



Court File No.: CV-23-00709415-00CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE
MR. JUSTICE GLUSTEIN

Tuesday THE 5th DAY OF
November , 2024

BETWEEN:

ELIAS FAIZ

Plaintiff

- and -

CANADIAN ALL CARE INC. operating as
CANADIAN ALL CARE COLLEGE

Defendant

Proceeding under the *Class Proceedings Act*, 1992

ORDER

THIS MOTION, made by the Plaintiff, for an Order certifying this action as a Class Proceeding, was heard this day at Osgoode Hall, 130 Queen Street West, Toronto.

UPON READING the Consent executed by counsel for the Parties and hearing their submissions,

AND UPON READING:

- (a) The Affidavit of Elias Faiz sworn May 31, 2024;
- (b) The Affidavit of Christopher Lupis, sworn May 30, 2024;
- (c) The Affidavit of Carolyn Seaquist sworn May 22, 2024;
- (d) The supporting documents filed along with the Affidavits;
- (e) The Factum on behalf of the Plaintiff;

AND UPON BEING ADVISED:

- (a) that the Defendant consents to this Order;
- (b) that this Order does not affect the rights of any person or parties under a disability within the meaning of Rule 7.04;

1. **THIS COURT ORDERS** that this action is certified as a Class Proceeding pursuant to the *Class Proceedings Act*, 1992, S.O. 1992, c.6 (the “CPA”);

2. **THIS COURT ORDERS** that the Class is defined as follows:

All students enrolled in the Diagnostic Medical Sonography Program (“the DMS program”) at Canadian All Care College at any time between November 4, 2019 and November 9, 2022 (the “Class” or “Class Members”).

3. **THIS COURT ORDERS** that Elias Faiz is appointed as the representative plaintiff on behalf of the Class;

4. **THIS COURT ORDERS** that Flaherty McCarthy LLP is appointed as counsel for the Class;

5. **THIS COURT DECLARES** that the following cause of action has been certified pursuant to the CPA:

- (a) Breach of Contract;
- (b) Negligent Misrepresentation;
- (c) Breach of the *Consumer Protection Act*;

6. **THIS COURT DECLARES** that the certified common issues are:

A. Breach of Contract

1. Was the relationship between the Defendant and the Class Members a contractual relationship?
2. If the answer to question #1 is yes, was the Defendant required by the Ministry of Colleges and Universities to ensure that its enrollment contract complied with *Superintendent's Policy Directive #8 (Approval of Ultrasound Technology or Medical Sonography Programs)*?
3. If the answer to question #2 is yes, did the Defendant's enrollment contract comply with the Ministry of Colleges and Universities' *Superintendent's Policy Directive #8 (Approval of Ultrasound Technology or Medical Sonography Programs)*?
4. If the answer to question #3 is no, does this constitute a breach of contract?

B. Negligent Misrepresentation

5. Was the Defendant in a special relationship with the Class Members?
6. If the answer to question #5 is yes, did the Defendant, by act or omission, incorrectly represent the probationary status of its DMS program, in contravention of the Ministry of Colleges and Universities' *Superintendent's Policy Directive #8 (Approval of Ultrasound Technology or Medical Sonography Programs)*?
7. If the answer to question #6 is yes, were the representations, by act or omission, untrue, inaccurate or misleading?

8. If the answer to question #7 is yes, was the Defendant negligent in making the representations?

C. Breach of the Consumer Protection Act


9. Did the Defendants breach Part III of the *Consumer Protection Act*?
10. If so, what remedy, if any, are the Class Members entitled to under the Act?
11. Does the Class, or any portion thereof, require, and is it entitled to, a declaration waiving the notice provisions of section 18 of the *Consumer Protection Act*?

D. Damages

12. Can an award of aggregate damages be made pursuant to s. 24(1) of the *Class Proceedings Act*, 1992 for the Class?
 13. Does the conduct of the Defendant justify an award of exemplary damages?
7. **THIS COURT ORDERS** that notice of certification of this action as a class proceeding and of the opt-out process shall be provided to Class Members pursuant to section 17(6) of the *CPA*, prior to the Notice Deadline, substantially in the form attached as **Schedule "B"** (Long Form Notice for mailing), and substantially in the manner set out in the Notice Plan attached as **Schedule "C"**;
 8. **THIS COURT ORDERS** that Class Counsel shall forthwith deliver to counsel for the Defendant a list of all Class Members whose names and addresses and/or email addresses are known to Class Counsel.

