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CASE SUMMARY: ALTHOUGH UNIVERSITIES HAVE BROAD DISCRETION TO MAKE ACADEMIC DECISIONS, SOME FACTUAL ALLEGATIONS WILL ALLOW A STUDENT TO DEFEAT A MOTION FOR SUMMARY JUDGMENT

The Appellant, Mr. Lam, successfully appealed a summary judgment decision made by a motion judge. The motion judge had dismissed his action for damages against the Respondent, University of Western Ontario Board of Governors.

Administrative law – Decisions reviewed – University Appeal Board – Discretion of delegated authority – Judicial review – Appeals – Standard of review – Correctness – Universities – Damages

Lam v. University of Western Ontario Board of Governors, [2019] O.J. No. 611, 2019 ONCA 82, Ontario Court of Appeal, February 6, 2019, G.R. Strathy C.J.O., P.D. Lauwers and B. Zarnett JJ.A.

The Appellant, Simon Lam, enrolled in a Ph.D. program at the University of Western Ontario, in 2011. In 2012, his thesis supervisor died. After various meetings and discussions with the new supervisory committee, Mr. Lam decided to transfer out of the Ph.D. program and into a Master's program. Mr. Lam later commenced an action against the Respondent, the University of Western Ontario Board of Governors (the "University"), alleging he was pressured to transfer out of the Ph.D. program. He further alleged the new supervisory committee misled and provided incorrect information to him about the availability and security of his funding. He sought damages for loss of income, pain and suffering.

The University applied to the Court seeking summary judgment dismissing Mr. Lam's claim. The motion judge held there were genuine issues of fact that would require a trial to resolve, including:

- (1) Whether the supervisory committee recommended Mr. Lam to transfer because it genuinely believed there were problems with his work, or because the members of the committee were unwilling to familiarize themselves with his work; and
- (2) What Mr. Lam was told about funding by the supervisory committee and whether those statements were justified.

The motion judge held that it was not necessary for these issues to proceed to trial because "as a matter of law" Mr. Lam should have complained to the University instead of the court. The motion judge granted summary judgment and dismissed the action. Mr. Lam appealed to the Court of Appeal.

The Court of Appeal reviewed the motion judge's decision on a standard of correctness because the motion judge made the decision based purely on legal principles. The Court of Appeal reviewed the decisions in *Gauthier* and *Jaffer* regarding the availability of judicial review for Universities' discretionary decisions. The Court of Appeal held that there were some allegations made by Mr. Lam that would be rebutted by the University's broad discretion. However, the motion judge failed to consider that the University could not rely on its broad discretion to rebut all of the factual allegations made by Mr. Lam.

The Court of Appeal held the motion judge erred in law. The genuine issues of fact could have, if resolved in favour of Mr. Lam, resulted in a legally cognizable claim. There was nothing that required the court to decline to deal with such a claim.

The Court of Appeal allowed the appeal, set aside the motion judge's decision dismissing the action, and directed the matter proceed to trial. The Court of Appeal also awarded costs to Mr. Lam.

This case was digested by [Scott J. Marcinkow](#), and first published in the LexisNexis® Harper Grey Administrative Law Netletter and the Harper Grey Administrative Law Newsletter. If you would like to discuss this case further, please contact Scott Marcinkow at smarcinkow@harpergrey.com.