

Superior Court  
(Commercial Division)

Canada  
Province of Québec  
District of Montréal  
No: 500-11-060613-227

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**In the matter of the *Companies' Creditors Arrangement Act* of:**

**RISING PHOENIX INTERNATIONAL INC.  
10864285 CANADA INC.  
11753436 CANADA INC.  
CDSQ IMMOBILIER INC.  
COLLÈGE DE L'ESTRIE INC.  
ÉCOLE D'ADMINISTRATION ET DE SECRÉTARIAT DE LA RIVE-SUD INC.  
9437-6845 QUÉBEC INC.  
9437-6852 QUÉBEC INC.**  
Debtors

-and-

**MCCARTHY TÉTRAULT LLP, in its capacity as Students' Representative Counsel**  
Applicant

-and-

**RICHTER ADVISORY GROUP INC.**  
Monitor

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**Factum of the Students' Representative Counsel in support of the Immigration  
Application<sup>1</sup>**

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**To the Honourable David R. Collier, JSC, sitting in the Commercial Division in and for the  
district of Montréal, the Students' Representative Counsel respectfully submit:**

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<sup>1</sup> All capitalized terms used herein and not otherwise defined have the meaning ascribed to them in the *Amended Application for the Issuance of an Order Extending the CAQ and/or Study Permit of Certain Students and Implementing a Streamlined Process for the Reconsideration of Refused Study Permit Applications* dated April 12, 2022.

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**I. Overview of the facts: the Students urgently need the renewal or extension of their CAQs and Study Permits**

1. More than 1,500 foreign students are currently struggling emotionally and financially as a result of the financial distress of the Debtors. These foreign students, mostly from India, have invested significant funds – often borrowed from friends, family or local banks – to pursue their dream of obtaining higher education in Canada. This dream has been thus far put in peril by the action and inaction of individuals, corporations and various authorities.
2. On March 14, 2022, the Court approved the Transaction, which, *inter alia*, contemplates the assumption of many student-specific liabilities by the Purchaser, as well as the provision of interim financing to allow funding to close the transaction and to resume after approximately four months the education of the approximately 740 Registered Students – most of whom are currently in Canada. The Purchaser has also undertaken to honour the Debtors' commitment to educate a large number of Students and to assume certain refund obligations that may be owing to the Students.
3. However, in order to benefit from the Transaction, many of the Students need to renew/extend their CAQ and/or Study Permit. While they could individually apply for extensions of both their CAQ and, once secured, their Study Permit, this would be a burdensome and stressful administrative process for a large number of Students, requiring them to resubmit complete applications and pay additional processing fees for both CAQ and Study Permit renewals and creating additional burdens on them.
4. Furthermore, unless a streamlined process is implemented for the reconsideration of Study Permit applications denied by IRCC, the Other Students who wish to benefit from the offer of the Purchaser to assume the obligations towards them "in kind", would be subject to the payment of additional application fees and potentially lengthy administrative delays should they seek to submit a new application, and might not be in a position to meet the qualification conditions within a reasonable time in order to benefit from the option offered by the Purchaser.
5. In furtherance of one of the objectives of the Students' Representation Counsel as part of the Student Representation Order, of the Transaction approved by the Court and of these CCAA Proceedings, which is to allow the Students to resume and complete their studies thereby minimizing the consequences, financial or otherwise, of the Debtors' insolvency on the Students, the Students' Representative Counsel has been attempting to collaborate with IRCC and MIFI on special programs that could be created for the Students to address the aforementioned issues and has namely asked IRCC and MIFI to:
  - (a) renew/extend, for a period of four months the CAQ and/or Study Permit of the Registered Students, Pipeline Student and Other Students whose CAQ and/or study permit is set to expire prior to the date on which they are expected to complete their studies; and
  - (b) implement a streamlined process facilitating the reconsideration by IRCC of the Other Students' refused Study Permit applications.
6. Unfortunately, IRCC and MIFI remain closed to the idea of implementing the solutions suggested by the Students' Representative Counsel and supported by the Monitor.