9. **THIS COURT ORDERS** that the Plaintiff and Defendant shall bear their own costs of providing notice to the Class of certification, in accordance with the Notice Plan, including receiving and reporting to the Court and the parties regarding Class Members who elect to opt-out.
10. **THIS COURT ORDERS** that a Class Member may elect to opt-out of this action if their written opt-out information is delivered by the Opt-out Deadline which is 60 days from the date that the Defendant sends notice by mail or email.
11. **THIS COURT ORDERS** that an opt-out notice from a Class Member is valid only if it contains the following information:
 - (i) The name of this proceeding (*Faiz v Canadian All Care College*, or similar identifying words);
 - (ii) The Class Member's full name and date of birth;
 - (iii) The Class Member's mailing address and telephone number;
 - (iv) A brief statement indicating that the Class Member understands they are opting out of the class proceeding and that they will be excluded from any judgment (including an approved settlement);
12. **THIS COURT ORDERS** that no person may opt out a mentally incapable member of the class without permission of the Court after notice to the Public Guardian and Trustee, as appropriate;
13. **THIS COURT ORDERS** that any Class Member who has not validly opted-out of this action will be bound by any determinations made by the Court in this action;
14. **THIS COURT DECLARES** that the Proposed Litigation Plan attached as Schedule "D" to this Order is approved as a workable method of advancing the proceeding on behalf of the class in accordance with s. 5(1)(e)(ii) of the *CPA*. The plan may be revised as necessary under the continuing case management authority of the Court;

15. **THIS COURT ORDERS** that there shall be no costs of this motion.



THE HONOURABLE MR. JUSTICE GLUSTEIN

SCHEDULE "A" – PROPOSED COMMON ISSUES

A. Breach of Contract

1. Was the relationship between the Defendant and the Class Members a contractual relationship?
2. If the answer to question #1 is yes, was the Defendant required by the Ministry of Colleges and Universities to ensure that its enrollment contract complied with *Superintendent's Policy Directive #8 (Approval of Ultrasound Technology or Medical Sonography Programs)*?
3. If the answer to question #2 is yes, did the Defendant's enrollment contract comply with the Ministry of Colleges and Universities' *Superintendent's Policy Directive #8 (Approval of Ultrasound Technology or Medical Sonography Programs)*?
4. If the answer to question #3 is no, does this constitute a breach of contract?

B. Negligent Misrepresentation

5. Was the Defendant in a special relationship with the Class Members?
6. If the answer to question #5 is yes, did the Defendant, by act or omission, incorrectly represent the probationary status of its DMS program, in contravention of the Ministry of Colleges and Universities' *Superintendent's Policy Directive #8 (Approval of Ultrasound Technology or Medical Sonography Programs)*?
7. If the answer to question #6 is yes, were the representations, by act or omission, untrue, inaccurate or misleading?
8. If the answer to question #7 is yes, was the Defendant negligent in making the representations?

C. Breach of the *Consumer Protection Act*

9. Did the Defendant breach Part III of the *Consumer Protection Act*?
10. If so, what remedy, if any, are the Class Members entitled to under the Act?

11. Does the Class, or any portion thereof, require, and is it entitled to, a declaration waiving the notice provisions of section 18 of the *Consumer Protection Act*?

D. Damages

12. Can an award of aggregate damages be made pursuant to s. 24(1) of the *Class Proceedings Act, 1992* for the Class?
13. Does the conduct of the Defendant justify an award of exemplary damages?

SCHEDULE “B” – LONG FORM NOTICE

THIS NOTICE IS TO ALL PERSONS WHO WERE STUDENTS ENROLLED IN THE DIAGNOSTIC MEDICAL SONOGRAPHY PROGRAM (“THE DMS PROGRAM”) AT CANADIAN ALL CARE COLLEGE AT ANY TIME BETWEEN NOVEMBER 4, 2019 AND NOVEMBER 9, 2022

This Notice may affect your rights. Please read it carefully.

1. What is this lawsuit about?

A Representative Plaintiff, Elias Faiz has commenced a Class Proceeding against CANADIAN ALL CARE INC. operating as CANADIAN ALL CARE COLLEGE seeking damages on behalf of all students enrolled in the Diagnostic Medical Sonography Program (“the DMS program”) at Canadian All Care College at any time between November 4, 2019 and November 9, 2022.

