

SUPREME COURT OF NOVA SCOTIA

Citation: *Tapics v. Dalhousie University*, 2018 NSSC 53

Date: 20180309

Docket: Hfx No. 425795

Registry: Halifax

Between:

Tara Tapics

Applicant

v.

Dalhousie University

Respondent

LIBRARY HEADING

Judge: The Honourable Justice Suzanne Hood

Heard: October 30, 31, November 1, 2, 6, 7, 2017 in Halifax, Nova Scotia

Final Written Submissions: December 14, 2017

Written Decision: March 9, 2018

Subject: Breach of contract; negligence; negligent misrepresentation; and educational malpractice.

Summary: Tara Tapics claims against Dalhousie University (“Dalhousie”) for breach of contract and negligence, including negligent misrepresentation.

Issues:

- (1) civil claims versus discretion of university in academic matters;
- (2) breach of contract between student and university;
- (3) breach of duty of care owed by university to student;
- (4) negligent misrepresentation;
- (5) educational malpractice; and

(6) damages

Result:

University breached its contract; university was negligent; actuarial report flawed; damages awarded of \$48,750.

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Counsel: Barbara Darby, for the Applicant
Rebecca K. Saturley and Scott R. Campbell, for the Respondent

By the Court:

Introduction

[1] Tara Tapics claims against Dalhousie University (“Dalhousie”) for breach of contract and negligence, including negligent misrepresentation.

Facts

[2] Tara Tapics is a Ph.D. student at the Université de Sherbrooke. She has a Masters of Science from Dalhousie in Oceanography which she obtained in May 2009.

[3] In 2010 Tara Tapics responded to a solicitation for a graduate student which was posted in June 2010. She was subsequently accepted unconditionally into the Ph.D. program at Dalhousie University to work on the leatherback turtle project and commenced her studies in January 2011. She continued to work on her Ph.D. on the subject until events of June 8, 2012. Thereafter her internal advisory committee met and the project was terminated.

[4] Subsequently Tara Tapics began work on a Ph.D. with respect to right whales with Dr. Christopher Taggart as her supervisor. Dr. Taggart withdrew as her supervisor and no other supervisor was subsequently found. Tara Tapics

appealed unsuccessfully to an *ad hoc* committee of the Faculty of Graduate Studies and then to Dalhousie's Senate Appeal Panel. Tara Tapics then filed a Notice of Application in Court against Dalhousie University, Dr. Taggart and another professor.

[5] Dalhousie defended the matter and made a motion to dismiss it. That motion was granted and Tara Tapics appealed. The Court of Appeal concluded in a decision dated July 22, 2015 that the appeal be dismissed with respect to the two professors. It also concluded that the claims related to the sea turtle project had not been determined (para. 71).

[6] Thereafter Tara Tapics filed an amended Notice of Application dealing only with the period from June 2010 to June 8, 2012.

Dr. Christopher Taggart

[7] Dr. Taggart has a Ph.D. in oceanography and is a professor at Dalhousie in the Oceanography Department.

[8] In late 2009 he and Dr. Michael James discussed the possibility of a collaboration between them. Dr. James has a Ph.D. in Biology and they wanted to combine their two areas of expertise with respect to leatherback turtles.

[9] In April 2010 Dr. Taggart made a funding application to the Endangered Species Fund of the Canadian Wildlife Federation. He was to be the primary investigator and Dr. James the secondary investigator. The application was with respect to leatherback turtle (“LBT”) critical habitat in Canadian Waters (quoting in part from the title of the research proposal).

[10] On page 4 of the proposal there was reference to the need for a graduate student “who will work under the guidance of Taggart and James”.

[11] The proposal referred to a project then underway with a summer student, which project analyzed LBT tag data. Further mention was made of “long-term satellite telemetry studies” and “satellite tags data”. The proposal stated “all the required data are in-hand”.

[12] Dr. Taggart prepared the solicitation for a graduate student. It stated that “The research, conducted in collaboration with Dr. M. James (BIO), will focus on the analysis of a large suite of turtle ... data ... collected from satellite-linked and archival tags”

[13] The proposal was accepted with funding to be provided.

[14] Subsequently a collaboration began between the Canadian Sea Turtle Network (CSTN) and Dr. Taggart. An application was made by CSTN’s executive

director Kathleen Martin, in November 2010, to the Habitat Stewardship Project (HSP) for funding. The funding was granted and CSTN entered into a sub-agreement with Dalhousie with respect to the program and its funding. The funding included funding for Kathleen Martin.

[15] Dr. Taggart prepared the solicitation to which I have referred above and to which Tara Tapics responded. He became Tara Tapics' supervisor and a Ph.D. Advisory Committee was established. The other advisory committee members were Dr. Michael Dowd, Dr. Daniel Kelley and Dr. James. Dr. Taggart said it was common for an external advisor, including adjuncts, to be part of an advisory committee.

[16] Dr. Taggart said his role as supervisor of a Ph.D. student was:

- (a) assist students with the selection of a research topic suitable for a PhD candidate;
- (b) form an Advisory Committee in consultation with the student;
- (c) provide guidance regarding course selection and teaching assistantships;
- (d) provide both encouragement and critical feedback to the student with respect to goals, approaches, methods, interpretations, writing, reviewing, editing;
- (e) monitor the progress of the student's research;
- (f) ensure that the student meets research deadlines;
- (g) provide the student with an appropriate stipend, if applicable and appropriate;
- (h) provide the student with funding support for conferences, workshops and field trips, if applicable and appropriate; and
- (i) referee conflicts that may interfere with research.

Dr. Michael James

[17] The third principal player in this matter is Dr. James. He has a Ph.D. in biology and did post-doctoral studies. He was employed by the Department of Fisheries and Oceans at the Bedford Institute of Oceanography as the senior species at risk researcher. In addition, he was the founder of what was later called the CSTN. It is a charitable organization devoted to the protection of leatherback turtles which are a species at risk. He was its volunteer Director of Science but had no day-to-day role in the operation of CSTN.

[18] Dr. James was as well an adjunct at Dalhousie in the Biology Department. He was not a university employee. His role as such did not make him a member of faculty and there was no remuneration to him for his work. His position as such was to supervise students in their research work.

[19] It was Dr. James who provided the data with which those students, including Tara Tapics, would work.

[20] Dr. James is married to Kathleen Martin, the executive director of CSTN. He, at various times, referred to the data as “my data/CSTN’s data”.

[21] According to his evidence, his relationship with Tara Tapics was often rocky. Dr. Taggart said he had to mediate between Dr. James and Tara Tapics on a number of occasions.

