

Court File No.

CV-15-534310-00CP

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

ANISH GOYAL and CHINTAN ZANKAT

Plaintiffs

- and -

NIAGARA COLLEGE OF APPLIED ARTS AND TECHNOLOGY

Defendant



Proceeding Under the Class Proceedings Act, 1992

STATEMENT OF CLAIM

TO THE DEFENDANT

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff. 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 lawyer or, where the Plaintiff does not have a lawyer, serve it on the Plaintiff, 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.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

ISSUE DATE: AUG 13 2015

Issued by



Local Registrar

Address of court office:

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TO: NIAGARA COLLEGE OF APPLIED ARTS AND TECHNOLOGY
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CLAIM

1. The Plaintiffs claim on behalf of themselves and on behalf of the

Class to be certified:

- (a) damages in the amount of \$50,000,000.00, for, among other causes of action:
 - (i) unfair practices pursuant to Section 18 of the *Consumer Protection Act*, 2002, S.O. 2002, c.30, Sch.A, as amended;
 - (ii) negligent and/or fraudulent misrepresentation and/or breach of duty; and
 - (iii) negligence and/or breach of duty;
- (b) punitive, aggravated and exemplary damages in the sum of \$5,000,000.00;
- (c) pre-judgment interest pursuant to the provisions of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
- (d) costs of this action together with applicable Harmonized Sales Tax; and,
- (e) such further and other relief as this Honourable Court deems just.

PARTIES

2. The plaintiff, Anish Goyal, is a graduate of the General Arts and Sciences 2-year Diploma Transfer Program ("GAS Program") offered by the Defendant, Niagara College of Applied Arts and Technology ("Niagara College"), primarily to international students. Anish Goyal resides in the City of Toronto, in the Province of Ontario.

3. The plaintiff, Chintan Zankat, is a graduate of the GAS Program at Niagara College and resides in the City of Toronto, in the Province of Ontario.

4. The Plaintiffs together, or either of them, seek to represent a class of persons consisting of all international students registered in the GAS Program at Niagara College in the school semesters commencing in September of 2013, January of 2014, May of 2014, September of 2014 and January of 2015 (the "Class" or "Class Members").

5. The Defendant, Niagara College, is a corporation without share capital established pursuant to Subsection 2(1) of the *Ontario Colleges of Applied Arts and Technology Act, 2002*, S.O. 2002, c. 8, Sch. F and operates as a community college in Ontario. Niagara College, like other regulated Colleges in Ontario, purported to offer prospective students a comprehensive program of post-secondary education and training to assist Class Members in finding and keeping employment upon graduation.

OVERVIEW OF THE CLAIM

6. At all material times, Niagara College promoted the GAS Program primarily to international students who had already completed a program of studies in Canada. Through its program description (the "Program Description") and other promotional materials, the Defendant, directly, and through its agents (immigration consultants paid by it to recruit foreign students), represented to Class Members that successful completion of the 4 month long GAS Program

would qualify international students for a 3-year work permit (the “3-Year Post-Graduation Work Permit”) under Canadian immigration rules.

7. While international students enrolled in the GAS Program would have been eligible for a 1-year work permit immediately after completing their first year of graduate studies, these international students were promised by the Defendant that that they would qualify for a coveted 3-year Post-Graduation Work Permit by completing the GAS Program and, in reliance on that promise, Class Members gave up the opportunity to obtain a 1-year work permit, in favour of obtaining the coveted 3-year Post Graduation Work Permit, which was promised by the Defendant upon completion of the GAS Program.

8. The GAS Program, which was designed and offered by the Defendant, was comprised of both in-class and on-line courses.

9. The Defendant, at all material times, knew or ought to have known that, under Citizenship and Immigration Canada rules, international students who participate in a “distance learning program” would not be eligible for a 3-Year Post-Graduation Work Permit.

10. Students were advised by the Defendant that:

- (a) completion of the GAS Program would qualify them for a 3-Year Post-Graduation Work Permit; and
- (b) the on-line course component in the GAS Program would not impact their eligibility for 3-Year Post-Graduation Work Permits because the GAS Program was not a “distance learning program”.

(together the “Work Permit Representations”).