The Class Proceeding was certified on _____. Flaherty McCarthy LLP represents the class (“Class Counsel”). The purpose of this document is to provide notice to Class Members that the Class Proceeding has been certified and your rights to remain in the action or to opt-out of the action.

2. Am I a member of the Class?

You are a member of the Class and entitled to participate in the proceeding if you fall under the definition of a “Class Member”, which is defined as:

All students enrolled in the Diagnostic Medical Sonography Program (“the DMS program”) at Canadian All Care College at any time between November 4, 2019 and November 9, 2022 (the “Class” or “Class Members”).

3. How does this Class Proceeding affect you?

If you are a Class Member, and you wish to participate in the proceeding, then **you do not need to do anything more at this stage**. You are automatically included in the Class.

There is no cost to you to participate in the class action. You will have no responsibility to pay any legal fees. Class Counsel will only be paid if the action succeeds at trial or there is a settlement. Class Counsel have entered into a contingency fee agreement with the representative plaintiffs. The agreement provides for a contingency fee of 33% of the

amount recovered in the Class Proceeding to be paid to Class Counsel, along with reimbursement of all disbursements and taxes. The court must first approve Class Counsel's legal fees before they will be paid.

4. Class Members May Opt Out of the Proceeding

IF YOU DO NOT WANT TO PARTICIPATE in this Class Proceeding, you must take steps to opt out of the Class. If you opt out of the Class, you will not be eligible to recover any benefits under a settlement or award in this Class Proceeding.

Members of the Class may exercise their right to opt out of the Class by sending an email to optout@allcareclassaction.com indicating your wish to opt out of the Class Proceeding. Your Opt-Out Email must include:

- (i) The name of this proceeding (*Faiz v Canadian All Care College*, or similar identifying words);
- (ii) The Class Member's full name and date of birth;
- (iii) The Class Member's mailing address and telephone number;
- (iv) A brief statement indicating that the Class Member understands they are opting out of the class proceeding and that they will be excluded from any judgment (including an approved settlement);

You cannot exclude yourself by telephone.

No Class Member will be permitted to opt out after _____.

A Class Member who does not opt out of the Class Proceeding will be bound by the terms of any judgment or any settlement approved by the Court. Each Class Member may be entitled to share in the amount of any judgment awarded or settlement reached in the Class Proceeding.

A judgment (including an approved settlement), whether favourable or not, will bind all Class Members who do not opt out of the Class.

5. Additional Information

The certification order and other information regarding the Class Proceeding is available at www.allcareclassaction.com

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Requests for further information or questions for Class Counsel should be directed to
info@allcareclassaction.com

SCHEDULE “C” – NOTICE PLAN

If the action is certified as a class proceeding, the Plaintiff will ask the court to:

- (a) Settle the form and content of the Notice, including French translations;
- (b) Approve a Notice Program with respect to the Notice including the following:
 - (i) The Defendant shall send the Long Form Notice, by email or mail, to each Class Member whose name and address and/or email address is known to the Defendant but is not known to Class Counsel. The Defendant shall do so by no later than 60 days after the Certification Order has been signed;
 - (ii) Class Counsel shall publish the Long Form Notice to a dedicated Facebook Group page created and managed by Class Counsel for the sole purposes of disseminating notice of the Class Proceeding and communicating with putative Class Members;
 - (iii) Class Counsel shall publish a copy of the Long Form Notice on its website www.allcareclassaction.com;
 - (iv) Class Counsel will deliver the Notice by email to any Class Member who has previously provided their email address to Class Counsel;
 - (v) Forthwith after publication and delivery of the Notice suggested herein and approved by the Court in the Certification Order, Class Counsel and counsel for the Defendant shall file with the Court an affidavit(s) confirming publication of and delivery of the Notice in accordance with the Certification Order.

SCHEDULE "D" – LITIGATION PLAN

Court File No.: CV-23-00709415-00CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

ELIAS FAIZ

Plaintiff

- and -

CANADIAN ALL CARE INC. operating as
CANADIAN ALL CARE COLLEGE

Defendant

Proceeding under the *Class Proceedings Act, 1992*

PLAINTIFF'S LITIGATION PLAN

The Plaintiff's plan pursuant to s. 5(1)(e)(ii) of the *Class Proceedings Act, 1992* is set out below.

