was". It is not entirely clear whether a copy of the Residence Handbook was included in the material sent to the appellant but the appellant thought he had seen a copy. He said on discovery that he didn't know if he got one or where he had seen it but it looked familiar.

3 There was also sent out with the registration kit a notice; a copy of it is in evidence as exhibit 17. It reads in part:

August 1, 1974

ACADIA UNIVERSITY Business Office

TO: All Students registering for 1974-75 Academic Year.

In an attempt to make the Business Office part of the Registration Procedure more convenient for you, we are making a few points and offering some suggestions to you.

(1) *Fees*. Regulations (Page 60 General Calendar) states that one half of total fee is payable prior to completion of Registration with the remaining half payable in full on or before January 6, 1975. Please refer to the Calendar for details regarding payment of fees and late payment penalty of $3.00 per day.

. . . . .

and:

If you have any questions respecting fees, kindly direct your inquiry to (Mrs.) D. Bent, Supervisor of Student Accounts.

4 The calendar at p. 59 sets out the academic, student organization, residence and dining hall fees and at p. 60 appears "Regulations Regarding Payment of Fees", which read in part:

Fees for the academic year are assessed at time of registration in September, with one-half of the total payable in full prior to completion of the student's official registration, and the remaining half is payable on or before January 6, 1975....

I refer also to p. 62 of the calendar where "Refunds" are dealt with as follows:

A student voluntarily withdrawing from the University during the academic year will be charged 5% of the academic fee and student organization fees for each week of attendance. However, no refunds will be granted until such time as the student obtains a withdrawal form from the Registrar's Office and has it signed by the Dean of his Faculty or School. Students moving out of residence are required to pay the room charges for the year.

5 The Residence Handbook, a booklet of fourteen pages, contains rules and regulations to be observed by students in residence. It contains a section under the heading "Withdrawals From Residence" and the first paragraph of that section reads:

All students who choose to leave the residence prior to the end of the academic year will be responsible for the room rent for the rest of the academic year or until a student not currently living in University housing moves in as a replacement who assumes responsibility for the residence agreement for the balance of the rental period.

6 The registration form signed by the appellant and dated September 10, 1974 is in evidence as exhibit 3. The six courses of study to be undertaken by the appellant as well as laboratory courses are listed and it bears the signature of the Dean as approving it. After these matters were dealt with, as evidenced by the entries on the form, the next step in the registration process was the calculation of the amount of money payable by the appellant. Mr. B. H. Mason, Assistant Controller of the University, testified that the registrant is told the total amount that is required of him for the full year and that half of it is due and payable as of the registration date and the other half in January. Mr. Mason was asked what reason, if any, there was for the two-part payment, one in September and one in the following January. He testified:

> A. Basically convenience.
>
> Q. But the charges are based on the full year?
>
> A. Yes, the charges are based on that.
>
> Q. And they are computed when?
>
> A. In September.
>
> Q. And you say the students are informed of that then when he takes the registration form to the business office?
>
> A. That is correct.

7 There was adduced in evidence through Mr. Mason exhibit 4, which he said was the appellant's "Statement of Student Account". One such statement is prepared for each student in residence and is his financial record for the year. The first entries on this exhibit would have been made as the second step of the registration procedure. The exhibit first shows a credit of $25.00. This was a room deposit carried over from the previous year. The next line shows a charge of $1,880.00. This was made up of tuition $635.00, room $670.00, board $500.00, and student organization fees $75.00. Each of these amounts is referable to the full year. There then is shown a payment of $915.00, being one-half of the charge of $1,880.00, that is, $940.00, less the $25.00 credit. This $915.00 was what the appellant actually paid when he registered. On the back of exhibit 4 is recorded the calculations, which resulted in the amount of $496.95, said to be owing by the appellant. The date of withdrawal is given as January 4, 1975, but the calculation is made on the basis that the appellant had been in attendance at the University for the period September 7 to December 18, 1974, which is 15 weeks. The University applied the refunds provision, which appears on p. 62 of the calendar and which I have set out above but repeat in part for the sake of convenience:

> A student voluntarily withdrawing from the University during the academic year will be charged 5% of the academic fee and student organization fees for each week of attendance....