- Sixth Report of the Monitor at paras 21-23, 48-49
7. For many, if not all, Registered Students, their CAQ and/or Study Permit is set to expire prior to the date when they are likely to complete their studies. In fact, the Students' Committees have informed the Students' Representative Counsel that for many of the Registered Students, the expiry date is April 30, 2022.
  8. Furthermore, many Students have already been waiting for many months and even more than one year to study in Canada or to receive a refund of their tuition fees paid to the Colleges at the invitation of the Canadian government.
  9. It is of the utmost importance that these issues be resolved as expeditiously as possible to bring closure to the Students. The Students' emotional and financial struggles are a direct consequence of the action and inaction of individuals, corporations and various authorities all outside of their control. They have been through enough and no more hurdles should be put in the way of them achieving their dream.
  10. It is in this context that the Students' Representative Counsel is petitioning this Court seeking the issuance of an order:
    - (a) ordering the *Ministre de l'Immigration, de la Francisation et de l'Intégration* of Québec and the Minister of Immigration, Refugees and Citizenship of Canada to renew/extend, for a period of four months the CAQ and/or Study Permit of the Registered Students, Pipeline Student and Other Students whose CAQ and/or Study Permit is set to expire prior to the date on which they are expected to complete their studies; and
    - (b) providing for the implementation of a streamlined process facilitating the reconsideration by IRCC of the Other Students' refused Study Permit applications.
- II. The Court should grant the Proposed Order as it furthers the remedial purpose of the CCAA by maximizing recovery for the creditors of the Debtors**
- A. In the context of a liquidating CCAA, the remedial purpose of the CCAA is to maximize creditor recovery**
11. Canada's insolvency statutes pursue an array of overarching remedial objectives that reflect Parliament's intention that those statutes minimize the wide ranging and potentially catastrophic impacts insolvency can have on the stakeholders of insolvent debtors. As part of this framework, the CCAA generally prioritizes avoiding the social and economic losses resulting from liquidation of an insolvent corporation by allowing it to restructure its business and financial affairs. The CCAA also has the simultaneous objectives of maximizing creditor recovery, preservation of going-concern value where possible, preservation of jobs and communities affected by a debtor's financial distress and enhancement of the credit system generally.
    - [9354-9186 Québec inc v Callidus Capital Corp, 2020 SCC 10](#) at paras 40-42  
[Source 2]

12. To fulfill these remedial objectives, Parliament chose to keep two legislations where one benefits from significant flexibility to meet the ever growing challenges of reorganizing debtors in a complex world which required creative and effective decisions. The CCAA has been and remains the engine of this evolution and adaptation that is required to restructure debtors nowadays.
  - [Century Services Inc v Canada \(AG\), 2010 SCC 60](#) at para 21 **[Source 1]**
13. The courts have developed new and creative remedies to ensure that the objectives of the CCAA are met. Judges are often told opposing parties that if they make a particular order it will be the first time in Canadian jurisprudence. Nonetheless, the orders are made, if the circumstances are appropriate and the orders can be made within the framework and in the spirit of the CCAA legislation.
  - [Metcalfe & Mansfield Alternative Investments II Corp \(2008\), 2008 CanLII 21724 \(Ont SCJ\)](#) at para 43, Campbell J **[Source 4]**
  - [Canadian Red Cross Society, Re, 1998 CanLII 14907 \(Ont SC\)](#), at para 45, Blair J **[Source 5]**
14. Since the enactment of the CCAA in 1933, restructuring evolved from the survival of a debtor in an operational state to the survival of the business conducted by a debtor under a different corporate form or ownership, including some form of liquidation of the debtor's assets. The latter are referred to as "liquidating CCAAs" and are commonplace in the Canadian restructuring landscape.
  - [9354-9186 Québec inc v Callidus Capital Corp, 2020 SCC 10](#) at paras 41-43, 45-46 **[Source 2]**
15. Ultimately, the relative weight that the different objectives of the CCAA take on in a particular case may vary based on the factual circumstances, the stage of the proceedings or the solutions that are presented for Court approval.
  - [9354-9186 Québec inc v Callidus Capital Corp, 2020 SCC 10](#) at para 46 **[Source 2]**
16. When the reorganization or the liquidation is complete the objectives of the CCAA shift and that of maximizing creditor recovery "takes the center stage". It is the supervising judge which is tasked with the "case-specific assessment and balancing" of the remedial objectives of the CCAA.
  - [9354-9186 Québec inc v Callidus Capital Corp, 2020 SCC 10](#) at para 46 **[Source 2]**
17. In the present case, all of the assets of the Debtors were sold to the Purchaser. The Debtors no longer have any meaningful assets such that the **only** objective of the current CCAA Proceedings should be maximizing recovery for the Debtors' creditors.
  - B. The courts have been given the supervising judge a large discretionary power in furtherance of the remedial purpose of the CCAA**

18. The most important feature of the CCAA, which “enables it to be adapted so readily to each reorganization” is the broad discretion given to the supervising judges in section 11 CCAA to make a variety of orders, as needed. The CCAA is a flexible instrument that is skeletal in nature.