11. Upon completion of the GAS Program, the Plaintiffs and Class Members, applied to Citizenship and Immigration Canada for 3-Year Post-Graduation Work Permits. The Plaintiffs and Class Members, were denied (or reasonably anticipate being denied) their 3-Year Post-Graduation Work Permits. The Plaintiffs and Class Members have been advised that the reason for the denial is that the courses in the GAS Program were distance learning courses, making the Plaintiffs and Class Members ineligible for a 3-Year Post-Graduation Work Permit.

12. Under the *Consumer Protection Act*, 2002, S.O. 2002, c. 30, Sch. A (the "*Consumer Protection Act*"), it is an unfair practice to "make a false, misleading or deceptive representation" or "to make an unconscionable representation." In specifying in its Program Description that the Plaintiffs and Class Members would qualify for the 3-Year Post-Graduation Work Permit, by enrolling in and completing the GAS Program, when it knew or ought to have known that this was not, in fact, so, the Defendant engaged in an unfair practice in breach of the *Consumer Protection Act*.

13. The Defendant failed to ensure that completion of the GAS Program, which it designed, would qualify its graduates, for the 3-Year Post-Graduation Work Permit, as promised. The Defendant was negligent in making the Work Permit Representations, which were misrepresentations.

THE CLASS

14. This action is brought by the Plaintiffs pursuant to the *Class Proceedings Act*, 1992, S.O. 1992, c.6, on behalf of the following Class: all international students registered in the GAS Program in the school semesters commencing in September of 2013, January of 2014, May of 2014, September of 2014 and January of 2015 (the “Class” or “Class Members”).

THE PROGRAM DESCRIPTION

15. At all material times, Niagara College promoted its GAS Program to international students to induce international students to transfer into the GAS Program after completing one year of studies at another Canadian educational institution, based on the Defendant’s assurances that, upon completion of the GAS Program, graduates would qualify for a 3-Year Post-Graduation Work Permit.

16. The Program Description posted on the Defendant’s website stated as follows:

“Niagara College recognizes that many students are interested in graduating from a two year diploma program, so they can qualify for a three-year work permit under the current immigration rules and practices. Students interested in transferring their one-year postgraduate studies to Niagara College’s two year General Arts and Science (GAS) diploma can do so based on the following.

- Successful completion of a one-year Graduate or Post-graduate program at a recognized institution in Canada (transcripts required);
- Bachelors degree from their home country (transcripts required);

- must have a valid study permit and have not applied for their postgraduate work permit; and,
- proof of English proficiency (if English is your second language).”

17. The Defendant marketed the GAS Program in and outside of Canada and also through, its agents (immigration consultants, who the Defendant paid on commission), with a view to inducing international students to register for the GAS Program knowing that the 3-Year Post Graduation Work Permit was coveted and desired by international students. The tuition paid by international students like the Class Members was significantly higher than that paid by Canadian students enrolled at Niagara College.

18. The Defendant was aware that the majority of students enrolled in the GAS Program were international students who spoke English as a second language and who would be seeking a 3-Year Post-Graduation Work Permit in Canada upon their graduation.

19. The Defendant was aware that the 3-Year Post-Graduation Work Permit provided Class Members with an opportunity for prolonged employment and the development of a career in Canada, as well as the prospect of permanent residency and Canadian citizenship in the future.

THE REPRESENTATIVE PLAINTIFFS

1. Chintan Zankat

20. The Plaintiff, Chintan Zankat (“Chintan”), is a citizen of India living in Canada. Chintan obtained his Commerce Degree in India in 2010. In 2013, Chintan applied to and was accepted into the 1-year Financial Planning Program at George Brown College in Toronto, Ontario. Chintan was granted a visa to study in Canada. Chintan commenced the George Brown Program on September 3, 2013, and completed the Program at George Brown on April 17, 2014.

21. After the completion of his studies at George Brown College, Chintan enrolled in the GAS Program (comprised of 6 courses, 5 of which were on-line) commencing in May of 2014, so that he would qualify for a 3-Year Post-Graduation Work Permit upon his graduation in 4 months’ time.

