

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA

Citation: Power v. Centre for Arts and Technology, 2010 NSSM 8

Date: 20100302
Claim: SCCH 320104
Registry: Halifax

Between:

Trevor Power

Claimant

v.

TEC The Education Centre Inc, cob as Centre for Arts and Technology--Halifax

Defendant

Adjudicator: W. Augustus Richardson, QC

Heard: January 12, 2010 in Halifax, Nova Scotia.

Appearances: David G. Coles, QC, Tony Amoud, for the Claimant
Thomas P. Donovan, QC, and Ashley Dunn, for the Defendant

By the Court:

[1] In September 2009 the claimant Trevor Power was a student at the Centre for Arts and Technology, a school operated in Halifax, Nova Scotia by the defendant TEC The Education Centre Inc (“the School”). On September 9th Mr Power was expelled from the School. He says that expulsion was wrongful. He claims the return of his tuition, totaling \$15,649.85.

[2] I heard the evidence of Mr Power. I also heard the evidence of Leanne McDow, Cara Gammon and Tristan Sowards, all of whom were students at the School, on behalf of the claimant. On behalf of the defendant, I heard the evidence of Joanne Leavitt, the School’s Education Director, and Jason Spares, program director at the School, and Jamie Hartling, the School’s Campus Director. A number of documents were also entered as exhibits.

[3] The defendant describes itself as “a national student-centered college, focused on regional excellence that prepares students to achieve their personal best in their career and in

life.” Its vision is to position itself “to be Canada’s premier training institution focused on entertainment and information technologies:” Ex. C2, Student Handbook, p.4.

[4] In 2008 Mr Power was working for Aliant. He was bored and looking for a career change. He decided to quit and pursue his interest in graphic design. He investigated his options and settled on the School as providing the best fit between his interests and the education being offered. The total cost of the program offered by the School over the course of approximately 18 months was in the range of \$22,000.00. Mr Power applied for a student loan, as well as using some of he and his wife’s savings to pay the tuition.

[5] On Mr Power’s first day at school he and the other students in his course received two documents at the same time:

- a. the “Student Handbook:” Ex. C2, and
- b. a “Student Contract:” Ex. C1.

[6] Mr Power, his fellow students and the School staff present reviewed and discussed the two documents. Mr Power then signed the Student Contract. The start date for the program was September 29, 2008. The end date was April 6, 2010. The contract specified and described the courses that would be provided by the School. The total for tuition and fees was \$20,989.85. Books and supplies brought the total to \$21,439.85.

[7] Under “Instructions to Students” the Student Contract noted that it was required by the *Private Career Colleges Regulations Act* to provide the following to any student *before* the contract was signed:

- a. an outline of the content of the program;
- b. a breakdown of the duration of the program;
- c. a program cost breakdown; and
- d. “a copy of the college’s policies, rules and regulations, and a copy of the Tuition Refund Policy detailed in the General Regulations of the *Private Career Colleges Regulations Act*.”

[8] Section 4 of the Student Contract contains a “declaration” on the part of the School that it had provided the student (*i.e.* Mr Power), before signing the contract, with, *inter alia*, “a copy of the college’s policies, rules and regulation.”

[9] A review of the Student Contract satisfies me that the first three requirements were met or satisfied by the Student Contract itself, inasmuch as it contained an outline of the program’s content, duration and cost. The Student Contract also contained, as Schedule “A”, the Tuition Refund Policy.

[10] What is at issue however is whether the School provided Mr Power with “a copy of the college’s policies, rules and regulations” or, if it did, what those “policies, rules and regulations” were. In particular, the question is whether there were “policies, rules and regulations” that governed the conduct of a student at the School.

[11] The Student Contract itself contains little regarding student conduct, other than a term that unexplained or justified absences of more than 15 days in total “are grounds for dismissal;” and that students were required to maintain certain minimum course work standards in order to complete the program.

