

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

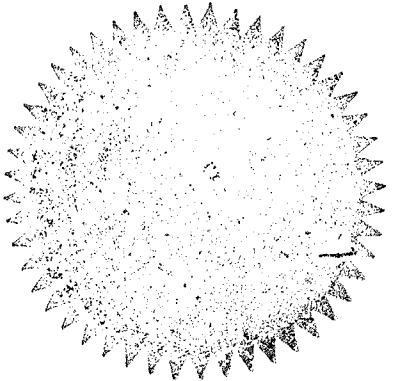
JONATHAN TURNER

Plaintiff

-and-

YORK UNIVERSITY

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.

Date:

Jan 23/09

Issued by:.....

Local Registrar

Address of court office:

393 University Avenue
10th Floor
Toronto, Ontario
M5G 1E6

TO: York University.
4700 Keele Street
Toronto, Ontario
M3J 1P3

CLAIM

I. DEFINITIONS

1. The following definitions apply for the purposes of this statement of claim:
 - a) “**Act**” means the *Class Proceedings Act*, 1991 S.O. 1992, c. 6, as amended;
 - b) “**CPA**” means the *Consumer Protection Act*, S.O. 2002, c. 30., as amended;
 - c) “**Class**”, “**Class Members**”, or “**Plaintiffs**” means all individuals enrolled at York during the Class Period;
 - d) “**Class Period**” means the period of time commencing with the earliest moment in time that a Class Member could or did enroll at York for the Fall Semester of 2008 to the cessation of the strike and the general commencement of classes for all Class Members;
 - e) “**Courts of Justice Act**” means the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
 - f) “**Damages**” or “**General Damages**” when used without a qualifier means direct damages, consequential or indirect damages, punitive damages and all other damages available at law which may be sought in these proceedings by the Plaintiff and Class Members;
 - g) “**Plaintiff**” when used in the singular means Mr. Jonathan Turner in his capacity as representative Plaintiff for the Class.
 - h) “**Services**” means anything other than goods, including any service, right, entitlement or benefit;

- i) **“Supplier”** means a person who is in the business of selling, leasing or trading in goods or services or is otherwise in the business of supplying goods or services, and includes an agent of the supplier and person who holds themselves out to be a supplier or an agent of the supplier;
- j) **“York”** means the Defendant, York University.

II. RELIEF SOUGHT

- 2. The Plaintiff, on his own behalf, and on behalf of the Class Members, claims:
 - a. an Order certifying this action as a class proceeding and appointing Jonathan Turner as representative Plaintiff;
 - b. general damages in the sum of \$250,000,000.00 or such other amount as may be granted by this Court;
 - c. a Declaration by this Court that York has been unjustly enriched through its breaches of its common law and statutory duties to the Plaintiff and Class Members as delineated herein;
 - d. a Declaration by this Court that York is holding all monies received by the Plaintiff and Class Members in Constructive Trust;
 - e. an Order that York make restitution through an accounting and disgorgement to the Plaintiff and the Class Members for their monies expended in order to attend York, including but not limited to tuition, and housing fees;

- f. punitive damages of \$25,000,000.00;
- g. an Order directing a reference or such other procedure as may be necessary to determine issues not determined at the trial of the common issues;
- h. prejudgment interest pursuant to the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
- i. rescission, contract damages, restitution and/or cancellation of the relevant consumer agreements as under the *Consumer Protection Act*, S.O. 2002, c. 30., as amended, and all other remedies available under the *CPA*;
- j. the costs of this action on a substantial indemnity basis and GST thereon; and,
- k. such further and other relief as this Honourable Court deems just.

III. NATURE OF THIS ACTION

3. The proposed representative Plaintiff, Jonathan Turner, alleges that York breached its statutory and common law duties to the Plaintiff and Class Members by cancelling classes at the commencement of a CUPE Local 3903 (“CUPE”) strike at York during the fall of 2008. As a result of the alleged breaches of its statutory and common law duties to the Plaintiff and Class Members, the proposed representative Plaintiff requests on his behalf and on behalf of the Class Members general damages and/or restitution, as the case may be. The strike commenced on November 6, 2008, causing a complete cessation of the teaching and examination activities at York. The strike interrupted approximately the three (3) remaining weeks of scheduled classes and examinations for the 2008 fall semester. In addition to the interruption of instruction

time, examinations as well as final projects could not take place at the usual time in the academic year. Overall the Plaintiffs claim the Defendant breached sections 9(1), 13(4), 15 and 17 of the *Consumer Protection Act*; is in breach of contract; and has been unjustly enriched, resulting in he and the proposed Plaintiff class being entitled to, *inter alia*, Damages, and/or a full or partial refund of tuition, fees, and other monies paid to York by the Class Members for the fall semester of 2008.