8 The number of weeks, 15, during which the appellant was in attendance at 5% for each week resulted in 75% being applied to the fees. The calculation of the amount owing is most conveniently set out in exhibit 5 as follows:

Charges:		
Tuition.....75% of $635.00.....		$ 476.25
Student Organization Fees.....75% of $75.00.....		56.25
Room.....Assessed for full year.....		670.00
Meals.....15 wks. @ $15.63		234.45
Total charges to date of withdrawal.....		$1,436.95
Credits:		
Room deposit March 12, 1974.....	$ 25.00	
Registration payment Sept.10, 1974	915.00	
Total credits to date of withdrawal.....		$ 940.00
Balance now due.....		$ 496.95

9 The principal issues which emerge are whether there was a contract between the appellant and the University and, if so, is the calendar a contractual document so that the parties are bound by its provisions as to the fees payable by the appellant, refunds and room charges?

10 Counsel for the appellant contended that the calendar is informative in nature, not contractual. He maintained that the University stood *in loco parentis* to the appellant and accordingly that the relationship between the parties is governed by the same principles as govern the so-called domestic agreement cases such as *Balfour v. Balfour*, [1919] 2 K.B. 571; and see also *Rose and Frank Co. v. J. R. Crompton and Brothers Ltd.*, [1923] 2 K.B. 261. Any commercial context here, it was submitted, is replaced by an *in loco parentis* relationship; there was no common intention to create legally enforceable rights and obligations.

11 The short answer to the *in loco parentis* contention in this case is that the appellant was born, as revealed by the information entered on exhibit 3, on March 11, 1955. He accordingly attained the age of majority, which is 19 years in this province, on March 11, 1974 - see the *Age of Majority Act*, Stats. N.S. 1970-71, c. 10. Any *in loco parentis* relationship would therefore have come to an end before the appellant registered for the 1974-75 academic year on September 19, 1974. In any event, in my opinion, the University does not stand *in loco parentis* to its students. This concept in its educational context apparently originated as a means whereby a teacher or tutor might exercise the powers of restraint and correction over a minor which a parent could exercise without fear of criminal proceedings or civil action being brought against him by the parent. The matter was put thus by Doull, J., in *Murdock v. Richards*, [1954] 1 D.L.R. 766, Nova Scotia Supreme Court, at p. 769:

> As to whether there was any cause of action at all, it may be useful to first consider the position of a teacher in charge of the pupils in a school. The statement in Salmonds on Torts, 11th ed., p. 381, is, I think, accepted by both sides. It is as follows: "'When a father sends his child to school he delegates to the schoolmaster all his own authority, as far as is necessary for the welfare of the child, and a

> schoolmaster therefore is entitled to administer reasonable chastisement to the child.'" And continuing and quoting from Lord Hewart C.J. in *R. v. Newport (Salop) Justices*, [1929] 2 K.B. 416 at p. 428: ""Any parent who sends a child to school is presumed to give to the teacher authority to make reasonable regulations and to administer to the child reasonable corporal punishment for breach of those regulations.""
>
> The editor of the 11th edition of Salmond says in a note that Prosser gives a sounder reason for the rule than the statement of Lord Hewart. Prosser on Torts, 1941, p. 167, states the rule as follows: "'A parent or one who stands in the place of a parent, may use reasonable force, including corporal punishment, for discipline and control. A school teacher has the same authority. It is sometimes said that the parent, by sending the child to school, has delegated his discipline to the teacher; but since many children go to public schools under compulsion of law, and the child may well be punished over the objection of the parent, a sounder reason is the necessity for maintaining order in and about the school.'"

12 It seems to me entirely unrealistic to apply a principle invoked for the better disciplinary control of children at school to the large institutions which universities are today and where much the greater number of students have reached the age of majority. There is a dearth of Canadian authority on this subject but we were referred to the Yearbook of Higher Education Law, 1977 where D. Parker Young, Associate Professor of Higher Education, Institute of Higher Education, University of Georgia, states at p. 97:

> The doctrine of in loco parentis is not legally tenable today. With a lowered age of majority in most states, almost all college students today are legally adults....

and:

> Although it may depend upon how the term is defined, strictly speaking, in loco parentis, as a legal doctrine, has no validity today....