[12] Under the Tuition Refund Policy, which is Schedule “A” to the contract, clause 8 provides as follows:

“Where an operator of a Private Career College dismisses a student and the operator satisfies the Minister that the dismissal is for just cause, the operator of the Private Career College may retain a portion of the fees calculated in the following manner:

- (a) the student registration fee referred to in Section 1;
- (b) the proportion of the tuition installment paid that the part of the program taken to the date of dismissal bears to the part of the program that is covered by the paid installments; and
- (c) 10% of the difference between the tuition fee for the whole program and the amount calculated under clause (b).”

[13] The only other document provided to the students and, in this case, Mr Power was the Student Handbook. It is a 20-page document that covered a number of areas of student life at the School, including such things as attendance, assignments and deadlines, plagiarism, acceptable

email, internet and computer hardware and software use, smoking and harassment policies. I will return to this document later.

[14] Mr Power began his studies at the School. Within the first few weeks of commencing his classes he became dissatisfied with a number of the courses that he was being taught under the contract. He was not the only student to have concerns. Many of the other students were also upset. It is not necessary for the purposes of this decision to detail these concerns, other than to say that they related to the quality and content of some of the courses, and the performance and abilities of at least one of the instructors. I am also satisfied on the evidence of all the witnesses, including those on behalf of the School, that there were indeed problems with the course content. The problems were sufficiently serious to cause the School to eventually offer the students with at least two additional courses—without charge—as a form of “make up” for these problems. This offer however came too late for Mr Power, who in the meantime had been expelled from the School.

[15] Mr Power raised these concerns with the School. They were initially verbal. He was assured from time to time that things would improve, which they would, momentarily, before becoming bad again. In April 2009 he sent an email to one of his instructors voicing his concerns about what he perceived to be a lack of quality or competence with the teaching: see Ex. C3. He wrote to Ms Leavitt on July 30, 2009 to express similar concerns: see Ex. D15, Tab 3. Ms Leavitt asked for specifics of his complaints or concerns and he provided them via email on August 25, 2009: Ex. D15, Tab 5. She also indicated that she had intended to meet with Mr Hartling that day but that he was sick and she would try to meet with him later.

[16] Ms Leavitt met with Mr Power on August 31. He told her that he was so frustrated with the course and what he perceived to be a lack of response on the School’s part that he wanted to be relieved of any further tuition obligations: see Ex. D15, Tab 7. (Tuition under the contract was payable in installments and at this point Mr Power still had a few installments to pay.) Ms Leavitt prepared minutes of this meeting and asked Mr Power to sign them. She said that she would meet with Mr Hartling to discuss this proposal and a resolution to Mr Power’s concerns once Mr Power signed the minutes: Ex. D15, Tab 6.

[17] Mr Power signed the minutes on September 2nd. He asked when he could meet. He was told by Ms Leavitt that she would try to set up a meeting with him and Mr Hartling. A meeting was scheduled for September 8th but at the last minute it turned out Mr Hartling had a conflict in his schedule and could not attend. The meeting was put off.

[18] I pause here to note that notwithstanding Mr Hartling's inability to attend the scheduled meeting Ms Leavitt was able to prepare a letter dated September 8, 2009 indicating that:

- a. she was still uncertain as to what Mr Power was complaining about,
- b. the School had made changes, and
- c. no refund or discount of tuition would be offered to him: Ex. C9.

[19] The letter was not however provided to Mr Power on that date.

[20] What happened instead was this.

[21] Mr Power was by the cancellation of the September 8th meeting very frustrated. He felt his complaints had not been addressed. The meetings to discuss his concerns and his proposed resolution kept getting put over: see Ex. C7.

[22] At about 1:15 pm on September 8th, a few hours after he had been advised by Ms Leavitt that the meeting with Mr Hartling had again been put off, he was in class with his fellow classmates. The instructor had stepped out of the classroom. Mr Power looked into the hall and saw Mr Spares, the School's program advisor, taking what appeared to Mr Power to be two prospective students through the building on a tour. Mr Power left the classroom and interrupted Mr Spares. As it was reported to Mr Hartling he said to the two prospects words to the following effect: "they shouldn't come here, it's a horrible school, a waste of money and that they should go to the NSCC:" see Ex. D15, Tab 11. Mr Power then went back into the classroom.

[23] There was conflicting evidence as to what if anything Mr Power said or did when his instructor returned to the classroom; or what if anything Mr Power said to his classmates. It is not in my view necessary to resolve the conflict.