– [Canada v Canada North Group Inc, 2021 SCC 30](#) at para 21 **[Source 3]**

19. As Justice Deschamps writes in *Century*, when deciding on the granting of an order not provided for in the CCAA, “[t]he question is whether the order will usefully further efforts to achieve the remedial purpose of the CCAA”. Even “when an order is sought that does realistically advance the CCAA’s purposes, the ability to make it is within the discretion of a CCAA court”.

– [Century Services Inc v Canada \(AG\), 2010 SCC 60](#) at paras 70-71 **[Source 1]**

20. Section 11 has been interpreted broadly, including “to sanction measures for which there is no explicit authority in the CCAA”. Indeed, as Justice Côté recently held in *Canada v Canada North Group* (with Chief Justice Wagner and Justice Kasirer concurring), that the section 11 power is vast and serves a broad purpose.

[21] The most important feature of the CCAA - and the feature that enables it to be adapted so readily to each reorganization - is the broad discretionary power it vests in the supervising court (*Callidus Capital*, at paras. 47-48). Section 11 of the CCAA confers jurisdiction on the supervising court to “make any order that it considers appropriate in the circumstances”. This power is vast. As the Chief Justice and Moldaver J. recently observed in their joint reasons, “On the plain wording of the provision, the jurisdiction granted by s. 11 is constrained only by restrictions set out in the CCAA itself, and the requirement that the order made be ‘appropriate in the circumstances’” (*Callidus Capital*, at para. 67).  
[...]

[Emphasis added]

– [Canada v Canada North Group Inc, 2021 SCC 30](#) at paras 20, 31, 176, 178 **[Source 3]**

– [Century Services Inc v Canada \(AG\), 2010 SCC 60](#) at para 61 **[Source 1]**

– [9354-9186 Québec inc v Callidus Capital Corp, 2020 SCC 10](#) at para 65 **[Source 2]**

21. However, while the supervising judge’s discretion under section 11 of the CCAA is vast, it is not unlimited and, to exercise this discretion, the supervising judge must be satisfied that the Proposed Order sought is appropriate in the circumstances and that the Students’ Representative Counsel have been acting in good faith and with due diligence.

– [Century Services Inc v Canada \(AG\), 2010 SCC 60](#) at paras 59, 69, 70 **[Source 1]**

– [9354-9186 Québec inc v Callidus Capital Corp, 2020 SCC 10](#) at paras 49, 50, 70 **[Source 2]**

22. Whether an order is appropriate will depend upon the unique factual matrix of each case. However, in considering the relevant factual circumstances, the overarching question is whether both the purpose of the order sought and the means it seeks to employ advance the remedial purpose of the CCAA.

– [Century Services Inc v Canada \(AG\), 2010 SCC 60](#) at paras 59, 70 **[Source 1]**

23. Accordingly, in the context of a liquidating CCAA where the debtors no longer have any assets, courts should grant orders under section 11 where they allow for the maximization of creditor recovery.

**C. The CCAA is paramount to any provincial legislation in conflict with its array of overarching remedial objectives**

24. The Court’s discretion pursuant to section 11 of the CCAA supersedes any provincial legislation that “frustrates” the purpose of the CCAA.

– [Alberta \(Attorney General\) v Moloney, 2015 SCC 51](#) at paras 16, 18, 25, 26 **[Source 7]**

– [Sulphur Corporation of Canada Ltd, 2002 ABQB 682](#) at paras 37-38 **[Source 8]**

25. As previously mentioned, Section 11 has been interpreted broadly, including “to sanction measures for which there is no explicit authority in the CCAA”. The section 11 power is vast, serves a broad purpose, and must be exercised despite any conflicting provincial legislation:

[31] [...] [C]ourts have ensured that the CCAA is given a liberal construction to fulfill its broad purpose and to prevent this purpose from being neutralized by other statutes: [TRANSLATION] “As the courts have ruled time and again, the purpose of the CCAA and orders made under it cannot be affected or neutralized by another [Act], whether of public order or not” (Triton Électronique inc. (Arrangement relatif à), 2009 QCCS 1202, at para. 35 (CanLII)). “This case is not so much about the rights of employees as creditors, but the right of the court under the [CCAA] to serve not the special interests of the directors and officers of the company but the broader constituency referred to in *Chef Ready Foods Ltd. [v. Hongkong Bank of Can. (1990), 1990 CanLII 529 (BC CA), 51 B.C.L.R. (2d) 84 (C.A.)]* . . . Such a decision may inevitably conflict with provincial legislation, but the broad purposes of the [CCAA] must be served” (Pacific National Lease Holding, at para. 28).