DEFINED TERMS

1. Unless otherwise defined herein, capitalized terms have the same meaning as set out in the Statement of Claim issued November 9, 2023. In addition, the following terms are defined as follows:
 - (a) **"Action"** means the proposed class proceeding commenced on November 9, 2023 in the Ontario Superior Court of Justice in Toronto bearing Court File No. CV-23-00709415-00CP;

- (b) **"Administrator's Decision"** means the Claim's Administrator's written decision on a Claimant's eligibility or entitlement in this Action;
- (c) **"Claim Form"** means an electronic claim form approved by the Court, to be completed by a Claimant;
- (d) **"Claimant"** means a person who was a student enrolled in the Diagnostic Medical Sonography Program ("the DMS program") at Canadian All Care College at any time between November 4, 2019 and November 9, 2022 and provides a completed Claim Form to the Claims Administrator in the manner stipulated in this Plan;
- (e) **"Claims Administrator"** means the person or company who will be appointed by the Court to carry out the functions described in this Plan;
- (f) **"Claims Deadline"** means the date by which the Claim Form must be received by the Administrator;
- (g) **"Class"** or **"Class Members"** means all students enrolled in the Diagnostic Medical Sonography Program ("the DMS program") at Canadian All Care College at any time between November 4, 2019 and November 9, 2022 (the "Class" or "Class Members").
- (h) **"Class Counsel"** means the law firm of Flaherty McCarthy LLP;
- (i) **"Class Counsel Fees"** means the fees, disbursements and taxes payable to Class Counsel as ordered by the Court;
- (j) **"Class Counsel Representative"** means the person(s) appointed by the Court to represent the interests of the Class;
- (k) **"Class Period"** means the period beginning November 4, 2019 and ending November 9, 2022;
- (l) **"Contact Information"** includes the full name, postal address, email address, type of and period of enrollment, as applicable, during the Class Period of the Class Member;

- (m) **"Court"** means the Ontario Superior Court of Justice;
- (n) **"Defendant"** means Canadian All Care Inc. operating as Canadian All Care College;
- (o) **"Defendant's List"** means the list of Class Members presently known only to the Defendant;
- (p) **"Notice"** means the electronic or mailed notice to the Class of the certification of the Action as a class proceeding in the form approved by the Court;
- (q) **"Notice Plan"** means the method of distributing the Notice described in this Plan;
- (r) **"Plan"** means this Litigation Plan;
- (s) **"Referee"** means the person who will be appointed by the Court to carry out the functions described in this Plan;
- (t) **"Website"** means the website developed and maintained by Class Counsel at www.allcareclassaction.com;

Class Counsel

2. Class Counsel is Flaherty McCarthy LLP ("Class Counsel"). Sean Brown has primary carriage of the file. Mr. Brown is the head of the class proceedings team at Flaherty McCarthy LLP and has acted on numerous certified class proceedings. He has experience with class proceedings in the areas of mass torts, consumer protection and privacy breaches.
3. The Class Counsel team is also comprised of Christopher Lupis and Laura Bassett.
4. Class Counsel may add other lawyers or other professionals to their complement if Class Counsel decides they are necessary. Aside from experts intending to

provide expert evidence to the Court, such lawyers or other professionals may be paid on a contingency basis.

5. To date, Class Counsel have devoted considerable resources to arriving at a cogent and compelling theory of the case, and to move this litigation forward, which has included:
 - (a) Meeting with and interviewing the Plaintiff;
 - (b) Establishing a website with details of the status of the litigation and a method of communicating with Class Counsel;
 - (c) Communicating with and obtaining information from potential Class Members;
 - (d) Extensive research and investigations regarding the relationship between the Plaintiff/Class Members and the Defendant, including contractual relationships, to advance the theory that, *inter alia*, the Defendant has breached a contract with the Plaintiff/Class Members, made negligent misrepresentations to the Plaintiff/Class Members, and/or breached various sections of the *Consumer Protection Act* to the detriment of the Plaintiff/Class Members;
 - (e) Retaining an expert to provide an opinion to assist in establishing the breadth and scope of the damages suffered by the Plaintiff/Class Members;
6. Class Counsel have the requisite knowledge, skill, experience, personnel, and financial resources available to prosecute this class action to its conclusion.
7. Class Counsel anticipates that prosecuting this action will require:
 - (a) Meeting with the Representative Plaintiff and other Class Members;
 - (b) Collection and production of the Representative Plaintiff's documents;

- (c) Collection of information and documentation from Class Members;
- (d) Reading, organizing, profiling, scanning, briefing, managing and analyzing hundreds or thousands of documents to be produced by the Defendant;
- (e) Analysis of complex legal issues and developing litigation strategies;

The Composition of the Class and Class Definition

8. The Plaintiff seeks to represent a Class defined as follows:

All students enrolled in the Diagnostic Medical Sonography Program (“the DMS program”) at Canadian All Care College at any time between November 4, 2019 and November 9, 2022 (the “Class” or “Class Members”).