[24] This incident was reported to Ms Leavitt and Mr Hartling. On September 9th the latter wrote a letter to Mr Power expelling him from the School: Ex. C8. Mr Hartling referred to the incident in the hallway, and to what he understood had been said by Mr Power to Mr Dixon (the instructor in the classroom). He stated that "[u]nder the terms of your student contract, section attached titled 'Cause for Dismissal and/or Suspension,' reasons for this action include:

Dismissal and/or suspension of a participant from any program or course at the college will be at the discretion of the Campus Director in consultation with Instructors, administrative

staff and others as necessary:” Ex. C8 (emphasis in original). The “attached” section was Policy S-116, which contained the following relevant passage:

- (2) Student behaviour which will result in expulsions includes but is not limited to:
 - (f) Representing the school, its employees or its students in a demeaning or negative fashion or to otherwise negatively affect the reputation of the school, its staff or its students.

[25] On September 21st Mr Power appealed the decision to expel him, pursuant to appeal provisions set out in the Student Handbook: Ex. C10. The appeal was denied on September 18th: Ex. D15, Tab 13.

[26] Mr Power then commenced this claim by way of Notice of Claim filed November 20th, 2009. He claimed that the expulsion “was without just cause; that the Defendant acted without proper authority, fundamental breach of the contract, and contrary to the claimant’s fundamental freedom of expression rights.” He sought a return of the money he had paid to date together with general damages “representing the inconvenience, time wasted by the Claimant on the program.”

[27] In its defence the School denied that it had committed any breach. It relied upon Policy S-116 and the Student Handbook, saying that his approach to the prospective students in the hallway constituted “unacceptable behaviour” under both the Student Handbook and Policy S-116.

[28] I start with the perhaps trite observation that the parties were bound by a contract and its terms and conditions. The question on the evidence and submissions of the parties concerns the content of the contract.

[29] In my view—and I so find—the Student Contract and the Student Handbook contain the only terms and conditions relevant to this claim. Neither contain the terms or conditions described by the expulsion letter as being part of the “student contract.” Neither contain the wording of Policy S-116. And in my opinion the School cannot rely upon Policy S-116 to justify its expulsion of Mr Power.

[30] First and foremost, Policy S-116 was not given to the students at the time they signed the Student Contract. The contract was a document drafted by the School. It expressly provided that

“a copy of the college’s policies, rules and regulations” of the School had been provided to the students prior to their execution of the contract. The only document given to them was the Student Handbook. The School’s witnesses acknowledged at the hearing that Policy S-116 was part of an internal policy book that was confidential to the school and its staff: it was not provided to nor was it accessible by students. If the School wanted Policy S-116 to be part of the Student Contract it should have given it to the students before they signed the contract, as was specified in the contract itself. If the School had done that the students would have had a chance to discuss the policy and to decide whether or not they were prepared to attend the school with it in place. But the School did not do that. Policy S-116 accordingly cannot and did not form part of the “policies, rules and regulations” that were binding on students who signed the Student Contract.

[31] The defendant then is limited in my view to the Student Contract and the Student Handbook. There is nothing in my view relevant to the facts of this case in the Student Contract. The only provision that comes close is that cited in para. [12] above. However, that applies only where there is “just cause” and, as discussed below, there was not “just cause” for the expulsion in this case.

[32] What then about the Student Handbook?

[33] There is a section titled “Expulsion.” It provides as follows:

“Through the duration of the course, there may be students who abuse the policies and are a detriment to the learning environment. Students may be required to leave their course of studies during the training year. Expulsions could be the direct result of but not limited to: absenteeism, marks, physical/mental abuse or conduct, or distributing or downloading pornographic material using Centre for Arts and Technology bandwidth or computers. Students removed from their program are still responsible for tuition for that quarter.”

[34] In my opinion this clause is not broad enough to cover what happened. Mr Power was expelled in essence because he “badmouthed” the School on school property during school time to prospective students. Such conduct does not constitute “absenteeism, marks, physical/mental abuse or conduct, or distributing or downloading pornographic material .” I acknowledge that the section says that the power to expel is not limited to such conduct. But the power to expel cannot be limitless (at least without express wording to that effect). It cannot be arbitrary. It must in my view be interpreted as being a power to expel *for just cause*.