IV. THE PARTIES

The Plaintiff

4. The Plaintiff Jonathan Turner resides in Richmond Hill, Ontario and has attended York for approximately three (3) years. His academic career at York began in 2005 after transferring from another university. He is a Kinesiology major who is currently scheduled to graduate from York in the spring of 2009.

The Defendant

5. Pursuant to and continued by the *York University Act*, York was founded in 1959 as an institution of higher learning and research. York maintains two (2) campuses, the York Campus at 4700 Keele Street, Toronto and Glendon Campus, 2275 Bayview Avenue, Toronto.

V. MATERIAL FACTS

Background

6. On or about November 6, 2008 CUPE members commenced a strike at York. CUPE represents 3,340 contract faculty, teaching, graduate and research assistants at York.
7. According to the CUPE website, “3903 members do more than 50% of the teaching at York University.” Notwithstanding CUPE’s claim, there still remain a significant number of courses taught by full time York Faculty that are not members of CUPE and therefore were not a part of the strike.
8. In response to the CUPE strike, which only impacted 3,340 contract faculty, teaching, graduate and research assistants at York, the Defendant decided to cancel all of its classes, including those taught by non-striking York Faculty.
9. To date, CUPE has not returned to work, and as a result of the same, approximately 50,000 students, those whose classes were disrupted by the CUPE strike, as well as those whose classes were not directly impacted by the disruption but still canceled by the Defendant, have been unable to attend class.
10. Throughout the course of the strike there have been numerous discussions between York and CUPE with the intention of negotiating a resolution, but to no avail.
11. As negotiations between both sides continue to fail, the 50,000 students who were unable to attend classes have not received the services from York for which they originally bargained.

12. When the strike ends, the wealth of the 50,000 students impacted by the class disruption will have paid full tuition; full tuition covers a 26 week academic semester.
13. But due to the strike, said students for the most part will have only received 23 weeks of academic instruction.
14. If the strike ends by a quickly approaching deadline, the Defendant has proposed that the approximate three (3) week balance of the fall semester be compressed into a 13 day instruction period, and a 12 day examination period. However, to effectively achieve the compressed instruction and examination period, *inter alia*, the winter semester reading week, originally scheduled for February 16 – 20 has to be cancelled.
15. To date, the Defendant has offered no financial relief to help mitigate the damages suffered by those impacted by the strike disruption.
16. The Plaintiff and the Class Members have incurred damages as a result of the strike.

VI. CAUSE OF ACTIONS

Breach of Sections 9, 13, 15 and 17 of the Consumer Protection Act

17. The Plaintiffs plead and rely upon the facts and allegations referred to above.

Section 9

18. The Plaintiffs plead that when each individual student pays tuition said student has entered into a “consumer agreement” with York. A consumer agreement is “*an agreement between a supplier and a consumer in which the supplier agrees to supply*”

goods or services for payment” under the *Consumer Protection Act* s.1. As such, the Defendant’s actions breached section 9(1) of the *Act* as follows:

- a) Defendant breached section 9(1) of the *Consumer Protection Act*, S.O. 2002, c. 30, Sched. A. which states the supplier is deemed to warrant that the services supplied under a consumer agreement are of a “*reasonably acceptable quality*.”
- b) Here, many students paid the Defendant for 26 weeks of relatively un-interrupted academic tutelage, and due to the Defendant’s actions have only received 23 weeks. The Plaintiff contends any attempt to ameliorate the damage caused by the interruption cannot be repaired by a compressed academic and examination period.
- c) Therefore, when the Plaintiff and the Class Members originally entered the consumer agreement, they purchased services, i.e., 26 weeks of relatively un-interrupted education from the Defendant, of a certain quality, from an institution with an established reputation.
- d) The Plaintiff and the Class Members contend they paid tuition and enrolled in classes specifically at the Defendant’s institution to gain the tangible benefit of a university degree, as well as the intangible benefit of the Defendant’s perceived reputation as a respected university.