– [Canada v Canada North Group Inc, 2021 SCC 30](#) at paras 20, 31, 176, 178 **[Source 3]**

26. The CCAA’s remedial objectives include avoiding the social and economic losses resulting from liquidation of an insolvent corporation by allowing it to restructure its business and financial affairs and the simultaneous objectives of maximizing creditor recovery, preservation of going-concern value where possible, preservation of jobs and communities affected by a debtor’s financial distress and enhancement of the credit system generally.

- [Century Services Inc v Canada \(AG\), 2010 SCC 60](#) at paras 15, 59 [Source 1]
- [9354-9186 Québec inc v Callidus Capital Corp, 2020 SCC 10](#) at paras 40-42 [Source 2]
- [Canada v Canada North Group Inc, 2021 SCC 30](#) at para 20 [Source 3]

**D. The Proposed Order is appropriate in the circumstances**

**(i) The conduct of the Provincial and Federal Government supports the issuance of the Proposed Order**

27. As further detailed in the Application, the Students are currently facing emotional and financial distress as a result from circumstances completely outside of their control, namely the insolvency of the Debtors and the shortcomings on the part of the Provincial Government (MES) and Federal Government (IRCC) in the context of the international student application process.

**A. The conduct of the Provincial Government**

28. The MES approved the Colleges as DLIs and renewed the permit of CCSQ and CDE despite being cognizant of the financial challenges experienced by these colleges and even issuing reservations as to their financial capacity to ensure the proper functioning of the colleges. Additionally, it appears from M Colleges’ unaudited financial statements for the period ending on December 31, 2020, which under the *Act Respecting Private Education*, M College was required to provide the MES yearly, that it had collected many millions of dollars in deferred revenues (i.e. tuition fees paid in advance by the Students) and that many millions of dollars were paid in advances to shareholders.

- CCEP’s *52e Rapport annuel, 2020-2021* in respect of the Colleges, Exhibit P-5
- “État des flux de trésorerie” forming part of the unaudited financial statements of M College attached under seal as an Exhibit to the Amended pre-filing Monitor’s Report dated January 6, 2022 (under seal), Exhibit P-8

29. This is particularly relevant given the absolute trust that the Students put in the government’s DLI designation. The Students rely on this seal of approval by a Canadian authority when choosing their institution as not only is it safe in their eyes to pay their tuition fees in advance to such institution, but also because it makes them eligible for a Post-Graduation Work Permit (“**PGWP**”) after their studies.

- Testimony of N. Rani

30. Moreover, the MES remained passive when some of the Colleges’ directors were arrested by the Québec anti-corruption unit, UPAC, and charged with fraud in November 2020. The accusation alone would have been sufficient grounds to revoke the permit of CCSQ, M College and CDE.

- [Act Respecting Private Education, CQLR c E-9.1](#), s 18.1



The Minister may refuse to renew a permit if the permit holder, one of the holder's directors or shareholders or an officer of the institution has a judicial record relevant to the abilities and conduct required to operate an educational institution.

- Extracts of the REQ for CCSQ, M College and CDE, Exhibit P-6
- Leah Hendry and Benjamin Shingler's article "Fired by her school board, a Montrealer went on to run 3 colleges. International students are paying the price" published on March 17, 2022, Exhibit P-7

### **B. The conduct of the Federal Government**

31. As part of their Study Permit application, Students are required under the *Immigration and Refugee Protection Regulations* to provide proof that they have sufficient and available financial resources.

- [Immigration and Refugee Protection Regulations, SOR/2002-227](#), s 220

An officer shall not issue a study permit to a foreign national, other than one described in paragraph 215(1)(d) or (e), unless they have sufficient and available financial resources, without working in Canada, to

(a) pay the tuition fees for the course or program of studies that they intend to pursue;

(b) maintain themselves and any family members who are accompanying them during their proposed period of study; and

(c) pay the costs of transporting themselves and the family members referred to in paragraph (b) to and from Canada.

32. Despite the fact that the law only requires students to prove the availability of the funds, the Visa Office Instructions provide that the "preferred option for proof of funds" is "evidence of purchase of a special Guaranteed Investment Certificate (GIC) from a participating Canadian financial institution, in the amount of \$10,000 CAD to cover living expenses for your first year in Canada and evidence of payment for your tuition".