[35] That then brings us to the question of whether “just cause” could include the expression of an opinion concerning the value of the education being provided by the School.

[36] A determination of what “just cause” might include will be influenced by the examples used by the drafter (here, the defendant). The examples are all serious. Two (absenteeism, marks) relate to the student’s ability to learn. The others (abuse and pornography) relate to quasi-criminal (if not criminal) or morally reprehensible conduct. None relate to the expression of a negative opinion concerning the School’s program to another person.

[37] There is no doubt that the parties to a contract can expressly agree to limit one another’s power to express certain opinions or provide certain information. Examples of such agreements may be found in confidentiality agreements. The common law and statute law provide other types of restrictions, such as those found in libel and defamation law. But such restrictions—whether express or implied—must be proved and, once proved, interpreted strictly.

[38] But here there is no express limitation relating to the expression of opinions concerning the school’s program to others. Nor do I see how it would be possible to imply such a provision. An implied term is one that an objective observer, if asked at the time the contract was entered into, would have said “of course the parties would agree to such a term.” But in this case the answer would not be easy. Would the restriction apply to opinions expressed to family or close friends? Ms Leavitt in cross agreed that it would not. If not, then at what point and under what circumstances *would* it apply? To pose the question this way is to reveal the complicated drafting exercise that would be required if I were to imply a limitation—an exercise that goes far beyond what a court can “imply” in a contract. This is not to say that the parties could not have come up with such an express restriction—indeed, one perhaps even like that in Policy S-116. But it is for the parties and not this court to draft such a restriction.

[39] Even if I was satisfied that the contract contained an express or implied term permitting the School to expel a student for such an expression I am equally satisfied that such a power would in the usual course have to be exercised sparingly and only after intermediate disciplinary steps had been taken to bring home to the student the seriousness with which the School took the matter. Expulsion of a student is a form of educational capital punishment. Mr Power lost a year of his life with nothing to show for it. He had no diploma or certificate. He lost his tuition. His outburst, if arguably not appropriate, was nevertheless understandable in the circumstances, given the School’s somewhat haphazard response to his complaints and indeed, its own acknowledgment that there had been some problems with the program. If then discipline was

appropriate it ought not to have resulted in expulsion for a first offence. In jumping to the final resort as it did the School acted arbitrarily and without just cause and so breached its contract with Mr Power.

[40] I am satisfied then that the defendant fundamentally breached its contract with Mr Power. It had no contractual power to expel him for expressing an opinion as to the merits of its program to another person, whether a student or a prospective student. In doing so it deprived him of the entire benefit of the contract. He lost all his tuition. He lost a year of his life and his studies.

[41] Mr Power is accordingly entitled to the return of his tuition, and to damages.

[42] As to the amount of that refund of tuition, at the hearing there was some discussion and evidence concerning the fact that some part of this tuition was paid by way of a student loan, and that the lender would have to be repaid directly. Given this situation I leave it to the parties to agree on the appropriate payment to be made and to whom. I will retain jurisdiction to deal with any dispute as to this part of my judgment.

[43] I note as well that there was also evidence that Mr Power received a small payment after the claim was issued, which payment represented the value of the two classes the defendant put on after he left in order to deal with the problems he (and other students) had identified. This payment represents a credit to be deducted from the amount otherwise owing to Mr Power or the lender.

[44] As to damages, as I have said Mr Power lost a year of his life. This is a year that had he not attended the School he could have been working and earning an income. It is a year that resulted and can result in no diploma or certificate in his chosen field. If he wants to get that he will have to attend another school and spend another year (if not more) acquiring that diploma or certificate. In my view general damages are appropriate. The jurisdiction of this court is limited to \$100.00, a figure that in the circumstances I consider an appropriate award.

[45] The claimant will also have costs, which I fix at \$200.00.

[46] I will make an order in light of the above.

Dated at Halifax, this 2nd day of March, 2010

Original: Court File)
Copy: Claimant)
Copy: Defendants)

W. Augustus Richardson, QC
ADJUDICATOR