22. Chintan graduated from the GAS Program on September 10, 2014.

23. In or around August of 2014, upon completion of his GAS classes, Chintan obtained employment as a Customer Representative at Scotiabank. In December of 2014, Chintan was subsequently promoted to the position of Financial Advisor at Scotiabank.

24. In October of 2014, Chintan applied for the 3-Year Post-Graduation Work Permit.

25. On April 8, 2015, Chintan was denied the 3-Year Post-Graduation Work Permit by Citizenship and Immigration Canada. At that time, he was advised that the denial was on the basis that the GAS Program was a distance

learning program and he was, thus, ineligible for a 3-Year Post-Graduation Work Permit. Chintan was advised that he was required to leave Canada by May 10, 2015. Chintan is appealing the decision to deny him a 3-Year Post-Graduation Work Permit and has applied for a further study permit. Chintan continues to reside legally in Canada while his appeal and application are pending.

26. Upon being denied the 3-Year Post-Graduation Work Permit, Chintan notified his employer, Scotiabank, which was unable to continue his employment because of his immigration status.

2. Anish Goyal

27. The Plaintiff, Anish Goyal ("Anish") is a citizen of India living in Canada. Anish obtained his Bachelor's Degree in Engineering in India in 2010. In 2013, Anish applied to and was accepted into a 1-year Project Management Program at Centennial College in Scarborough, Ontario. Anish was granted a visa to study in Canada. Anish graduated from the Project Management Program at Centennial College on August 15, 2014.

28. Anish applied for and was accepted into the GAS Program on September 2, 2014, so that he would qualify for a 3-Year Post Graduation Work Permit upon his graduation in 4 months. Anish began the GAS Program in September of 2014. Anish enrolled in 6 courses (5 of which were online).

29. Anish graduated from the GAS Program on January 14, 2015.

30. In January of 2015, Anish applied for the 3-Year Post-Graduation Work Permit.

31. As of the date of the issuance of this Class Proceeding, Anish's application for a 3-Year Post-Graduation Work Permit has not been approved by Citizenship and Immigration Canada, but he expects that his application will be denied for the same reason that other Class Members have been refused; namely, that the Defendant's GAS Program is a distance learning program and its graduates are not eligible for that permit.

CAUSE OF ACTION UNDER THE *CONSUMER PROTECTION ACT*

32. Class Members entered into agreements for the supply of educational services with the Defendant. These agreements comprise consumer transactions within the meaning of Section 2(1) of the *Consumer Protection Act*.

33. Under the *Consumer Protection Act*, it is an unfair practice to make a "false, misleading or deceptive representation" or "to make an unconscionable representation".

34. Citizenship and Immigration Canada established criteria for granting 3-Year Post-Graduation Work Permits to international students who graduate from Canadian college programs. The Defendant knew or ought to have known that Citizenship and Immigration Canada has, at all materials times, excluded from eligibility for a 3-Year Post-Graduation Work Permit students who participate in distance learning programs.

35. Publication of the Work Permit Representations, and any and all acts or omissions of the Defendant and/or its agents, for whom the Defendant is in law responsible, which had the effect of confirming the Work Permit

Representations set out in the Program Description, and elsewhere, were false, misleading and deceptive because the Defendant:

- (a) represented that graduates of the GAS Program would qualify for a 3-Year Post Graduation Work Permit when it knew or ought to have known that was not the case;
- (b) represented to the Class that the GAS Program had sponsorship, approval, performance characteristics, accessories, uses, ingredients, benefits or qualities that it did not have;
- (c) represented to the Class that Niagara College, which was to supply the educational services, had sponsorship, approval, status, affiliation or connection which the Defendant did not have;
- (d) represented to the Class that the GAS Program was of a particular standard, quality or grade, when it was not;
- (e) represented to the Class that the GAS Program was available for a reason that does not exist; and,
- (f) used exaggeration, innuendo and ambiguity as to a material fact and/or failed to state a material fact where such use or failure deceived or tended to deceive the Plaintiffs and Class Members.

The Plaintiffs and Class Members plead and rely upon sections 14(1) and 14(2) of the *Consumer Protection Act*, and specifically subsections 1, 2, 3, 6, 8, 11, 13 and 14 of section 14(2).