Reporting to and Communicating with Class Members

9. The precise class size is known to the Defendant only, but Class Counsel assumes there are approximately 100 Class Members. More precise estimates of the size of the Class, together with information identifying individual Class Members, can be obtained from the Defendant.
10. If certified, the Plaintiff will seek a direction from the Court that the Defendant produce a list (“Defendant’s List”) of all students enrolled in the Diagnostic Medical Sonography Program at Canadian All Care College as of January 1, 2020.
11. After the Defendant delivers Class Counsel the Defendant's List and the Contact Information, Class Counsel may establish a secure registration system that permits Class Members to register utilizing a user ID and password. If established, the secure registration system permits the Class Members to update their information

from time to time. If established, the secure registration system will also permit Class Counsel to read, organize, profile, scan and manage documents.

12. Class Counsel has created a dedicated website at www.allcareclassaction.com in respect of this proceeding.
13. Current information about the class proceeding will be posted on this website, and it will be updated whenever material events occur. Copies of significant publicly-filed court documents, court decisions and other information relating to the action will be accessible from the website. This allows the Class Members, wherever they reside, to keep informed as to the status of the action.
14. In addition, the website includes contact information for Class Counsel. Class Counsel has and will continue to promptly respond to all communications from Class Members.
15. Class Counsel has prepared and will continue to maintain a database of members of the proposed Class who have contacted them and who wish to receive updates regarding the proceeding, including their name, address, telephone number, email address, and, if provided, details of their personal circumstances.
16. From time to time, as reasonably required, Class Counsel will provide updates reporting on the status of the class action directly to Class Members. Class Members who provide email addresses will receive updates by way of email. These updates will also be posted to the dedicated website setup by Class Counsel.
17. It is expected that following the dissemination of the Notice of Certification, Class Counsel will continue to obtain information from newly identified Class Members, and the Class Member Database will be updated on an ongoing basis, accordingly.

Pleadings

18. The Defendant has not delivered a Statement of Defence.
19. Should amendments to the Claim be necessary based upon information disclosed during either the exchange of information for the certification motion, or after the discoveries have been completed, then the Plaintiff will bring the appropriate motion to amend at that time.

Pre-Certification Timetable

20. The Defendant has been served with the Plaintiff's Statement of Claim but has not yet defended the Claim.
21. Justice Glustein has been assigned as the Class Proceedings Judge in this matter.
22. The first Case Conference between the parties and Justice Glustein took place on February 26, 2024. A timetable was established regarding the due date for the service of the Plaintiff's Certification Motion Record.
23. Class Counsel and counsel for the Defendant may request that the litigation schedule be amended from time to time.

Document Exchange and Management

24. Most of the documents relevant to the proposed common issues are in the possession, power, or control of the Defendant. Class Counsel expects that all records, documents (electronic or otherwise) or other evidence relating to this Action and in the possession of the Defendant shall be preserved.
25. Within 45 days of the certification order becoming final, the parties will meet and confer to establish a discovery plan in accordance with their obligations under the

Rules of Civil Procedure. In advance of that meeting, the Defendant will review their records, make internal inquiries, and determine the identity of the key custodians of information about this proceeding. At or before the meet and confer meeting, the Defendant will produce a list of the key custodians, including their job description and a brief explanation of why they have been identified as key custodians.

26. As part of the discovery plan, the Plaintiff will require the production of all documentation in original electronic format, where available, or in searchable .PDF images. The Plaintiff intends to use electronic document review software for the management of all document productions. All productions will be scanned and summarized in this software program.
27. If the parties are unable to agree upon the terms and scope of the discovery plan within 30 days of the date of the first meet and confer session, then any party may arrange a case conference with the case management Judge to obtain directions with respect to the terms upon which the parties are unable to reach a consensus.
28. The parties will produce all relevant documents in their power, possession, and control that are relevant to the common issues, in accordance with their obligations under the *Rules of Civil Procedure*, and as agreed in the discovery plan. Document production shall be completed by no later than 120 days after the discovery plan is finalized, unless otherwise agreed.