[22] The Application in Court consisted of a voluminous affidavit with exhibits from Tara Tapics (114 paragraphs plus 64 exhibits); an extensive affidavit from Dr. Taggart (71 paragraphs plus 36 exhibits); the affidavit of the then dean of Graduate Studies, Dr. Bernard Boudreau (30 paragraphs plus ten exhibits, one of which contained the Graduate Studies Calendars for 2010/2011 and 2011/2012). In addition Dr. James and Kathleen Martin gave *viva voce* testimony. Discovery transcripts were tendered from Dr. Sara Iverson, a biology professor and Scientific Director of the Ocean Tracking Network (OTN) and Dr. Dowd who was a member of Tara Tapic's advisory committee. Jessie Shaw Gmeiner's expert actuarial report was filed as Exhibit 7.

The Ph.D. Project

[23] In my view, the project was doomed to failure from the start. Tara Tapics had difficulty obtaining all the data she needed from Dr. James. Furthermore, he had a full-time job at BIO and was often unavailable to meet with Tara Tapics or the advisory committee.

[24] Further problems arose with the Serrano V camera which led to delays.

[25] By April 2011, Tara Tapics was expressing concerns to Dr. Taggart about Dr. James and how he was trying to direct her research. Around May 2011, Dr. James told Dr. Taggart he had concerns with respect to “synergy” between Tara Tapics and himself.

[26] Things got worse in the lead-up to the field work in late August – early September of 2011. Dr. James expected Tara Tapics to be available to assist with getting the gear ready but Tara Tapics had vacation plans for that time.

[27] Dr. James was concerned with Tara Tapics’ “fit” for the field work, saying to Dr. Taggart that people skills were as important as analytical skills. According to Dr. Taggart, he had to intervene between Tara Tapics and members of the field team during the field trip.

[28] After the field trip, Dr. James asked to be co-supervisor of Tara Tapics on the project. Dr. Taggart and Tara Tapics met about this and according to Tara Tapics, Dr. Taggart sided with Dr. James about the co-supervisor role. She subsequently told Dr. Taggart she would rather abandon the project than have Dr. James as co-supervisor. Later she reluctantly agreed. As it turns out, that role was never formalized and Dr. Bernard Boudreau, then Dean of Graduate Studies, said

he was merely *de facto* co-supervisor. However, Dr. James acted as if he was a co-supervisor. As such, he had the responsibility (among others) “to be as helpful as possible in suggesting research topics and in assisting students to define their theses” (quoting from policy 8.5.2 of the Graduate Studies Calendar for 2011/2012).

[29] As *de facto* co-supervisor, Dr. James’ role was greater than as a member of an advisory committee. He had a greater onus to ensure Tara Tapics’ work was progressing.

[30] After the field work, Tara Tapics asked on a number of occasions for the photographs taken then, but by February 2012 still had not received them.

[31] Soon after her first request for the photos, Tara Tapics was interviewed on the CBC radio show “The Vinyl Café” about the LBT project. According to Dr. Taggart, when Dr. James heard the interview he “hit the roof”.

[32] There was no evidence about the content of the interview but Dr. James was angry and concerned about the effect on what he called the “industry partners”. According to Dr. James, they were worried about the possible effect on their fishery, i.e., whether it might be shut down to protect LBTs.

[33] In late October 2011, Dr. James emailed Dr. Taggart saying the collaboration was not good, it was stressful and unproductive. He said it would be unwise for him and the CSTN to go further than one paper, not a full Ph.D. thesis. Dr. Taggart urged him to continue and he did so.

[34] In the November, 2011 to January/February, 2012 period, Dr. Taggart believed his mediation efforts had been fruitful and good progress on the project was being made.

[35] Nevertheless, at the end of March, Dr. James denied Tara Tapics access to a video for a talk she was giving to a high school class.

[36] By April 2, 2012, Dr. Taggart emailed Dr. Sara Iverson because she had dealt with Dr. James with respect to his supervision of one of her students and her research. She said there were difficulties with his role with the student. She said he was difficult to work with.

[37] Dr. Dowd had that impression as well from e-mails he received from Tara Tapics. She had said he was “a bit controlling” and was not always forthcoming about taking the research in new directions.

[38] Dr. Taggart said he wanted to meet with Dr. James to “save the science”, a last ditch effort. He suggested meeting with Dr. Iverson to “prevent dysfunction”

to Tara Tapics and others. Dr. Taggart said the dysfunction was with both Tara Tapics and Dr. James and he was walking a fine line dealing with them.

[39] Subsequently, Dr. Taggart met with Dr. James and Kathleen Martin. The minutes from that meeting say its purpose was:

to discuss the status and direction of the research being conducted by T. Tapics (TT), with a focus on status, data problems, video record synchronization, light calibration and potential solutions, and the status of the collaboration.

[40] Item 14 of the minutes was:

It was agreed that MJ would arrange to meet with TT, at some neutral and public (recommended by CTT) location to determined [sic] the ongoing nature of the research and collaboration and the near and long-term future.

[41] When the minutes were provided to Tara Tapics, item 14 was not included.

[42] Dr. Taggart emailed Tara Tapics about his concern with delay and suggested she meet with Dr. James. At that time, Kathleen Martin said the collaboration was not working well and Dr. James said it was close to its end.

[43] Dr. Daniel Kelley was a member of Tara Tapic's advisory committee. As such he emailed Dr. Taggart to discuss the situation with Tara Tapics. Dr. Taggart said he was at "his wits' end" and verging on giving up. He said he was beginning not to care about the research and Tara Tapics' future. He said he had never experienced a situation like this.

[44] On April 18, Dr. James met with Tara Tapics, although she had concerns about the meeting. She was unaware that Dr. Taggart, Dr. James and Kathleen Martin had discussed having the meeting.

[45] Thereafter on April 20, Tara Tapics emailed Dr. Taggart. She referred to Dr. Taggart “working very hard ... to facilitate us working together”. However, she said she would rather leave than continue, although she said she was no longer concerned about “our ability to work together ...”. She went on to say that she continued “to be extremely concerned about Mike, his expectations, and the ever-present threat of data withdrawal”.

[46] This is the first reference to the latter to Dr. Taggart, although Tara Tapics had expressed that concern to Dr. Dowd in October 2011 (Discovery, Exhibit 18, pp. 81-82).

[47] Tara Tapics went on to refer to the distinction between advice and direction in the context of her research.

[48] In May 2012, Dr. James was frustrated because, although he was a collaborator, these were some things he did not agree with. He wanted a single paper from the research, not a Ph.D. thesis.

[49] On June 1, 2012, Tara Tapics sent to the Advisory Committee members her “draft research outline”, seeking their comments before the June 12 meeting of the Advisory Committee.