36. The Work Permit Representations were unconscionable representations because the Defendant knew or ought to have known:

- (a) that they would be used by its agents and employees to entice Class Members to study at Niagara College to their detriment;
- (b) that Class Members would place their trust in representations made by a post-secondary institution whose

object included assisting students in finding and keeping employment in business and industry in Canada;

- (c) that they had not sought or obtained confirmation from Citizenship and Immigration Canada that, the GAS Program as designed, would qualify their graduates for 3-Year Post-Graduation Work Permits;
- (d) that the Defendant was providing immigration advice to Class Members when it was not authorised to provide such advice pursuant to the *Immigration and Refugee Act*, S.C. 2001, c.27;
- (e) that Class Members spent considerable sums of money and gave up career opportunities at home and in Canada to obtain the 3-Year Post-Graduation Work Permit that they were assured they would qualify for upon completion of the GAS Program;
- (f) that Class Members would not receive a substantial benefit from the GAS Program and would in fact be foregoing the 1-year work permit that they would have otherwise been entitled to;
- (g) that the Work Permit Representations were false, misleading and deceptive, and/or that the Defendant failed to correct the Work Permit Representations once it became aware that the Work Permit Representations were false, misleading and deceptive; and,
- (h) that the Program Description contained a statement regarding eligibility for the 3-Year Post-Graduation Work Permit that was false and misleading and that Class Members were likely to and did rely on to their detriment.

37. In or around April of 2015, Class Members began receiving notice from Citizenship and Immigration Canada that the GAS Program was a distance learning program and that Class Members were being denied a 3-Year Post-Graduation Work Permit as a result.

38. Until receiving notice from Citizenship and Immigration Canada, Class Members did not know and could not reasonably have known, that the

Work Permit Representations were “false, misleading or deceptive representations” and/or were “unconscionable representations” (either or both of which constitute “unfair practices” under the *Consumer Protection Act*). Class Members, including the Plaintiffs, have notified the Defendant that they have been denied the 3-Year Post Graduation Work Permit and the Defendant has not resolved the matter in any way whatsoever. The Plaintiffs and Class Members hereby provide further notice of same by service of this Statement of Claim on the Defendant.

COMMON LAW CAUSES OF ACTION

39. The Defendant had knowledge and information about the GAS Program that Class Members did not possess, including the fact that the GAS Program had not received any approval whatsoever from Citizenship and Immigration Canada that would allow for graduates of the Program it designed to qualify for the 3-Year Post-Graduation Work Permit.

40. As a public educational institution publishing and making representations about the benefits of the GAS Program to prospective students, the Defendant was in a special relationship of trust with such prospective students. Further, Class Members who were induced into enrolling in the GAS Program relied on the knowledge and expertise of the Defendant in designing and implementing the Program, and as such, the Defendant was in a special relationship of trust with Class Members.

41. Based on this special relationship, the Defendant owed Class Members a duty of care to accurately describe the attributes of the GAS Program, to design and implement the GAS Program to deliver the promised 3-Year Post-Graduation Work Permit to Class Members upon graduation, and to inform Class Members of any inaccuracies in its representations in a timely manner. The Defendant failed to do so, and as a result, it breached its duty of care to the Class.

42. The Work Permit Representations were untrue, inaccurate and/or misleading. In addition, the Defendant failed to design a program that met Canadian immigration requirements for the 3-Year Post-Graduation Work Permit (i.e. a program that was not a distance learning program).

43. Class Members plead that the Defendant negligently breached its duty of care to Class Members, and is liable for the negligent and/or fraudulent Work Permit Representations, as a result of which Class Members have suffered damages as set out herein. In particular, and in addition to the allegations set out herein, Class Members claim against the Defendant for:

- (a) negligently, recklessly and/or fraudulently representing to Class Members that completion of the Program would qualify Class Members for 3-Year Post-Graduation Work Permits;
- (b) negligently, recklessly and/or fraudulently representing to Class Members that the GAS Program was not a distance learning program;
- (c) providing Class Members, on their own and/or through its retained agents, with a Program Description and other promotional materials for the GAS Program which were inaccurate, incomplete, false, deceptive and/or misleading;

