

AMENDED THIS Dec 21/07 PURSUANT TO
MODIFIÉ CE CONFORMÉMENT A

RULE/LA RÉGLE 26.02 (A)

Court File No.: 07-CV-334131CP

THE ORDER OF
L'ORDONNANCE DO
DATED / FAIT LE

ONTARIO
SUPERIOR COURT OF JUSTICE

REGISTRAR GREFFIER
SUPERIOR COURT OF JUSTICE COUR SUPÉRIEURE DE JUSTICE

BETWEEN:

AMANDA HASSUM and DANIEL ROFFEY

Plaintiffs

-and-

THE CONESTOGA COLLEGE INSTITUTE OF TECHNOLOGY AND
ADVANCED LEARNING and THE GEORGE BROWN COLLEGE OF APPLIED
ARTS AND TECHNOLOGY

Defendants

A Proceeding under the Class Proceedings Act, 1992

AMENDED STATEMENT OF CLAIM

TO THE DEFENDANTS:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff(s). The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a Statement of Defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the Plaintiff(s) lawyers or, where the Plaintiff(s) do(es) not have a lawyer, serve it on the Plaintiff(s), and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this Statement of Claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your Statement of Defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a Statement of Defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your Statement of Defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

IF YOU PAY THE PLAINTIFF'S CLAIM, and \$500.00 for costs, within the time for serving and filing your statement of defence, you may move to have this proceeding dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the plaintiff's claim and \$100.00 for costs and have the costs assessed by the court.

Date: June 5/2007

Issued by A. Amissimova
Local Registrar

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Attn : Le Conseil des
Directeurs
La Cité collégiale
801, promenade de
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Ottawa (Ontario) K1K 4R3

CLAIM

1. The Plaintiffs claim on their own behalf and on behalf of the members of the class of persons described at paragraph 5 below:
 - a) an order certifying this proceeding as a class proceeding and,
 - i) appointing them as representative plaintiffs for the Class as defined below, and
 - ii) appointing the named defendants as representative defendants for the Defendant Class of Ontario Colleges, as defined below;
 - b) a declaration that the Ontario Colleges have violated the Minister's Binding Policy Directive respecting ancillary fees, as defined below, by charging tuition-related ancillary fees during the class period;
 - c) a declaration that the levying and collection of such tuition-related ancillary fees by the Ontario Colleges are *ultra vires*, illegal and otherwise proscribed;
 - d) a declaration that the Defendants and Defendant Class of Ontario Colleges hold such tuition-related fees in constructive trust for the benefit of Class Members;
 - e) a declaration that the Ontario Colleges are liable to the Plaintiffs and the other Class Members for damages caused by their levying of the illegal fees;
 - f) general damages for unjust enrichment, breach of contract, negligence and negligent misrepresentation in the sum of \$200,000,000.00;
 - g) in the alternative to sub-paragraph f) above, recovery of all tuition-related fees paid by Class Members during the class period on the grounds of payment of monies under mistake of fact;

- h) prejudgment interest and postjudgment interest pursuant to the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
- i) the costs of this action on a substantial indemnity basis, together with applicable Goods and Services Tax thereon in accordance with the *Excise Tax Act*, R.S.C. 1985, c. E-15, as amended; and,
- j) such further and other relief as this Honourable Court may deem just.

NATURE OF THIS ACTION

2. This action arises out of the levy and collection of unlawful tuition-related ancillary fees by Ontario post-secondary colleges. The Ontario government, which is responsible for regulating Ontario post-secondary colleges, has prohibited the imposition of tuition-related ancillary fees on Ontario college students. Nevertheless, Ontario post-secondary colleges have imposed and *continue to impose such prohibited fees*. The proposed Class Members described below are present or former students of Ontario post-secondary colleges. The levy and collection of tuition-related ancillary fees has caused damages to the proposed Class Members.