I respectfully agree and also acknowledge the assistance I have had from a paper entitled "In Loco Parentis: Does It Mean Anything Today?" by Michael P. Gardner delivered at a conference held at Dalhousie Law School on The University and the Law, February 28-March 1, 1978.

13 In my opinion there was clearly a contract here between the appellant and the University and it is this contract which governed the relationship between the parties. The University in and by its calendar informed the appellant that it granted, among others, the degree of Bachelor of Science following three years of study from Nova Scotia Grade XII or its equivalent or four years of study from Nova Scotia Grade XI or its equivalent and in each case the courses to be taken are set out. The annual fees, to which I have already referred, are also clearly stated in the calendar which, in my opinion, is a contractual document as found by the learned trial judge. Armed with this information the appellant on September 10, 1974 completed the registration document, exhibit 3, and paid the amount required of him. He thereby accepted the offer made to him through the medium of the calendar.

14 The calendar, as is usual in such publications, deals with many matters other than fees. Among them are provisions as to probation and dismissal, discipline, regulations respecting examinations, re-reading of examination papers and so on. I have no doubt that the appellant by his registration must be

taken to have agreed to be bound by such provisions - see *Re Polten and Governing Council of University of Toronto et al.* (1975), 8 O.R. (2d) 749, Ontario Divisional Court, at p. 754. I mention them only to make the point that the authorities, as I understand them, are not entirely clear whether the courts have jurisdiction over such matters or whether they are "domestic" in the sense of falling exclusively within the jurisdiction of the University - see *King v. The University of Saskatchewan*, [1969] S.C.R. 678; *Re Polten and Governing Council of University of Toronto et al., supra*, and in the Supreme Court of this province *Doane v. Mount Saint Vincent University* (1977), 74 D.L.R. (3d) 297 and *Chitty's Law Journal*, vol. 21, 6 June 1973, p. 181 "Judicial Intervention Into University Affairs" by Dean G. H. L. Fridman.

15 But I think it clear that a university can bring action in the courts to recover payment of fees which a student has contracted to pay. In the *Doane* case Mr. Justice Morrison at p. 301 said that the contractual position is summarized in the Dean Fridman article and quoted a passage from the article, which had also been quoted by Weatherston, J., in the *Polten* case. I reproduce the passage in part:

> 'Universities when examined closely from the point of view of their juridical position and the legal nature of their activities, are very curious bodies. On the one hand they are legal corporations, self-governing and legally independent, which enter into contractual relations with members of the staff, both academic and non-academic (as well as with students) and make whatever rules they consider fit or feasible to regulate such relationships. The law of contract applies in such a context as it does elsewhere....'

Dean Fridman also said - see *Re Polten* at p. 762:

> 'A reading of such modern cases as there are, from the various Commonwealth jurisdictions, reveals ambivalence on the part of the courts. There are decisions and dicta which indicate that university affairs are domestic and courts will not interfere (*unless of course, some breach of contract or tort can be established*)....'
>
> [emphasis added]

16 There remains only the question of the amount recoverable by the University from the appellant. I have no doubt that upon registration he became liable for the full year's academic and student organization fees. I can take no other meaning from the provision on p. 60 of the calendar that fees for the academic year are assessed at the time of registration. The word "assessed" in its context here in my opinion means fixed and imposed - see Concise Oxford Dictionary. The student by the following words is given the privilege of paying the amount in half-yearly instalments. The provision as to refunds clearly contemplates in my view that it will be applied on the basis that the fees are annual fees.

17 I think also that the room charges are exigible for the full year subject only to reduction in the case of a student vacating the room at some time during the academic year where the University can find an off-campus occupant for the room as set out in the Residence Handbook, a rule or regulation favourable to the appellant in view of the fact that the schedule of fees in the calendar at p. 59 sets out the residence and dining hall fees for the year. After the appellant had left the University there was a shuffling of rooms which resulted in some saving to the University with respect to the appellant's room. The learned trial judge was, with respect, correct in taking that saving into account as in mitigation and reducing the claim

accordingly to the figure found by him.

18 For all these reasons I would dismiss the appeal with costs.

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