[50] Dr. James responded to Tara Tapics on June 8, 2012 and copied his response to Dr. Taggart. The end result was a decision by the Advisory Committee (in Dr. James’ absence) that the relationship with Dr. James on the project be terminated. The Committee also agreed to advise Tara Tapics not to “respond to/agree to the terms outlined by Dr. Michael James”.

[51] Dr. James’ email said he wanted to clarify the collaboration and establish how their efforts could lead to a productive result. He said he had previously discussed these issues with Tara Tapics, either through CSTN or Dr. Taggart.

[52] Dr. Taggart said these issues had not been previously discussed.

[53] The conditions set out by Dr. James included:

1. requiring his permission for Tara Tapics to use CSTN data;
2. providing to him, within three weeks of his or CSTN’s request, copies of all data files;

3. requiring his authorship on any papers involving CSTN data or data obtained using the CSTN research platform;
4. requiring clearance from Kathleen Martin at CSTN before Tara Tapics accepts any media or public requests to speak about work relating to CSTN data or data collected using the CSTN research platform;
5. keeping confidential, *inter alia*, the names of CSTN members, names of boats, addresses, etc.

[54] The so-called Internal Advisory Committee (without Dr. James, the external member) met. The purpose of the Advisory Committee meeting held on June 12 (as per draft minutes) was to address concerns related to the email from Dr. James (“the MJ proposal”):

Some of the statements are contrary to the original arrangement and some are unlikely to be acceptable from an academic and professional perspective.

[55] Under the heading “Current Concerns” was the revocation of previously granted written permission to use certain data. The concern was that there was a potential threat to pull all data.

[56] The minutes continue:

The current instability of the project and previous history with Dr. James are a concern.

[57] There was also the comment:

Dr. James is not following Dalhousie University's Policy on Integrity in Scholarly Activity.

[58] The minutes also reflect Dr. James' status as an Adjunct in Biology.

The question is raised as to whether or not he is fulfilling his duties as Adjunct in light of the concerns raised.

[59] Action Items included:

Dr. Christopher Taggart contacting Dr. Iverson and the Graduate Coordinator, Biology with a view to having them participate in a meeting with the Dean of the Faculty of Graduate Studies (FGS); and

Notification to Dr. Michael James in consultation with the dean of FGS, Dr. Bernard Boudreau.

[60] Dr. Taggart said he would try to salvage the project, saying there was a 20 percent chance. Tara Tapics declined his offer.

[61] Dr. Taggart prepared a briefing note for Dr. Boudreau which he gave to him when they met on June 19, 2012. That same day, Dr. Taggart emailed Dr. James, with copies to Dr. Kelley and Dr. Dowd, advising Dr. James that "I must terminate the research collaboration".

[62] He went on to refer to the unacceptable unconditional demands made by Dr. James in the context of a collaborative research project. He said that the demands “could be viewed as unethical, unprofessional, and un-collegial”. He said:

They also appear to violate the accepted policies of the Faculty of Graduate Studies, especially for a researcher acting in an advisory capacity and holding an adjunct position at the University.

[63] As a result of his meeting with Dr. Taggart, Dr. Boudreau wrote to the Acting Chair of the Department of Biology and Marine Biology. Without details, Dr. Boudreau said, “A serious matter has come to my attention.” He then advised that Dr. James’ appointment with FGS would not be renewed and he would not be permitted to co-supervise graduate students or serve on supervisory or examination committees. He also recommended that Dr. James have no contact with any undergraduate or summer student.

[64] However, because he was supervising another graduate student, Dr. James’ adjunct status in the FGS was renewed for the period July 1, 2012 to June 30, 2013. He has since December 2012 not been an adjunct in the Biology Department, after the student he was supervising left Dalhousie.

[65] The CSTN data was subsequently removed from Dalhousie’s servers after Kathleen Martin sent an email to Jody Rice Gallaher, the Legal Advisor for Dalhousie Research Services, on December 3, 2012.

[66] Tara Tapics changed her Ph.D. topic to right whales with Dr. Taggart as her supervisor. What occurred thereafter is referred to in detail in the Court of Appeal decision, dated July 22, 2015 (2015 NSCA 72). In that decision, the court concluded that the University's tribunals had not adjudicated with respect to the sea turtle project.

[67] Fichaud, J.A. said in para. 77:

I would allow the appeal with respect to Ms. Tapics' allegations involving Dr. James' role and the sea turtle research, and the University's responsibility (if any) for that matter.

[68] He continued in para. 78:

The appeal to this Court involves only whether the judge erred by ruling there was an abuse of process. That is the extent of my reasoning. I should not be taken as commenting on the merits. For instance, Dalhousie may allege that, by replacing Dr. James after June 2012, the University did all that was required. Ms. Tapics, on the other hand, may cite Dr. Taggart's letter of January 31, 2013 to Dr. Lewis (above para. 13), that says "I have done what I can to support Tara's interests, and to salvage what I can from the debacle generated by an external collaborator in the sea turtle project" but "the entire process has been difficult..." From this, Ms. Tapics may allege that the effects lingered on. This and other aspects of the merits would be for the hearing judge to consider afresh. There is no implicit direction in my reasons.

[69] He allowed Tara Tapics to amend her pleadings as a result of the Court of appeal decision (para. 79).

[70] The Amended Notice of Application in Court referred to "breach of contract and negligence" by Dalhousie. She said she relied on representations made to her

about the availability of a dataset “to pursue her program and qualify for a doctoral degree”. She said the representations were inaccurate (paras. 6 and 7).

[71] She also says the University represented to her that a qualified researcher had been selected to “participate in supervising” her and failed to “comply with the Respondent’s rules, regulations, policies and procedures” (para. 8).

[72] She said Dr. James was in a conflict of interest which “should have been dealt with in advance”. (para. 11) She said Dalhousie failed to ensure that Dr. James “was bound to [its] Rules, Regulations, Policies and Procedures” (para. 12).

[73] She said as a result she was prevented from applying for a federal scholarship and lost “the opportunity for gainful employment or the pursuit of studies elsewhere” (para. 21). She referred to the period of her studies of almost 18 months after which she was “without access to data and without a viable field of scientific inquiry for her doctoral program ...” (para. 18).

[74] She therefore claims for “economic loss, loss of opportunity, general and special damages and other losses, the particulars of which will be adduced at the hearing” (para. 22).

[75] At the heart of Tara Tapics’ claims is her allegation that the data she was to work with for her Ph.D., a fundamental resource, was not secured by Dalhousie. In

its Notice of Centest, Dalhousie denies any inaccurate representations; says it satisfied all its contractual obligations to Tara Tapics; acted in compliance with its rules, regulations, policies and procedures; and discharged its legal obligations to Tara Tapics. In conclusion, it says Tara Tapics either “suffered no compensable loss” or if so, “the relief sought is either too remote or is otherwise unavailable at law”.