THE PARTIES

Plaintiffs and the Identity of the Plaintiff Class

3. Amanda Hassum is 20 years old and is a resident of Cambridge, Ontario. Amanda has attended the Doon Campus of the Conestoga College Institute of Technology and Advanced Learning (“Conestoga College”) from September, 2005 to the present, where she is enrolled as a full-time student in Conestoga College’s Advertising program.

4. Daniel Roffey is 26 years old and is a resident of Toronto, Ontario. Daniel attended the George Brown College of Applied Arts and Technology (“George Brown”) from September, 2004 to April, 2006, where he was enrolled as a full-time student in George Brown College’s Early Childhood Education program which was offered in collaboration with Ryerson University. Daniel graduated from his program in April, 2006.

5. Amanda Hassum and Daniel Roffey bring this action pursuant to the *Class Proceedings Act, 1992*, S.O. 1992, c.6, on their own behalf and on behalf of the following:

All persons who are or were students at one or more of the members of the Defendant Class of Ontario Colleges and enrolled in courses or programs of study that were eligible and reported for funding under the Ontario “general purpose operating grant, from April 1, 2003 to the date of the motion for certification of this action as a class proceeding (“Class Members”).

The Representative Defendants and the Defendant Class of Ontario Colleges

6. The Plaintiffs name the Defendants Conestoga College and George Brown College as representative defendants to defend this action on their own behalf and on behalf of the following Defendant Class of Ontario Colleges:

All Ontario postsecondary colleges that have offered courses or programs of instruction eligible and reported for funding under the Ontario “general purpose operating grant”, and comprising,

The Algonquin College of Applied Arts and Technology;
The Cambrian College of Applied Arts and Technology;
The Canadore College of Applied Arts and Technology;
The Centennial College of Applied Arts and Technology;
Collège Boréal d'arts appliqués et de technologie;
Collège d'arts appliqués et de technologie La Cité
collégiale;
The Conestoga College Institute of Technology and
Advanced Learning;
The Confederation College of Applied Arts and
Technology;
The Durham College of Applied Arts and Technology;
The Fanshawe College of Applied Arts and Technology;
The George Brown College of Applied Arts and
Technology;
The Georgian College of Applied Arts and Technology;
The Humber College Institute of Technology and
Advanced Learning;
The Lambton College of Applied Arts and Technology;
The Loyalist College of Applied Arts and Technology;
The Mohawk College of Applied Arts and Technology;
The Niagara College of Applied Arts and Technology;
The Northern College of Applied Arts and Technology;
The St. Clair College of Applied Arts and Technology;
The St. Lawrence College of Applied Arts and Technology;
The Sault College of Applied Arts and Technology;
The Seneca College of Applied Arts and Technology;
The Sheridan College Institute of Technology and
Advanced Learning;
The Sir Sandford Fleming College of Applied Arts and
Technology.

(collectively, together with the named Defendants, the “Defendant
Class of Ontario Colleges” or “Ontario Colleges”)

7. The Ontario Colleges are established pursuant to s. 2(1) of the *Ontario Colleges of Applied Arts and Technology Act, 2002*, S.O. 2002, Schedule F, as amended (“*OCAAT Act*”), and s. 2(1) of the associated regulations, O. Reg. 34/03, amended to O. Reg. 354/05 (“*OCAAT Regulations*”). Pursuant to ss. 2(1.1) and (4) of the *OCAAT Act*, each Ontario College is a corporation without share capital

consisting of its board of governors, and each is an agency of the Crown. The objects of the Ontario Colleges are to offer a comprehensive programs of career-oriented, post-secondary education and training to assist individuals in finding and keeping employment, to meet the needs of employers and the changing work environment and to support the economic and social development of their local and diverse communities.

8. Each of the Ontario Colleges offers courses and programs of instruction that are eligible and reported for funding under Ontario's "general purpose operating grant". The general purpose operating grant is the primary source of provincial government funding for the Ontario Colleges. The general purpose operating grant is distributed to the Ontario Colleges in proportion to each Ontario College's reported enrolment in courses and programs of instruction eligible for funding.

