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PRIDGEN V. UNIVERSITY OF CALGARY, 2012 ABCA 139

Greg Harding Q.C.

Area of Coverage - [Administrative](#)

Two students found guilty of non-academic misconduct by university on account of Facebook postings derogatory towards instructor. On judicial review, university decision quashed by Alberta Court of Queen's Bench under administrative law principles (unsupportable findings and inadequate reasons). Additional finding that *Charter* applies to student discipline process at Alberta universities, and that Charter right of the two students to freedom of expression engaged and breached. Court characterized university as an "agent of the government" and as engaged in the "implementation of specific government policy" in providing accessible post-secondary education services under Alberta's Post-Secondary Learning Act. Student discipline part of delivery of post-secondary education. *Charter* application via s. 32 of the *Charter* attracted.

On appeal to Alberta Court of Appeal: quashing of discipline decision upheld on administrative law grounds only. Standard of review was reasonableness. Reasons supporting discipline decision were inadequate as failed to demonstrate how misconduct flowed from the evidence heard -- no injury established or proven (and not to be inferred).

Majority held not necessary to decide appeal by reference to *Charter*.

Minority decision found *Charter* specifically applies to student discipline matters and found a breach of students' *Charter* right to freedom of expression. *Charter* applicability attracted under s. 32 as student discipline constitutes an exercise of "a power of statutory compulsion" expressly authorized in governing universities legislation. Minority decision also commented in obiter that the finding in court below that *Charter* applies where universities act as government agents was a "logical approach"; as per SCC finding in Eldridge. SCC decision in McKinney distinguished. However, application of *Charter* to disciplinary proceedings does not mean university loses its autonomy or independence from government, particularly in relation to its core academic functions.

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COMMENTARY:

Many media reports notwithstanding, the decision of Alberta's Court of Appeal does not establish that "the Charter applies to universities". Justice Paperny's findings on the applicability of the Charter were not adopted by Justices O'Ferrall and McDonald. On this point, her decision stands as a non-binding minority decision. Likewise, the decision of Justice Strekaf in the Court of Queen's Bench (i.e. the finding of general Charter applicability to the delivery of post-secondary education at Alberta universities) has been displaced by the finding of the Court of Appeal majority that it was not necessary to decide the judicial review application brought by the students by reference to the Charter.

On the other hand, the reasoning of Justices Paperny and Strekaf will likely be argued as "persuasive" for other Alberta courts in future cases.

Two recent Ontario Superior Court decisions (Lobo v. Carleton University; Telfer v. The University of Western Ontario) consider and reject arguments that Charter rights extend to student discipline proceedings at Ontario universities. Each acknowledges but distinguishes the Queen's Bench level decision in Pridgen on the basis "Alberta's legislation is unique".

Query the extent to which any "unique" intention on the part of the Alberta government is reflected in Alberta's universities legislation i.e. to treat Alberta universities distinctly from how other provincial universities are treated and regarded by other provincial governments.

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