- e) It is the Plaintiffs' position that the aforesaid reputational value of a degree from the Defendant's institution has been irreparably compromised. And as such, the Plaintiffs have lost the worth of reputation for which he originally bargained.
- f) The Plaintiffs further aver any compression period proposed by the Defendant is not only what he did not bargain for, but additionally, does not sufficiently resurrect the benefits of an education from a perceivably respected program.
- g) Additionally, it is the Plaintiffs' contention that a 13 day compression period fails to fully encompass the quality of education the Class would receive in a traditional three (3) week session at the Defendant's institution. Once again reaffirming the Defendant's compression proposal is wanting with respect to sufficiently rectifying the Plaintiffs' loss.
- h) Furthermore, as outlined earlier, not all York classes were directly impacted by the strike. Thus, York was under no obligation to cancel all of its classes, as many of the classes could have continued without the presence of the striking employees.
- i) By cancelling all of its classes, the Defendant denied all of its students the opportunity to adequately salvage the portion of the remaining semester; illustrating yet another facet of what the Plaintiffs did not

bargain for upon entering into the consumer agreement. As a result, the services fall far short of what is a reasonably acceptable quality standard as required under sec. 9(1).

19. Alternatively, should the court find that when a student pays tuition in exchange for educational services said relationship does not constitute a “consumer agreement” within the meaning of s.1 of the CPA, Plaintiffs plead in the alternative that the purchase of services from Defendant (supplier), and the subsequent sale of the same to the Plaintiffs (consumer) constitutes a “consumer transaction” under the same section defined as *“any act or instance of conducting business or other dealings with a consumer, including a consumer agreement.”*

Section 13(4) of the CPA

20. Alternatively, the Plaintiffs plead that the strike constitutes an unsolicited material change in the services being provided by the Defendant, and as such, the Defendant is in breach of Section 13(4) of the CPA.

21. Under Section 13(4), if a consumer is receiving goods or services on an ongoing or periodic basis and there is a material change in such goods or services, the goods or services shall be deemed to be unsolicited from the time of the material change forward unless the supplier is able to establish that the consumer consented to the material change. 2002, c. 30, Sched. A, s. 13 (4).

22. The Plaintiffs plead the agreement presented by the Defendants to attend York was officially accepted when the Class paid their tuition.

23. The Plaintiffs aver the Defendant's actions of cancelling all classes, and/or Defendant's attempt to amalgamate the remaining time into the winter 2009 semester, is a material change in the academic services originally bargained for by the Plaintiffs; resulting in a breach of s. 13(4) of the Act.

24. As a result of the Defendant's breach of s. 13(4), the Plaintiffs demand a refund from the Defendant under ss.13 (6) and (7) of the CPA. Sections 13(6) and (7) state if a supplier has received a payment in respect of unsolicited goods or services, the consumer who made the payment may demand a refund of the payment within one year after having made payment. This Claim constitutes said demand.

Sections 15, 17, 18 of the CPA

25. The Plaintiffs plead in addition, that the consumer transaction is excessively one-sided in favor of the Defendant, as exacerbated by Defendant's deficient disclosure of the Defendant's strike disruption policy prior to the Plaintiffs paying tuition and thereby entering into the consumer agreement, constitutes a breach of section 17(1) as an unfair practice by virtue of an unconscionable representation under section 15 of the CPA, in that the Defendant ought to have known:

- a. that the consumer transaction is excessively one-sided in favor of someone other than the consumer;

- b. that the consumer is not reasonably able to protect his or her interests because of “..... *ignorance ... inability to understand the language of an agreement or similar factors.*” [Emphasis ours]
- c. that the consumer is unable to receive a substantial benefit from the subject-matter of the representation;
- d. that the terms of the consumer transaction are so adverse to the consumer as to be inequitable;
- e. that a statement of opinion is misleading and the consumer is likely to rely on it to his or her detriment; and/or
- f. that the consumer is being subjected to undue pressure to enter into a consumer transaction.

26. The Plaintiffs contend the consumer transactions the Class entered into with the Defendant is excessively one sided in favor of the Defendant.

27. There are a handful of universities in the Greater Toronto Area (“GTA”), and as such, students who choose to attend university in the GTA are limited in their selection.

28. Accordingly, the Plaintiffs aver that students who intend on paying tuition and subsequently enrolling in class at the Defendant are in a “take it or leave it” position.