BACKGROUND

The Ministry's Binding Policy Directive

9. Pursuant to ss. 4(1) and (2) of the *OCAAT Act*, the Minister of Training, Colleges and Universities (the "Minister") is authorized to issue policy directives to the Ontario Colleges and such policy directives are binding on the Ontario Colleges.
10. On or about April 1, 2003, as part of the Ministry of Training, Colleges and Universities' Colleges of Applied Arts and Technology Policy Framework, the Ministry issued the Minister's Binding Policy Directive entitled "Tuition and Ancillary Fees" (the "Binding Policy Directive"). The Binding Policy Directive incorporates by reference a second document, the Ministry's Operating Procedure

entitled "Tuition and Ancillary Fees Reporting" (the "Operating Procedure"). The Operating Procedure was also issued on or about April 1, 2003. Both documents were revised on or about September 1, 2004.

11. The preamble to the Binding Policy Directive, entitled "Purpose and Application", provides in relevant part as follows:

The board of governors of a college, as a non-share corporation, is provided with incidental powers set out in the *Corporations Act*, including the power to establish fees.

The *Ontario Colleges of Applied Arts and Technology Act, 2002* authorizes the Minister to limit the powers that may be exercised by a college under the *Corporations Act* under such conditions as may be prescribed. The Minister of Training, Colleges and Universities may also issue policy directives that are binding on colleges in relation to the manner in which they carry out their objects or conduct their affairs.

This binding policy directive applies to all colleges of applied arts and technology. Except where noted, the directive outlines parameters for establishing tuition fees and related requirements for activity eligible and reported for funding through the college general purpose grant. The binding policy directive does not apply to ministry-funded apprenticeship programs, except for the post-secondary component of the co-op diploma apprenticeship program. In addition, the binding policy directive addresses ancillary fees, tuition fee refunds, accountability and reporting requirements, and the allocation of revenue from tuition fee increases to quality improvements and student assistance.

12. In relevant part, the Binding Policy Directive and the Operating Procedure:
 - a) directed the Ontario Colleges to establish a "Tuition Fee Freeze" for school years 2004-2005 and 2005-2006; and,
 - b) prohibits the Ontario Colleges from levying ancillary fees for any tuition-related materials or services in respect of any course or program of instruction eligible and reported for funding under the Ontario "general

purpose operating grant”.

The “Tuition Fee Freeze” and prohibition on tuition-related ancillary fees are described more particularly below.

The 2004 – 2006 Tuition Fee Freeze

13. In 2003, Ontario and the Ministry announced a tuition fee freeze (“Tuition Fee Freeze”) for post-secondary education in Ontario. The Tuition Fee Freeze was for two academic years, starting in 2004 and ending in 2006. The Operating Procedure describes the basic terms of the Tuition Fee Freeze, in part, as follows:

According to the revised Minister’s Binding Policy Directive on Tuition and Ancillary Fees, regulated and additional cost recovery fees for programs of instruction and part-time activity that are eligible and reported for funding through the general purpose operating grant can not increase over the actual 2003-04 levels in any existing program during the tuition freeze period, 2004-05 through 2005-06.

The board of governors of a college may have approved increases in tuition for regulated-fee and additional cost recovery fee programs, which were to come into effect in the 2004-05 and 2005-06 academic years. Regardless of such board approvals or other institutional plans, increases are not permitted in regulated-fee and additional cost recovery fee programs during the two-year freeze period.

Prohibition of Tuition-Related Ancillary Fees

14. The Tuition Fee Freeze was accompanied by a prescribed set of Ministerial guidelines respecting the levying of additional, or “ancillary”, fees at the Ontario Colleges. As defined in the Binding Policy Directive and Operating Procedure, “ancillary fees” are “fees for items not covered by the tuition fees established for a course or program of instruction that students may be required to pay upon

enrolment”, and “compulsory ancillary fees” are “ancillary fees that a student is required to pay in order to enrol in or successfully complete any course or program of instruction eligible for general purpose operating grant support.”