The Position of the Applicant

1) Educational malpractice

[76] Tara Tapics says Dalhousie, by failing to enforce its policies for her benefit, engaged in educational malpractice.

2) Negligent misrepresentation

[77] Tara Tapics said it was represented to her that the data she needed for her Ph.D. studies was “in hand”. She says she relied on this in leaving her job and applying to the Dalhousie Department of Oceanography for a Ph.D.

[78] She says the data was not secured for her and, by the actions of Dr. James in June 2012, her project was terminated. Ultimately the data was removed from Dalhousie’s servers. She says she was not told the data belonged to Dr. James

and/or CSTN and therefore was not under the control of Dalhousie as she believed. She says Dr. Taggart knew the data was not in hand and also knew of the relationship between Dr. James and CSTN with respect to the data. She says Dr. Taggart did not exercise reasonable care to ensure that his representation that the data was in hand was accurate and not misleading. She says that even if Dr. Taggart honestly believed the data was in hand, he did not take reasonable steps to ensure that was the case.

[79] In *Queen v. Cognos Inc.*, [1993] 1 S.C.R. 87 cited in *McKay v. CDI Career Development Institutes Ltd.*, 1999 CanLII 5599 (BC SC), the court set out the five requirements for a successful negligent misrepresentation claim:

- (1) there must be a duty of care based on a “special relationship” between the representor and the representee;
- (2) the representation in question must be untrue, inaccurate, or misleading;
- (3) the representor must have acted negligently in making said misrepresentation;
- (4) the representee must have relied, in a reasonable manner, on said negligent misrepresentation; and
- (5) the reliance must have been detrimental to the representee in the sense that damages resulted.

a) Duty of care based on special relationship

[80] Tara Tapics says there was a special relationship between Dr. Taggart and her as between Ph.D. student and her supervisor.

b) **Untrue, misleading or inaccurate**

[81] Tara Tapics says that saying the data was in hand was at least misleading and was inaccurate. She says the data was not secured by Dalhousie for her and the proof of this is that Dr. James withdrew his permission for her to access it and ultimately the university did delete it from its servers.

c) **Acted negligently**

[82] Tara Tapics says Dr. Taggart should have made it clear to her that the data was not in hand, but belonged to a third party. She said he was negligent in representing that the data was in hand when it was not.

d) **Reliance**

[83] Tara Tapics said she relied on the representation that the data was in hand, was available to her, and would continue to be available to her, in deciding to apply for the Ph.D. program at Dalhousie.

e) **Detriment**

[84] Tara Tapics says the failure of Dalhousie to ensure continued access to the data caused her to lose the opportunity to obtain a Ph.D. using that data. She says

this caused her to lose one and a half years of work done on this project and, ultimately, required her to go to another university and restart her Ph.D. studies.

3) **Negligence**

[85] Tara Tapics says Dalhousie owed her a duty of care “to ensure that its policies were adhered to” (para. 206 of Tara Tapics’ brief). She specifically mentions the conflict of interest policy (quoted hereinafter).

4) **Breach of contract**

[86] Tara Tapics says that Dalhousie breached its contract with her. She says the terms of the contract included the material included in the Dalhousie Faculty of Graduate Studies Handbook. One of the key policies is with respect to conflict of interest. It provides:

5.1 Conflict of Interest

Faculty members and students are expected to declare any conflict of interest of a personal or financial nature which may influence explicitly or implicitly their participation in graduate programs and graduate administration.

...

No student or supervisor shall have a financial or family interest in the industry or business in which the student is pursuing his/her thesis research.

[87] These policies are the same in the 2010/2011 and 2011/2012 Handbooks which cover the relevant time periods.

[88] She also says it was an implied part of her contract with Dalhousie that it would enforce its policies with respect to faculty, including adjuncts who were not faculty members.

[89] She says the following are implied terms of her contract as well:

1. she was to work as a Ph.D. candidate on the sea turtle project described in the solicitation;
2. Dr. Taggart would supervise her Ph.D. work;
3. the material she needed for her Ph.D. work was available to her and would continue to be available;
4. the role of her supervisor would include providing guidance, encouragement and feedback.

[90] Tara Tapics says that when Dr. James became her co-supervisor, he was to work in her best interests but this was not the case, because he was in a conflict of interest.

Dalhousie University's position

[91] Dalhousie takes the position that this is not a case of educational malpractice, nor was there any negligent misrepresentation or breach of contract.

Dalhousie says the issues raised are academic issues to be dealt with pursuant to the university's policies.

[92] Dalhousie says Dr. Taggart did what he could to keep the project moving forward and mediated on a number of occasions to resolve issues between Tara Tapics and Dr. James. Dalhousie says there were personality conflicts between Tara Tapics and Dr. James.

[93] These included Dr. James' concern re "fit" and "synergy" and his desire to have only one paper resulting from the research. On Tara Tapics' part, she found him controlling and trying to direct her research rather than advising her. On June 1, 2012 she referred to Dr. James as "Mikeopath". In spite of these conflicts, Dr. Taggart encouraged both to keep focussed on the goal.

[94] Dalhousie also says the June 8, 2012 email from Dr. James was unforeseeable. It was contrary to what would be expected in a collaboration and how the relationship between an external advisor and a Ph.D. student would occur. Dalhousie says the reason the Ph.D. project ended was because of Dr. James' unreasonable actions and expectations, not the failure of Dalhousie to ensure the data to which Tara Tapics referred would always be available.

[95] Dalhousie says there was no representation to Tara Tapics that the data was in hand when she applied to Dalhousie and commenced her Ph.D. studies there. In fact, Dalhousie says the data was available. It acknowledges there were difficulties, including the calibration of the Serrano V.

[96] Dalhousie says it was not a term of its contract with Tara Tapics that it would enforce its internal policies. It says this is an internal matter in the academic realm for Dalhousie to deal with. It says that after the email from Dr. James was received, Dr. Taggart and Dr. Boudreau did all that was expected of them pursuant to those policies. Dr. Taggart wrote to Dr. James setting out his concerns with the contents of the letter. Furthermore Dr. Boudreau wrote to the Acting Chair of the Department of Biology and Marine Biology stating that the Faculty of Graduate Studies “would not allow Dr. James to be re-appointed as an Adjunct or to supervise any other student until the expiry of his position as Adjunct (para. 21, Boudreau affidavit).