Notice of Certification

29. If the action is certified as a class proceeding, the Plaintiff will ask the court to:
 - (a) Settle the form and content of the Notice, including French translations;
 - (b) Approve a Notice Program with respect to the Notice including the following:

- (i) The Defendant shall send the Long Form Notice by email or mail to all class members, by no later than 60 days after the Certification Order has been signed;
- (ii) Class Counsel shall publish the Long Form Notice to a dedicated Facebook Group page created and managed by Class Counsel for the sole purposes of disseminating notice of the Class Proceeding and communicating with putative Class Members;
- (iii) Class Counsel shall publish a copy of the Long Form Notice on its website www.allcareclassaction.com;
- (iv) Class Counsel will deliver the Notice by email to any Class Member who has previously provided their email address to Class Counsel;
- (v) Forthwith after publication and delivery of the Notice suggested herein and approved by the Court in the Certification Order, Class Counsel and counsel for the Defendant shall file with the Court an affidavit(s) confirming publication of and delivery of the Notice in accordance with the Certification Order.

Opting Out

30. If the action is certified as a class proceeding, the Plaintiff will ask the court to approve the following opt-out procedure:
- (a) Set an opt-out date to be fixed but will be approximately ninety (90) days after the date of the first publication of the notice of certification (the Notice) of the action as a class proceeding;
 - (b) A Class Member may opt-out of this class proceeding by sending an email to an account established and monitored by Class Counsel, which will require the Class Member to provide sufficient information to establish that they are a Class Member and confirming their election to opt-out of the class

proceeding. Specifically, the Class Member seeking to opt-out must provide by email the following:

- (i) The name of this proceeding (*Faiz. V. Canadian All Care College*, or similar identifying words);
 - (ii) The Class Member's full name and date of birth;
 - (iii) The Class Member's mailing address and telephone number;
 - (iv) A brief statement indicating that the Class Member understands they are opting out of the class proceeding and that they will be excluded from any judgment (including an approved settlement), if any;
- (c) The emailed election by the Class Member to opt-out must be received by email before the opt-out date fixed by the Court;
 - (d) a Class Member may not opt-out of the class proceeding after the opt-out date fixed by the Court except by Court order;
 - (e) A Class Member may not opt-out of the class proceeding by telephone;
 - (f) Within 30 days after the end of the opt-out period, the Notice Administrator will report to the Court, Class Counsel and to the Defendant the details of all opt-outs;
 - (g) Direct that no information, other than the Notice, will be disseminated by the Defendant regarding the class proceeding during the opt-out period, unless approved by Class Counsel and, failing the approval of Class Counsel, then only as approved by the Court.

31. The Plaintiff will seek an Order that any Class Member who has not validly opted-out of this action in accordance the process approved by the Court will be bound by any determinations made by the Court in this action.

Examinations for Discovery

32. Class Counsel intend to examine for discovery at least one representative of the Defendant. The Plaintiff may bring a motion for leave to examine more than one representative of the Defendant in order to obtain reasonably informed evidence on all issues relevant to the common issues.
33. The Defendant may examine the representative Plaintiff for discovery if they choose to do so. If the representative Plaintiff is examined for discovery, his affidavit in support of the motion for certification, and any cross-examination thereon will form part of the discovery record, and the Defendant may not ask questions that were previously posed and answered on the cross-examination.
34. All undertakings will be answered by the parties within the time prescribed by the *Rules of Civil Procedure*, or such other time as is agreed between the parties in the discovery plan or following the completion of the examinations for discovery.
35. If any party wishes to bring a motion on refusals, the earliest available date will be scheduled with the case management Judge or a designated case management master for the motion to be heard. All refusals ordered to be answered shall be answered by no later than 30 days following the date of the order. The parties will confer prior to any such refusals motion in an attempt to resolve any disagreement regarding outstanding refusals.