15. As set out below, the Ministry’s policy guidelines respecting ancillary fees include an express or implied distinction between “tuition-related” and “non-tuition-related” materials and services.
16. The Binding Policy Directive and Operating Procedure prohibit the levying of tuition-related ancillary fees at the Defendant Ontario Colleges.
17. Paragraph M of the Binding Policy Directive provides as follows:

Colleges are not to establish additional fees for items considered to be covered by tuition fees for any programs and courses eligible and reported for funding through the general purpose operating grant. Acceptable categories of ancillary fees are identified in the operating procedure Tuition and Ancillary Fees Reporting. Boards of governors are to approve the fees to be established in each of the categories. [emphasis added]

18. The Operating Procedure expressly or impliedly provides that the Ontario Colleges may not establish ancillary fees for any items that are considered to be tuition-related.
19. Under the heading, “Ineligible Categories – Tuition-Related”, the Operating procedure identifies certain examples of tuition-related items that must be included in the tuition fee and may not be the subject of ancillary fees. Further, under the heading “Eligible Categories”, the Operating Procedure expressly

excludes “academic services such as library, computing and learning centre services” from the list of eligible categories of ancillary fees.

The Ontario Colleges Violated the Prohibition of Tuition-Related Ancillary Fees

20. Despite being bound by Ministerial directive not to levy tuition-related compulsory ancillary fees, during the class period each of the Ontario Colleges imposed one or more of the following compulsory fees on students enrolled in a course or program of instruction eligible and reported for funding under the general purpose operating grant:

- a) *Information Technology Fees (IT Fees)*: compulsory ancillary fees for Information Technology services and/or Information Technology infrastructure;
- b) *Lease or Purchase of Laptop Computers*: compulsory ancillary fees for the mandatory lease or purchase of laptop computers;
- c) *Lab Fees*: compulsory ancillary fees for supplies or equipment consumed or otherwise expended during mandatory laboratory work or instruction; and,
- d) *Library Fees*: compulsory ancillary fees for campus library services, infrastructure, acquisitions or other library-related operations or costs.

21. In or about July, 2006, the Ministry of Training, Colleges and Universities produced and publicly circulated a document entitled “Overview of Ancillary Fees”. It states in relevant part as follows:

Information Technology Fees

- Based on the annual CRALO ancillary fee survey, all twenty-four colleges are currently charging compulsory information

technology fees with fees ranging between \$70 and \$210 annually for full-time students. On average, IT fees represent 19% of total compulsory ancillary fees. A rough estimate of the revenue collected from IT fees based on 2005-06 College Financial Information System submissions is almost \$19 million system-wide. Despite the universal practice of charging the fees and despite being an important source of revenue, ancillary fees for IT are *not* currently an eligible fee.

- Information technology is similar to libraries or other academic services and is considered tuition-related and not an eligible item for which ancillary fees may be charged under the current policy.

[...]

Lab Fees

- Some colleges are charging laboratory fees for items that are consumed in the course of the lab such as gloves, syringes, etc. These items are ineligible under the current policy which clearly states that “Costs of consumable supplies and equipment and instruments not retained by the student” are not eligible items for which ancillary fees may be charged as they are considered tuition-related.

Library Fees

- Colleges have sought to introduce ancillary fees to support campus libraries. Library costs are ineligible since these costs are considered tuition-related, much like laboratory and shop costs.

Mandatory Lease of Laptop Computers

- Many college programs require students to lease laptops. The fees are considered “material” fees for an item that the student retains after he/she completes the course(s) and for which the college is acting as a broker since the institution does not realize net revenue for the laptops.
- The distinction between laptop leases and other IT fees needs to be clarified. The fees are significant and the Ministry regularly receives complaints particularly from students that already own laptops and question the need to purchase a second one.

22. The Plaintiffs plead that the ancillary fees listed in paragraph 20 above are tuition-related and therefore in violation of the Binding Policy Directive. As such they are proscribed, illegal and *ultra vires* the authority or power of the Ontario Colleges.