[97] Dalhousie says these were appropriate responses to the serious issues which arose from Dr. James’ email. It says these were academic matters dealt with pursuant to its policies affecting not only faculty members but adjuncts. It says it was of no legal concern to Tara Tapics how Dalhousie dealt with these internal

academic policies. It acted within a reasonable time period, but, in any event, this was after the project was terminated.

Analysis

1. Educational malpractice

[98] Although considered on a number of occasions by courts in Canada and the United States, a claim for educational malpractice has not been successful.

[99] In *Hozaima v. Perry et al.*, 2010 MBCA 21, MacInnes, J.A. cited several authorities the motions judge referred to with respect to claims of educational malpractice. In one of them, quoted at para. 42, *Gould v. Regina (East) School Division No. 77* (1996), 7 C.P.C. (4th) 372 (Sask. Q.B.), Matheson, J. said in para. 47:

It is surely not the function of the courts to establish standards of conduct for teachers in their classrooms, and to supervise the maintenance of such standards. Only if the conduct is sufficiently egregious and offensive to community standards of acceptable fair play should the courts even consider entertaining any type of claim in the nature of educational malpractice.

[100] The motions judge had also quoted from *Mohl v. University of British Columbia*, 2006 BCCA 70 where Smith, J.A. said the courts have not struck such claims at the pleadings stage (para. 37). In that decision, Smith, J.A. referred to *McKay v. CDI Career Development Institutes Ltd.* (1999) 64 B.C.L.R. (3d) 386

(S.C.). Blair, J. said in that case that although such claims had been rejected, “There appears to be some situations where a court might accept such a claim” (para. 7).

[101] Smith, J., in *Mohl* at para. 36, referred to the decision of Kirkpatrick, J. (as she then was) in *L.R. v. British Columbia* (1998), 65 B.C.L.R. (3d) 382 (S.C.). She commented on public policy reasons for judicial reluctance to accept claims of educational malpractice, as well as difficulties with causation and standard of care. She referred to the burden such claims would place on the school system and judicial reluctance to “interfere with the formulation and implementation of educational policy” (para. 45).

[102] Smith, J.A. said an action might lie where there are allegations of “egregious conduct ... that is offensive to community standards” (para. 39).

[103] In *Lagueux v. College of Electronics of Québec*, 2004 CanLII 13907 (QCCA), (unofficial translation), the court said the claim must relate to a specific obligation of the school to the student, not non-performance as a whole (paras. 30 and 31).

[104] The court said in para. 36 that the courts take the position they would not rule on the issue of failure to provide “quality education”.

[105] Similarly in the United States, courts have not embraced such claims and for the same policy reasons referred to by Kirkpatrick, J., Ripple J. pointed out that the court's intervention in educational issues would be "particularly troubling in the university setting where it necessarily implicates considerations of academic freedom and autonomy".

[106] I conclude this is not the appropriate case for its first application in Canada. The claim is more appropriately considered in the context of breach of contract where the policy considerations are within the discretion of the university. The quality of the teaching and supervision of Tara Topics are matters within the broad discretion of the university.

[107] If Dr. James were a party, his conduct would be an appropriate issue for the court to consider. In the absence of a claim against Dr. James in contract or tort, the allegations against him are in the nature of an academic dispute. As such they are within the purview of the university.

2. Negligent Misrepresentation

[108] There was a special relationship between Dr. Taggart and Tara Topics, between supervisor and student (*Young v. Bella*, [2006] 1 S.C.R. 108). However, I find as a fact that the data was in-hand. The two collaborators were Dr. Taggart

and Dr. James. It was Dr. James who had the data and by entering into the collaboration, it was understood the data would be available for research purposes. Dr. James was not a third party but the secondary investigator (Dr. Taggart being the primary investigator). Without the data, there would have been no collaboration.

[109] It was not inaccurate or misleading to state the data was in-hand and there was no negligence on the part of Dalhousie in saying it was in-hand.

[110] This is the nature of collaborations. As Dr. Dowd said at discovery they are based on good faith but there are no guarantees the collaboration will be successful or lead to successful completion of a doctoral thesis.

[111] In fact, the data was available throughout Tara Tapics' research. Dr. James retroactively withdrew his written authorization about the data in his email of June 8, 2012. It was only thereafter, after the collaboration ended, that the data actually became unavailable.

[112] I conclude that there was no untrue, inaccurate or misleading representation to Tara Tapics concerning the data. It was in-hand since one of the two collaborators in the Taggart-James collaboration, Dr. James, had it. There could be no collaboration between them without it.

[113] As Dr. Dowd said, collaborations are informal and proceed on the basis of good faith between the two collaborators. The custom is not to reduce them to writing.

[114] There was therefore no negligent misrepresentation.

Civil claims or academic matters

[115] Dalhousie says the claims are not properly before this court because they involve issues of an academic nature which are within the university's purview.

[116] In *Mohl, supra*, Smith, J.A. concluded in para. 29 that some of the claims should be struck because they had been finally determined in the judicial review process. However he said in para. 30 that claims of breach of contract, breach of fiduciary duty and negligence were not barred.

[117] In *Gauthier v. Saint Germain*, 2010 ONCA 309 (quoting from the unofficial translation), Rouleau, J.A. said in para. 32 the court has jurisdiction where the claims are in tort or contract.

[118] He continued in para. 46:

[46] In my opinion, in order to determine whether the court has jurisdiction, it is more helpful to focus on the remedy being claimed by the plaintiff. When a party seeks to overturn an internal academic decision made by a university, the

appropriate route is judicial review. However, if the plaintiff alleges the constituent elements of a cause of action based in tort or breach of contract, while claiming damages, the court will have jurisdiction even if the dispute stems from the scholastic or academic activities of the university in question.

[119] With respect to contract, he said the student must demonstrate a failure by the university to fulfill an obligation (para. 48). And to establish a breach of a duty of care, the student must plead facts showing either an intentional tort or conduct outside “the broad margin of discretion” enjoyed by the university and its professors (para. 49).

[120] In *Hozaima, supra*, MacInnes, J.A. said in para. 32:

32 There is no question that the university has broad jurisdiction in respect of disputes between a student and the university (in which I include all of its faculties and their academic personal) in respect of academic matters. That is as it should be. But the critical questions, it seems to me, are whether the dispute, in its essential character, is an academic dispute and whether the extant dispute resolution scheme provides an effective remedy.

[121] In *Jaffer v. York University*, 2010 ONCA 654, Karakatsanis, J.A. (as she then was) referred in para. 21 to *Gauthier* in para. 46 (quoted above).

[122] In *Vatamanu v. Baird*, 2009 CanLII 72023 (ON SC), the plaintiff made a formal complaint against a professor which was dealt with by the university. She also commenced action against him and the university alleging harassment, verbal assault and intentional interference with contractual relations.