- (d) negligently, recklessly and/or fraudulently allowing the Program Description and other promotional materials to contain information which it knew or ought to have known was inaccurate, incomplete, false, deceptive and/or misleading and in allowing these documents to be distributed to Class Members;
- (e) negligently, recklessly and/or fraudulently failing to provide Class Members with an amended and accurate Program Description and promotional materials once the Defendant became aware that its Program Description and promotional materials were incomplete, false, deceptive and/or misleading;
- (f) negligently, recklessly and/or fraudulently inducing Class Members to register for the GAS Program to their detriment through the use of untrue, inaccurate, misleading and deceptive wording in the Program Description and promotional materials;
- (g) negligently, recklessly and/or fraudulently failing to design and implement the GAS Program to ensure that its graduates would qualify for 3-Year Post-Graduation Work Permits under the rules set by Citizenship and Immigration Canada;
- (h) negligently, recklessly and/or fraudulently failing to obtain approval and/or confirmation from Citizenship and Immigration Canada that Class Members graduating from the GAS Program would qualify for 3-Year Post-Graduation Work Permits; and,
- (i) failing to warn Class Members of any risk known to it, or which ought to have been known; namely, that completion of its GAS Program would make Class Members ineligible for a 3-Year Post-Graduation Work Permit.

44. In addition to the foregoing, and with respect to the allegation of fraudulent misrepresentation, the Plaintiffs and Class Members claim against the Defendant for providing false immigration advice to Class Members when it was illegal to do provide any immigration advice pursuant to the *Immigration and*

Refugee Act, S.C. 2001, c.27, and/or for failing to adequately and immediately correct the false immigration advice.

45. The Plaintiffs and Class Members relied, in a reasonable manner, on the Defendant's misrepresentations to their detriment and have suffered damages as a result.

DAMAGES

46. Citizenship and Immigration Canada has determined that the GAS Program is a distance learning program and has denied Class Members who completed the GAS Program a 3-Year Post-Graduation Work Permit.

47. The Plaintiffs and Class Members have suffered significant damages arising from the above-described unfair practices, negligence and misrepresentations, including the following:

- (a) pain and suffering, loss of enjoyment of life, physical and emotional losses, mental anguish and disruption and upheaval associated with the denial of the 3-Year Post-Graduation Work Permit;
- (b) the cost of tuition, course and exam fees, books, travel, accommodation, living expenses, visa fees, legal fees and immigration consultant fees;
- (c) loss of past and future income;
- (d) delayed entry to the workplace;
- (e) loss of competitive advantage;
- (f) loss of past and future healthcare benefits and related costs associated with the denial of the 3-Year Post-Graduation Work Permit;

- (g) costs, including legal fees, incurred to adjust, extend or renew visas for residency, study and work in Canada or elsewhere;
- (h) costs associated with carrying the debt associated with the losses and costs set out above; and,
- (i) inability to work in Canada for 3 years to complete their education, establish their credentials in the workplace, receive training and skills that would benefit them and provide economic advantage throughout their working lifetimes.

The damages set out above are claimed on an aggregate basis if and where deemed appropriate by this Honourable Court.

48. The Plaintiffs seek an award of punitive, aggravated and/or exemplary damages based on the Defendant's promotion of the GAS Program to international students who were presented with false, inaccurate and misleading information, which the Defendant failed to correct. The Defendant was not authorised to provide immigration advice to Class Members pursuant to the *Immigration and Refugee Act*, S.C. 2001, c.27. The Defendant used this false, inaccurate and misleading information to induce students to enrol in the GAS Program to maximize its own revenues and/or profits through charging greater tuition to foreign students for a program it failed to properly design and implement to the detriment of the Class. This conduct was high-handed and callous and is deserving of an award of punitive, aggravated and/or exemplary damages.

49. The Plaintiffs rely upon the *Consumer Protection Act*, 2002, S.O., c.30, Sch. A, as amended, the *Class Proceedings Act*, 1992, S.O., c.6, as amended and the *Immigration and Refugee Act*, S.C. 2001, c.27, as amended.

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

DATE OF ISSUE: The 13 day of August, 2015.

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ONTARIO

SUPERIOR COURT OF JUSTICE

Proceeding Commenced at Toronto

STATEMENT OF CLAIM

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