29. As it is undisputed that a University Education is requisite to participate in the modern workforce, Plaintiffs aver that these circumstances undoubtedly place the Defendant, i.e., a GTA university, in an excessively one sided position as it relates to consumer transactions with its students.
30. The disproportionately lopsided advantage of the Defendant as it relates to dictating exculpatory provisions in favour of the Defendant, including Defendant's strike policy exonerating Defendant from liability in the event of a strike such as the one at hand, when entering into a consumer transaction with the Plaintiffs is a breach of sec. 17(1) of the CPA.
31. Therefore, the one sided transaction in favor of the Defendant amounted to an unconscionable representation under sec. 15(1) of the CPA, and by virtue an unfair practice under sec. 17(1) of the CPA.
32. Plaintiffs plead that Class Members are entitled to damages pursuant to S. 18(2) of the CPA, which provides in relevant part that:

18. (1) Any agreement, whether written, oral or implied, entered into by a consumer after or while a person has engaged in an unfair practice may be rescinded by the consumer and the consumer is entitled to any remedy that is available in law, including damages. 2002, c. 30, Sched. A, s. 18 (1).

Remedy if rescission not possible

(2) A consumer is entitled to recover the amount by which the consumer's payment under the agreement exceeds the value that the goods or services have to the consumer or to recover damages, or both, if rescission of the agreement under subsection (1) is not possible.

33. In light of Defendant's conduct alleged above, Plaintiffs plead that it is in the interest of justice for this Court to dispense with section 18(3), and related sections of the *Consumer Protection Act* requiring that the Plaintiff notify the Defendant of its intent to seek the remedies requested herein, and accordingly, respectfully requests that the Court disregard such notice requirement as provided for in s. 18(15) of the CPA.
34. Additionally, the Plaintiffs plead the agreement of paying tuition in exchange for the Defendant's academic tutelage constitutes a "remote agreement" as contemplated by Section 20(1) of the CPA.
35. Under the remedy of cancellation, if the Defendant is not in compliance with Section 45 of the CPA and appurtenant regulations requiring the Defendant to provide clear and candid written disclosure of salient aspects of the consumer agreement to the Class, the CPA cancels the remote consumer agreement complained of under paragraph 30, supra, as if it never existed, requiring the Defendant to refund any payment made under the agreement or any related agreements to the Plaintiffs in accordance with Sections 95 and 96 of the *Act*.
36. Plaintiffs plead that the Defendant has not complied with Section 45 of the CPA and appurtenant regulations.
37. Further, Plaintiffs plead that this Statement of Claim shall constitute notice to Defendant as required by section 92 for seeking a remedy of cancellation.

Accounting and Disgorgement of Tuition and Other Fees

38. As a result of the aforementioned conduct by the Defendant, the Plaintiffs have suffered substantial losses, predominantly but not limited to the tuition and other fees paid by the Plaintiffs to the Defendant for the fall semester of 2008.

39. The Plaintiffs seek an accounting by the Defendant of all tuition and other fees paid by the Plaintiffs to the Defendant, as well as a disgorgement of all the tuition and other fees together with compound pre-judgment and post-judgment interest from the date of payment to the date of judgment.

Breach of Contract

40. At the time of tuition payment and enrollment into classes, each of the Plaintiffs entered into a contract with the Defendant, who, in exchange for the aforementioned, is to provide each of the Plaintiffs with access to resources, class instruction and higher education. The contract between the Plaintiffs and Defendant consist of both express and implied terms.

41. The Plaintiffs aver that the Defendant is in breach of contract for *inter alia*:
- a. cancelling all of the classes in response to the CUPE strike, including classes not directly impacted by the strike;
 - b. limited to providing a compressed academic and examination period, instead of the originally bargained for 26 weeks of academic tutelage;

Plaintiffs paid tuition for a 26 week semester, wherein they only received 23 weeks, along with a potentially compressed academic and examination period.

c) Absence of Juristic Reason for the Enrichment: There can be no juristic reason for the Defendant's enrichment and the Class Members' corresponding deprivations to be maintained.

45. It would be inequitable for the Defendant to retain any profits, or other compensation it obtained from its wrongful conduct related to its response to the CUPE strike, accordingly, the Plaintiffs demand restitution and/or refund of tuition and other fees (full or partial), on behalf of himself and the Class Members of all monies paid by the Plaintiffs to the Defendant.

Legislation

46. The Plaintiffs plead and rely upon the *Class Proceedings Act*, 1992, S.O. 1992, c. 6; and the *Consumer Protection Act*, 2002, c. 30, Sched. A, as amended.

47. The Plaintiffs propose that this action be tried in the City of Toronto.

CV-09-370928CP
Court File No: _____

Jonathan Turner v. York University
Plaintiff Defendant

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto
Commenced under the
Class Proceedings Act

STATEMENT OF CLAIM

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