[123] The defendants argued that these claims were purely “administrative” or “academic” matters “within the realm of the university’s decision making power” (para. 6).

[124] Kershman, J. concluded the defendants’ authorities could be distinguished.

He said in para. 20:

[20] The defendants’ authorities can be distinguished from the situation at bar on the following grounds:

- (a) In the case before the court, the plaintiff did make use of the university’s appeal process to ensure the completion of her thesis. Thereafter, she brought this action to deal with the non-academic issues;
- (b) Her claim does not deal with the issue of grading or the success of her thesis. This has been dealt with by the University in the appropriate venue.

[125] He continued in para. 21:

[21] The completion of the plaintiff’s thesis is not at issue. What is at issue is the conduct of the defendant Baird, which is not an academic matter. The alleged conduct of the defendant Baird includes the emails forwarded by him to the plaintiff, the plaintiff being locked out of her lab and the taking of the plaintiff’s computer by the defendant Baird.

[126] In *Al-Bakkal v. de Vries et al.*, 2016 MBQB 45, Joyal, C.J.Q.B. said in para.1:

[1] ... in what circumstances should a court give effect (or not) to the otherwise well-established institutional deference that has typically permitted the academy to internally regulate most disputes as between it and its students?

[127] He ultimately concluded that although claims were made in tort and contract, they were, in essence, largely about academic matters which had been “addressed or redressed” by the judicial review or academic appeal process (para. 82).

[128] In conclusion he said in para. 95:

[95] ... while courts must always be cautious about pre-empting a litigant’s right to seek justice through a potential claim, a court must be equally vigilant in its adjudicative responsibility to clarify and affirm what is a fairly settled state of the law: where a dispute is about the grading, advancement, graduation or academic designation of a student or where the dispute focusses on the academic requirements, rules and/or regulations that the university or faculty applies to a student, a civil suit for damages is not an available remedy.

[129] In *Said v. University of Ottawa*, 2013 ONSC 7186, Dr. Said was subject to the university’s policies including those dealing with academic promotion and sexual harassment. Because he was found to have harassed a medical resident at the university, he was denied promotion. He subsequently was denied promotion again, because of inadequate “scholarly output”.

[130] Dr. Said sought a reversal of the latter decision and a declaration that there was no sexual harassment. The defendants argued that “his fundamental complaint” was that the university violated its own policies and he was trying to appeal its decisions rather than seeking judicial review (para. 22).

[131] Beaudoin, J. concluded in para. 33 that all the defendants were:

[33] ... acting within their discretion and within their obligations as officers and employees of the university in respect to academic matters.

[132] In *Turner v. York University*, 2012 ONSC 4272, Cunningham, A.C.J. of the Divisional Court dealt with an appeal from an application for certification of a class action, which had been denied. The claim arose from a faculty strike at the university lasting 85 days.

[133] He was referred to *Jaffer* and *Gauthier* but said they were unhelpful. He said in para. 21 that although it is:

[21] ... possible for a student to enter into a contract with a university, that is not to be confused with the academic relationship between a student and his or her university.

[134] In *Lam v. University of Western Ontario*, 2017 ONSC 6933, the claim was for damages for pain and suffering, out of pocket expenses and loss of income over Mr. Lam's lifetime as a result of the loss of opportunity to complete his Ph.D.

[135] However, Koehnen, J. ruled the claims should be dismissed since Mr. Lam should have brought a complaint to the university, which could ultimately be subject to judicial review by the courts.

[136] He referred to *Gauthier, supra*, *Jaffer, supra* and *Al-Bakkal, supra*. He then concluded that Mr. Lam's claim fell within the academic sphere, since it included

complains about supervision and funding. However, in that case, Mr. Lam had not used the university's internal processes.

[137] In the Court of Appeal decision, Fichaud, J.A. set out the principles applicable to determining whether the court can hear a claim even where academic matters are involved (para. 53, Item 2), citing *Gauthier* and *Jaffer*.

[138] He referred to *Young*, *Gauthier* and *Jaffer* for the principle that a university may be liable to a student in contract or tort (para. 53, Item 1).

[139] He also referred to the well-established principle, set out in the above three authorities, that the university has “considerable latitude in academics, programming and evaluation” (Item 3).

[140] Where a civil claim is an indirect attempt at judicial review, it may be struck (Item 6).

[141] On the subject of abuse of process, Fichaud, J.A. referred to authorities providing that an attempt to relitigate is one instance of an abuse of process, unless “a ban against relitigation” would create unfairness” (Item 8).

[142] In para. 74, Fichaud, J.A. said that: “A civil damages claim ... would be outside the mandate of an *ad hoc* faculty committee”.

[143] The Court of Appeal allowed the civil claims against Dalhousie to continue. The issue for this court is whether all the elements of each claim are within or outside the purview of Dalhousie.

[144] In *Gauthier, supra*, Rouleau, J.A. said the focus should be on the remedy sought.

[145] I will deal with the issues of negligence and breach of contract within this context.

Breach of Contract

[146] I conclude Dalhousie breached its contract with Tara Tapics. Although Dalhousie has “considerable latitude in academics ...”, it breached its obligations to Tara Tapics. In my view, Dalhousie overstepped its discretion when it did so.

[147] As the courts have said in cases such as this, the student must plead particulars to show the university went beyond its broad academic discretion (*Tumer, supra, Jaffer, supra*). In *Gauthier, supra*, Rouleau, J.A. in para. 48 referred to “an express or tacit obligation” to which the university committed itself’.

[148] At the heart of the breach was the conflict of interest of Dr. James and the role of Dr. Taggart in enabling Dr. James to become involved in a collaboration and in research to be undertaken by Tara Tapics, in the face of the conflict of interest.

[149] Dr. Taggart said he had known Dr. James for some time and had collaborated with him in the past on other research projects, including one on sea turtles.

[150] He said he did not know of Dr. James' connection with the CSTN or that he was married to its Executive Director, Kathleen Martin. Both however testified that Dr. James' relationship with the CSTN was well-known and would have been known to Dr. Taggart.

[151] Furthermore, in May 2010 Dr. James provided to Dr. Taggart his suggested amendments to the graduate student solicitation. One of his proposed amendments was to refer to his collaboration and that of the CSTN on the project rather than a collaboration with BIO. Dr. Taggart did not amend the solicitation.

[152] As well, Dr. Taggart wrote a letter of reference for Dr. James which refers to his curriculum vitae and to the data Dr. James has. In his curriculum vitae, Dr. James refers to the fact that he is "Founder and Director of Science" with the

CSTN. In his testimony, Dr. Taggart said he was not sure he read the part of the curriculum vitae referring to the CSTN.