23. Each of the Plaintiffs was required to pay one or more of the proscribed, illegal and *ultra vires* ancillary fees listed in paragraph 20 above. For example, in July, 2006, Conestoga College delivered a "Student Fees Invoice" for the academic year 2006 – 2007 to Amanda Hassum. Of the total \$2,787.00 fees billed to and paid by Amanda, an amount of \$214.20, or just less than 8% of her total fees, was for a "Technology Enhancement Fee". The "Description of Fees" that accompanied Amanda's July, 2006 fees invoice described the Technology Enhancement Fee as follows:

This annual fee assists in offsetting the cost of providing Doon, Guelph, and Waterloo students with up-to-date computer equipment, software and services (for example access to email and the Internet).

The Description of Fees further provided that the Technology Enhancement Fee was applicable to full-time students of Conestoga College.

24. The fee statements provided to Daniel Roffey by George Brown College for the same 2005-2006 college year do not clearly state the nature, number and value of the ancillary fees paid by Daniel. Daniel's fee statements for 2005-2006 includes two "Admin. Fee-Post Sec." fees in the amount of \$106.50, for a total of \$213. The fee statements do not specify what programs, services and/or materials the \$213 "Admin. Fee-Post Sec." fee was applied to.

25. Notwithstanding the lack of clarity in the 2005-2006 fee statements provided to Daniel Roffey by George Brown College, in or about June, 2006 the Ministry of Training, Colleges and Universities produced and publicly circulated a document entitled "2005/2006 Full Time College Tuition/Compulsory Ancillary Fee Survey" which sets out the types and values of compulsory ancillary fees paid by full time students at the Ontario Colleges for the 2005-2006 college year. This document lists the following fees, among other fees, for George Brown College in 2005-2006:

- an "Info Tech'y/Technology" fee of \$110;
- a "Std Supp/Admin/Registration" fee of \$60; and,
- a "Grad" fee of \$43.

26. The Plaintiffs plead that some portion of the ancillary fees paid by Daniel Roffey were in respect of tuition-related materials or services and that the precise number and value of tuition-related ancillary fees charged to Daniel Roffey in 2005-2006 and in other years by George Brown College is within the exclusive knowledge of George Brown College and/or the Ministry of Training, Colleges and Universities.

27. The Plaintiffs plead that all Class Members were compelled to pay one or more of the proscribed, illegal and *ultra vires* ancillary fees identified in paragraph 20 above.

UNJUST ENRICHMENT

28. The Ontario Colleges have been unjustly enriched in an amount equal to all tuition-related ancillary fees collected from Class Members.

29. There is no juristic reason why the Ontario Colleges should be entitled to retain the benefit of such *ultra vires* and illegal or otherwise proscribed and impermissible fees.
30. The Plaintiffs plead that Class Members are entitled to an accounting and restitution of all tuition-related ancillary fees that they paid to the Ontario Colleges during the class period.

CONSTRUCTIVE TRUST

31. The Plaintiffs plead that the Ontario Colleges hold the proceeds of all tuition-related ancillary fees collected from Class Members during the class period in constructive trust for the benefit of Class members.

BREACH OF CONTRACT

32. The Plaintiffs plead that the Ontario Colleges' offers of admission to Class Members and Class Members' acceptances of admission gave rise to a contract between each Class Member and his or her respective Ontario College.
33. Additionally, or in the alternative, the Plaintiffs plead that the Ontario Colleges' invoicing of Class Members for tuition and ancillary fees and Class Members' payment of such invoices for tuition and ancillary fees gave rise to a contract between each Class Member and his or her respective Ontario College.
34. The Plaintiff's plead that each of the contracts referred to in paragraphs 31 and 32

above contained an express or implied term of “legality” to the effect that all fees charged to students were ~~leviable at law and not illegal~~ legal or otherwise permissible.

35. The Ontario Colleges breached the express or implied term of “legality” and “permissibility” by illegally collecting tuition-related ancillary fees from Class Members in breach of the Binding Policy Directive.
36. The Plaintiffs plead that Class Members are entitled to damages in the amount equal to the illegal or impermissible ancillary fees that they paid to the Ontario Colleges during the class period.