Expert Evidence

36. Experts have been retained, and will be retained as deemed appropriate, by Class Counsel as the case progresses.

37. All expert reports will be exchanged by the parties when they are completed, and no later than 90 days prior to the pretrial. Any reply expert reports will be delivered no later than 30 days prior the pretrial date.
38. All experts of all parties on each topic will be encouraged to meet and confer between themselves after the delivery of their respective reports in order to determine if they are able to resolve among themselves any areas of disagreement in advance of the common issues trial.
39. Amendments to or supplementary reports arising as a result of such expert meet and confer sessions may be delivered at any time up to 7 days prior to the commencement of the common issues trial.

Case Management

40. At any time, any party may seek directions from the Case Management Judge, or to amend or revise any timetable with respect to the prosecution of the action.
41. As appropriate and necessary, this Litigation Plan will be revised and Class Counsel will seek the court's approval of any amended Litigation Plan.
42. Following the completion of the examinations for discovery, the Plaintiff may, if necessary, bring a motion for clarification of or to refine the certified common issues, based upon the evidence elicited in the discovery process.
43. Following the completion of the examinations for discovery, the parties will attend a case conference with the case management Judge to set a timetable for the action to proceed to trial, including fixing the trial date and duration.

Mediation and ADR

44. The Plaintiff is willing to participate in mediation(s) or other non-binding alternative dispute resolution efforts at any time and will make reasonable efforts to reach an informed settlement that is in the best interests of the class with the Defendant.

The Common Issues Trial

45. The Plaintiff will seek a common issues trial date that commences within 6 months after the completion of the examination for discoveries and delivery of answers to undertakings and any refusals ordered to be answered, or as soon as possible thereafter.
46. The Plaintiff will arrange for the trial to proceed to the maximum extent possible in electronic format, in co-ordination with the Defendant and the assigned trial Judge. The parties will meet and confer about any evidence that may be adduced by affidavit with cross-examination to follow, and to confirm witness lists and exchange will-say statements.
47. In addition to the expert evidence, the Plaintiff expects to call evidence from:
 - (a) The Representative Plaintiff and the affected Class Members;
 - (b) Such other witnesses and experts as are deemed appropriate.
48. At the trial of the common issues, this Court will be asked to establish that the Defendant is liable to the Class Members for:
 - (a) Breach of Contract;
 - (b) Negligent Misrepresentation;
 - (c) Breach of the *Consumer Protection Act* (“the Act”);

49. At the trial of the common issues, if the Plaintiff establishes liability on the basis of one or more of the common issues, this Court will be asked:
- (a) To award damages in the aggregate;
 - (b) To establish grids for aggregate damages, in necessary;
 - (c) To decide if the conduct of the Defendant justifies an award of exemplary damages?

Notice of Resolution of Common Issues

50. Assuming the common issues are resolved in favour of the Class, in whole or in part, the common issues trial Judge will be asked to settle the form and content of the Notice of Resolution of Common Issues (Notice of Resolution), and to approve the notice protocol for publication and distribution of the Notice of Resolution to the Class.
51. The Notice of Resolution will be published at the expense of the Defendant and will be published in a similar manner to the Notice of Certification, by the notice administrator, unless the Court directs otherwise.

Individual Issues Following the Common Issues Trial

52. The findings of fact and conclusions on the common issues should resolve all issues of liability, and any aggregate assessments of damages, if appropriate, leaving only the question of individual damages to be determined on individual assessment. Therefore, the Judge at the common issues trial ought to be able to give directions, pursuant to s. 25(3) of the *Class Proceedings Act, 1992* with respect to the resolution of the remaining individual issues by reference.
53. The Plaintiff proposes the procedure detailed below for assessing individual damages claims and any other individual issues that arise. A more precise and

detailed proof of damages methodology may be developed as the case progresses, once the positions and available records of the Defendant are better known, and the common issues are certified.

54. Individual damages may include damages for past and future loss of income and incidental fees and expenses associated with enrollment in the Defendant's DMS program.
55. The process is meant to minimize the burden on the Class Members, while remaining fair to the Defendant. The intent is to avoid an overly-adversarial and lengthy adjudicative process, particularly given that liability will have been resolved.
56. An independent Referee may be appointed by the common issues trial Judge. The Plaintiff will recommend the Referee. The Referee may appoint designates to assist it in hearing any cross-examinations and in assessing the damages claims. Each such designee shall be approved by the common issues Judge.
57. All costs of the individual assessment of damages and other individual issues shall be borne by the Defendant, including all costs of the independent Referee, and all hearing costs.
58. The Court will retain its supervisory powers pursuant to Sections 12 and 25 of the *Class Proceedings Act, 1992*, subject to the following:
 - (a) The Referee's decision on all individual issues shall be final, with no right of appeal, except on questions of law, and the appeal shall be to the common issues trial Judge, with no further right of appeal thereafter; and
 - (b) Any disputes regarding the procedure to be followed by the Referee will be resolved by the Referee, including, for example, making all rulings on

admissible evidence. The Referee will establish a common protocol to be followed for all individual issues assessments.