[153] I find as a fact that Dr. Taggart knew of Dr. James' role with the CSTN. Dr. Taggart also knew the data to be used in Tara Tapics' research was that of Dr. James and/or CSTN. The intention of the collaboration was to use that data for the research project. The two were the collaborators and Dr. James was to provide the data.

[154] I find as a fact that as part of the collaboration between Dr. Taggart and Dr. James the data was in fact provided. In the context of the collaboration between Dr. Taggart and Dr. James, the data was "in-hand". It continued to be available to Tara Tapics during her research. It was only some months after the project ended that the data was removed from Dalhousie. When the project ended, there was no further need for Dalhousie to retain the data.

[155] Dr. Taggart knew or should have known that Dr. James had two competing and conflicting interests in Tara Tapics' research. On one hand, Dr. Taggart and Dr. James were collaborating on the research project funded by the CWF. On the other hand, Dr. James' role with, and identification with, CSTN resulted in him not acting in Tara Tapics' best interests when he tried to control and direct the research

as he saw fit for his/CSTN's purposes. This conflict was bound to, and did, affect Tara Tapics' potential to complete her Ph.D. She was focussed on the research which she was conducting and which could have led to completion of her Ph.D. thesis. Dr. James' interest was to have one paper arising from the research, research which he was trying to direct for his and CSTN's purposes.

[156] Dr. Boudreau said that anyone who was aware of a conflict of interest had an obligation to raise it. In this case, Dr. Taggart should have raised the conflict of interest with Dr. James and made Tara Tapics aware of it.

[157] Although Dr. James had a greater responsibility to Tara Tapics as co-supervisor, his conflict of interest worked contrary to that role. In my view, he wanted to be co-supervisor so he would have greater influence on her research.

[158] Dr. Dowd said that during Ph.D. work a student should be becoming more independent as a researcher. Unfortunately, this was not Dr. James' purpose for Tara Tapics' research.

[159] I do not agree that it was a part of Tara Tapics' contract with Dalhousie that Dalhousie would enforce its policies with respect to faculty and adjuncts.

[160] It is true that Dr. James, as an adjunct, was subject to the university's policies. However, the relationship between Dalhousie and Dr. James is an internal

matter within the academic realm. It was a matter between them focussing on the university's policies.

[161] Dalhousie had no specific obligation to Tara Tapics with respect to Dr. James' conduct. It did, of course, have a serious effect on her but it was not an implied obligation in Tara Tapics' contractual relationship with Dalhousie that Dalhousie would enforce its policies on purely academic matters with respect to Dr. James. In fact, Dalhousie did enforce its internal academic policies, as set out above. Tara Tapics had no role, and was entitled to no role, with respect to the relationship between the university and Dr. James.

[162] Dr. Taggart went to the Dean of Graduate Studies with his concerns about the content of Dr. James' June 8, 2012 email. Dr. Boudreau took action to limit Dr. James' role as an adjunct and ultimately his status as such was terminated. In his affidavit he said Dr. James violated Dalhousie's policies. These included the policy on Integrity in Scholarly Activity, as amended to 2001 (Exhibit 16), approved by the Dalhousie Senate.

[163] Dr. James breached university policies and was dealt with by the university.

Causation/Negligence

[164] Dalhousie says there is no link between the delay of 18 months and the role of Dalhousie. It says the delay was not caused by a breach of university policies, a failure to secure data or a failure to disclose the role of CSTN. It says the delay was caused by the Advisory Committee (internal) and Tara Tapics walking away from Dr. James. That arose from the personality conflict between Tara Tapics and Dr. James.

[165] Dalhousie says therefore that the actions of Dr. James were unforeseeable and not related to Dalhousie.

[166] In *Resurface Corp. v. Hanke*, 2007 SCC 7, McLachlin, C.J. (as she then was) said at para. 6:

6 Liability for negligence requires breach of a duty of care arising from a reasonably foreseeable risk of harm to one person, created by the act of omission of another ...

[167] She then dealt with the test for causation beginning at para. 18, saying in para. 21:

21 First, the basic test for determining causation remains the “but for” test. This applies to multi-cause injuries. The plaintiff bears the burden of showing that “but for” the negligent act or omission of each defendant, the injury would not have occurred. ...

[168] It was reasonably foreseeable that the project would fail because of the conflict of interest.

[169] In *Young v. Bella*, 2006 SCC 3, McLachlin, C.J. and Binnie, J. writing for the court, said in para. 31 that there was a special relationship between professors and their students. They continued in that para.:

31 ... The appellant, even as a “distant” student, was a fee-paying member of the university community, and this fact created mutual rights and responsibilities. The relationship between the appellant and the University had a contractual foundation, giving rise to duties that sound in both contract and tort: *Central Trust Co. v. Rafuse*, [1986] 2 S.C.R. 147.

[170] Dalhousie breached its duty of care to Tara Tapics. Its actions were beyond its permitted discretion to deal with academic matters. It was negligent in not enforcing its conflict of interest policy. It had an obligation to do so. The university, through Dr. Taggart, knew of the conflict of interest and continued with the project in the face of it.

[171] But for that negligent action, the harm to Tara Tapics of not having the opportunity to continue with her research and possibly obtain her Ph.D. would not have occurred. I say “possibly” because, as Dr. Dowd pointed out, there are no guarantees that research will lead to the granting of a Ph.D.

Damages

[172] Tara Tapics claims that Dalhousie caused “economic loss, loss of opportunity, general and special damages and other losses, the particulars of which will be adduced at the hearing” (para. 22, Amended Notice of Application).

[173] At the hearing, brief reference was made to emotional distress, but I find there is no evidence to support such a claim at law. Tara Tapics was upset by the termination of her research on leatherback turtles, but very quickly went on to begin research on right whales. The unfortunate end to that project is detailed in the earlier Court of Appeal decision.

[174] Dalhousie, in its Notice of Contest, says Tara Tapics suffered no compensable loss (para. 8) and, in the alternative, says if there was some compensable loss (which it denies), the relief sought is “either too remote or is otherwise unavailable at law” (para. 9).

[175] To support her claim for damages, Tara Tapics filed an expert actuarial report of Jessie Shaw Gmeiner (Exhibit 7).

[176] In *Poirier v. Dyer*, [1989] N.S.J. No. 251 (S.C.), Davison, J. referred to Supreme Court of Canada decisions on actuarial evidence. From those decisions, the following comments can be gleaned:

1. the courts must realize that actuarial predictions are not as accurate as they may seem to be;
2. actuarial science deals with probabilities, not actualities;
3. actuarial evidence is to be used as a guide in assessing pecuniary loss;
4. the underlying assumptions must be carefully assessed.