NEGLIGENCE

37. The Plaintiffs plead that the Ontario Colleges, as educational institutions, owed a duty of care to the Plaintiffs and other Class Members, as students, not to charge illegal or otherwise proscribed and impermissible fees.
38. The Plaintiffs plead that the Ontario Colleges breached this duty by charging the Plaintiffs and other Class Members tuition-related ancillary fees.
39. The Plaintiffs and other Class Members suffered damages as a result of the Ontario Colleges’ breach of duty in the amount of the tuition-related ancillary fees that they paid the Ontario Colleges.

NEGLIGENT MISREPRESENTATION AND OMISSION

37.40. The Plaintiffs plead that the Ontario Colleges are liable to Class Members for damages resulting from the Ontario Colleges' negligent misrepresentation, as described more particularly below.

41. The Plaintiffs plead that the Ontario Colleges, as educational institutions, owed a duty of care to the Plaintiffs and other Class Members, as students, not to charge illegal or otherwise proscribed and impermissible fees.

38.42. The Plaintiffs plead that the Ontario Colleges had special knowledge of what fees the Ministry permitted the Ontario Colleges to charge to students.

39.43. The Plaintiffs plead that the Ontario Colleges, in invoicing their respective students for tuition-related ancillary fees during the class period, impliedly represented to Class Members that said fees were legal or otherwise permissible.

40.44. The Plaintiffs plead that said implied representation was false and that they Ontario Colleges knew or ought to have known of the falsity of same.

41.45. The Plaintiffs plead that they and the other Class Members reasonably relied on the implied misrepresentation of the Ontario Colleges to their detriment by paying tuition-related ancillary fees to their respective Ontario Colleges during the class period.

42.46. The Plaintiffs plead that they and the other Class Members are entitled to damages in the amount of tuition-related ancillary fees that they paid to the Ontario Colleges during the class period.

RECOVERY OF MONIES PAID UNDER MISTAKE OF FACT

43.47. In addition, or in the alternative, the Plaintiffs plead that they and the other Class Members paid the tuition-related ancillary fees during the class period out of an honest but mistaken belief that said fees were legitimately leviable by the Ontario Colleges.

44.48. The Plaintiffs plead that this honest mistaken belief arose from the failure of the Ontario Colleges to disclose the fact that said fees were in breach of the Binding Policy Directive.

45.49. The Plaintiffs plead that on the basis of their honest but mistaken belief they and the other Class Members paid said fees out of the honest and reasonable misapprehension that they were obliged to do so as a condition of enrolling in their respective Ontario Colleges.

46.50. The Plaintiffs plead that the Ontario Colleges have no legal, equitable or moral right to retain the benefit of said fees.

47.51. Consequently, the Plaintiffs plead that they and the other Class Members are entitled to recovery of said fees.

RELEVANT STATUTES

48.52. The Plaintiffs plead and rely upon the following:

- a) *Class Proceedings Act*, S.O. 1992, c.6;
- b) *Ontario Colleges of Applied Arts and Technology Act, 2002*, S.O. 2002, Schedule F, as amended, and associated regulations; and,
- c) *Ministry of Training, Colleges and Universities Act*, R.S.O. 1990, c. M19, as amended, and associated regulations.

PLACE OF TRIAL

96.53. The Plaintiffs propose that this action be tried in the City of Toronto, in the Province of Ontario.

Date: June 5/2007

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Solicitors for the Plaintiffs

**AMANDA HASSUM and DANIEL
ROFFEY**

- and -

**THE CONESTOGA COLLEGE INSTITUTE OF TECHNOLOGY
AND ADVANCED LEARNING and THE BEERGE BROWN
COLLEGE OF APPLIED ARTS AND TECHNOLOGY**

Plaintiffs

Defendants

Court File No. 07-CV-334131CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

AMENDED STATEMENT OF CLAIM

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