59. The Notice of Resolution will include a notice regarding the individual claims resolution process and include instructions explaining how to file a Claim for Compensation form (Claim Form).
60. The individual claims resolution process will require the Class Members to complete an on-line or paper Claim Form and submit it to the Referee within 180 days of the date that the Notice of Resolution is published. Particulars of the damages claimed should be included and evidenced by receipts, records substantiating income loss, or other evidence to demonstrate the loss claimed.
61. The level of details and evidentiary requirements of the claim form will be established by the common issues Judge with input from the Plaintiff and Defendant.
62. The individual Claim Form, and supporting documentation and evidence, will be provided to the Referee, who will forward copies to the Defendant and Class Counsel.
63. Either Class Counsel or the Defendant may request that the claimant provide additional particulars of their claim. The request must be made within 30 days of receipt of the claim and the claimant will have a further 60 days to file such further information with the Referee, who will forward copies to the Defendant and Class Counsel.
64. If the Defendant challenges a claimant's right to compensation for individual damages, the quantum of damages claimed, or assert that the claimant has failed to mitigate his or her loss (if relevant) they may do so by submissions in writing with supporting evidence. The Defendant may cross-examine a claimant before the Referee, if the request for cross-examination is approved by the Referee, and

any such cross-examination will be time limited as the Referee directs. The claimant will have the right to respond and clarify any evidence elicited through the cross-examination, either with the assistance of counsel or on their own, should they choose to be self-represented for this process. Class counsel will represent any claimant who wishes to separately retain them for this process, but claimants will also be free to retain another lawyer of their own choice.

65. The Referee will evaluate each claim based on all the evidence and submissions of the parties and determine whether the claim for damages has been established on the balance of probabilities. Pre-judgment interest will accrue on each individual damages award from the date the claim was commenced, and post-judgment interest will accrue from the date the Referee releases his or her decision.
66. The Referee will determine the Class Member's appropriate individual damages award, if any, within 30 days of the receipt of all submissions. The determination of the award shall be provided in writing, together with a brief set of reasons supporting the award.
67. The decision of the Referee is final and binding and not subject to appeal except on issues of law.
68. Costs of each successful damages claim will be paid to the lawyers for the claimant by the Defendant in the amount of 15% of the damages awarded, plus HST. Additional fees may be payable by the claimant to their counsel as agreed between themselves.

Fees and Expenses

69. The Court will be asked to fix the amount of Class Counsel's fees, disbursements, and applicable taxes ("Class Counsel Fees") at the end of the common issues trial, based upon the aggregate assessment of damages or punitive, aggravated or

exemplary damages, and then again at the end of the individual issues adjudicative process, based on the total individual damages awarded.

70. Class Counsel, other than the Class Counsel Representative, may continue to act as the lawyer for a particular Class Member after the common issues are resolved, if requested to do so by the Class Member and agreed to by Class Counsel. The Class Member will be required to pay fees, disbursements and taxes for this additional service which is not provided as part of Class Counsel's responsibility. If a Class Member retains other lawyers or representatives, the Class Member will be responsible for any fees, disbursements, taxes or other costs in the agreement between the Class Member and the lawyers or representatives.

Review of Litigation Plan

71. This Litigation Plan is a proposal for the future conduct of this action being made by Class Counsel. This Plan will be reconsidered and may be revised before the determination of the certification motion. This Plan may also be reconsidered and may be revised under the continuing case management authority of the Court if required both before and after the determination of any common issues.

FAIZ
Plaintiff

and

CANADIAN ALL CARE COLLEGE
Defendant

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding under the *Class Proceedings Act*,
1992, SO 1992, c 6, as amended

Proceeding commenced at TORONTO

PLAINTIFF'S LITIGATION PLAN

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and

CANADIAN ALL CARE INC.
Defendant

ONTARIO
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Proceeding commenced at TORONTO

ORDER

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