[177] Davison, J. in para. 29 pointed out that “it is trite to say” the plaintiff must prove facts permitting the court to assess damages. That decision was cited with approval in *Roemer v. Griffin*, 1999 CarswellNS 434 (S.C.). In that case, the court found there was no evidence to support a portion of the Gmeiner report (para. 23).

[178] On the subject of experts’ reports in general (not only actuarial reports), the Court of Appeal in *R. v. Keats*, 2016 NSCA 94, referred to *R. v. Lavallee*, [1990] S.C.R. 852, where Wilson, J. summarized the principles with respect to admissibility and weight of expert opinion. In cases where the expert has relied “on information not otherwise proven in court”, one of the principles is that:

Before any weight can be given to an expert’s opinion, the facts upon which the opinion was based must be found to exist (para. 83, *Keats*).

[179] The report claims losses of \$247,422 or \$243,502 depending upon the assumed duration for Tara Tapics to complete her doctorate of either four or five years respectively (December 2014 or December 2015).

[180] In arriving at those projected losses, Ms. Gmeiner calculated a loss of earning capacity based on a four year time frame: Tara Tapics would have completed her doctorate by the end of 2014 at age 38.

[181] Ms. Gmeiner also used a five year time period for completion based upon a Statistics Canada document noting that “the average time for completion of a doctoral degree was 5 years, 9 months”.

[182] Ms. Gmeiner used data from the 2011 National Household Survey (NHS) which shows income levels in 2010 for females with a doctorate. For ages 35 to 39 the earnings were \$63,204. However, she noted university professors earned more: \$74,529. She then adjusted the 2010 (all occupations) figure of \$63,204 by 14.0 percent to arrive at \$72,058.

[183] Based upon Tara Tapics’ age in December 2014, 38.81 years rounded to 39, Ms. Gmeiner calculated Tara Tapics’ income to be \$74,983 on attainment of her doctorate. From that amount she deducted Tara Tapics’ stipend of \$17,033 resulting in a past loss for 2015 of \$57,950. She also assumed Tara Tapics would

receive the stipend in 2016 and 2017 (the anticipated date for completion of her doctoral studies at the University of Sherbrooke).

[184] Assuming retirement at age 65, Ms. Gmeiner calculated the present value of Tara Tapics' future loss to be \$169,179; that is total past and future loss of \$277,129.

[185] Alternatively, using a five year period for completion of her doctorate at Dalhousie (December 2015), Tara Tapics' income stream commencing in 2016 would, according to Ms. Gmeiner, result in future income loss of \$223,209, after deducting the \$17,033 stipend for a three year period.

[186] Although her report refers to certain expenses Tara Tapics incurred, these are not in evidence and therefore not proven. They are moving expenses of \$2,034 and "tuition and related expenses" at Dalhousie totalling \$18,259. The claims therefore can be only for past and future earnings loss, \$227,129 or future loss of \$223,209.

[187] Dalhousie says there is no evidence of the value of a Ph.D. in oceanography in the marketplace or related job prospects at the relevant times.

[188] Exhibit 8 is a Statistics Canada research paper on "Doctoral Graduates in Canada: Findings from the Survey of Earned Doctorates, 2004/2005". In it, at p.

30, is a Table showing average length of time to complete a doctorate in various fields. For biological sciences, the average time is 68 months. This is more consistent with the five year, nine month period to which Ms. Gmeiner referred. However, she did not explain why she used four and five years except to say on cross-examination that the completion time for social sciences (not biological sciences) was longer.

[189] Also on cross-examination, Ms. Gmeiner admitted the salary figures she used were not starting salaries but salaries for all females at the ages referred to.

[190] Ms. Gmeiner was also referred to a Statistics Canada profile of the labour market for students graduating in 2009-2010 (Exhibit 9) for a four year period following graduation. She said on cross-examination that she did consider the possibility that some students did not have fulltime jobs and pointed out that the report referred to only one cohort.

[191] In *Lam, supra*, Koehnen, J. referred to the difficulties the court has in determining damages for the inability to complete a Ph.D. He referred to the uncertainties, including whether Mr. Lam would have received a Ph.D. and what sort of employment he would have obtained.

[192] These are uncertainties which make a damage claim difficult to address.

Difficult does not mean impossible. I have concluded that Dalhousie breached its duty of care to Tara Tapics and breached its contract with her. She lost 18 months of effort on the project and that loss must have a value, although it may be difficult to calculate.

[193] Ms. Gmeiner calculates the delay in completion and delay in entering the job market over Tara Tapics' future working career. The assumptions she made are problematic:

1. completion of a Ph.D. at Dalhousie in December 2014 or even 2015;
2. immediately finding fulltime employment;
3. starting salary versus average salary of all females with a Ph.D.
4. marketplace for Ph.D.s in oceanography;
5. continuation of fulltime employment to retirement at age 65; and
6. treating the claim as one for loss of earning capacity over Tara Tapics' career.

[194] Whether Tara Tapics would have attained a Ph.D. in 2014 or 2015, she lost the opportunity to do so, having spent 18 months working towards that goal. Tara Tapics lost the opportunity to obtain her Ph.D. from Dalhousie and suffered a delay

of 18 months. I use the date of December 2015 as the possible completion date of Tara Tapics' Ph.D. I base this upon:

1. the delays encountered in setting a date for the qualifying exam summary, finally set for May 28, 2012 but originally set for February 2012;
2. proposal to be done Spring 2012; draft prepared June 2012;
3. time to complete M.Sc. in May 2009, commenced Fall 2003.

[195] Had Tara Tapics commenced fulltime employment in early 2016, her income would not, in my view, have immediately been \$74,983, the average earning for all Ph.D. graduates at age 39. Many contingencies affect that income. Accordingly, I discount that income to allow for a lower starting income. The average income of \$74,983 presupposes some higher and some lower earnings. I conclude a starting income of \$65,000 is within the range.

[196] Another contingency is the possibility she would not have immediately found fulltime employment. It must also be remembered that this claim is for loss of the opportunity to complete the Ph.D. and begin to earn an income. It may not have occurred. A further discount in my view must be applied.

[197] Eighteen months income at \$65,000 per annum is \$97,500. The loss of the opportunity to earn that income over that period, in my view, results in a loss of half that amount, or \$48,750.

[198] In arriving at that figure, I acknowledge the possibility that fulltime employment might not be found immediately. I also acknowledge that, on the other hand, the delay in the possibility of earning that income will follow Tara Tapics throughout her career, although there are no guarantees of increases in earning throughout one's career except where collective agreements may provide for annual increases.

Costs

[199] Tara Tapics has been successful in her claim. If the parties cannot agree on costs, I will accept written submissions by June 30.

Hood, J.