- Visa Office Instructions, Exhibit P-9

33. This is even more concerning given the fact that this recommendation is in complete contradiction of the *Act Respecting Private Education*, which prohibits an institution from requiring payment of the tuition fees "before the performance of its obligation has begun" and is not required under the *Immigration and Refugee Protection Regulations*.

- [Act Respecting Private Education, CQLR c E-9.1](#), s 70

70. No institution may require payment from a client before performance of its obligation has begun, except for the payment of an admission or enrollment fee not in excess of the amount determined in accordance with the regulations of the Minister.

No institution may require payment of the client's obligation, or balance thereof if admission or enrollment fees have been paid, in less than two reasonably equal instalments. The dates on which the instalments become due must be fixed in such a way that they fall approximately at the beginning of each half of the duration, calculated in months, lessons or credits, of the educational services for which the student is enrolled.

→ [Immigration and Refugee Protection Regulations, SOR/2002-227](#), s 220

34. Furthermore, in the case of students applying through the "Student Direct Stream" ("**SDS**"), an accelerated application process, IRCC requires these students to provide "proof of full payment of tuition for the applicant's first year of study", once again in complete contradiction of the *Act Respecting Private Education*.

→ Extract of IRCC website – "Student Direct Stream: About the process" and "Student Direct Stream (SDS)", Exhibit P-15

→ [Act Respecting Private Education, CQLR c E-9.1](#), s 70

35. In compliance with the Visa Office Instructions issued by IRCC, or in compliance with the SDS requirements, and not informed that the requirement to pay in advance the tuition fees was illegal, most, if not all, Students paid their tuition fees in advance to satisfy the prerequisites for the issuance of a Study Permit.

36. The tuition fees paid in advance amount to approximately \$15,000, which for the Students represents almost seven years of earnings at the average income in India.

37. Based on the information submitted by the Debtors, as of the date of the filing of the CCAA Proceedings, \$11,371,841.94 was owed to the Students. The most efficient mean to reduce or eliminate this liability is to provide the Other Students the opportunity to study at the colleges owned by the Purchaser.

**(ii) The prejudice to the Students absent the issuance of the Proposed Order**

**A. CAQ and Study Permit extension/renewal**

38. In accordance with the terms of the Purchase Agreement, the Registered Students have just recently restarted their courses which had been interrupted due to circumstances entirely beyond their control, namely as a result of the insolvency of the Debtors and the CCAA Proceedings.

39. Pipeline Students and Other Students are either currently waiting on a decision regarding their Study Permit from IRCC or have obtained a refusal from IRCC and require a valid CAQ for the Streamlined Process.

40. While Registered Students, Pipeline Students and Other Students could individually apply for extensions of both their CAQ and, once secured, their Study Permit, this would be a burdensome and stressful administrative processes for a large number of Registered Students, Pipeline Students and Other Students, requiring them to resubmit complete applications and pay additional processing fees for both CAQ and Study Permit renewals and creating additional burdens on the Registered Students, Pipeline Students and Other Students.
41. To require Registered Students to apply via the standard process for both CAQ and Study Permit renewals (for which processing times vary) would also significantly negatively impact their eligibility for a PGWP since one of the requirements for same is to hold, or have held, a valid study permit within the 180 days prior to the date of application.
42. Taking into consideration that many of the Registered Students will shortly be completing their program, to required Registered Students to apply via the standard process may lead to many not having a valid Study Permit within the 180 days' requirement and thus rendering them ineligible for a PGWP.
43. The foregoing would go against one of the objectives of the Students' Representation Counsel as part of the Student Representation Order, of the Transaction approved by the Court and of these CCAA Proceedings, that is to allow the Students to resume and complete their studies thereby minimizing the consequences, financial or otherwise, of the Debtors' insolvency on the Students.

#### ***B. Streamlined Process***

44. The Purchaser is generously offering the Other Students the previously available curriculum courses that were pre-paid prior to the CCAA filing date, subject to such students satisfying all other pre-requisite obligations, such as obtaining their Study Permit and meeting the other qualification conditions, within a reasonable time (this period has yet to be established).
45. However, the terms of the Transaction provide that the Purchaser's assumed obligations towards the Other Students are "in kind" only, meaning that refund claims in cash are not assumed by the Purchaser in respect of such Other Students who have had their study permit application denied or have already withdrawn from the Colleges and do not wish to attend.
46. Taking into consideration that, at this moment, the likely refund of the tuition fees paid by the Other Students relying on ill-advised information provided by the authorities will be inconsequential, most of the Other Students want to fulfill their dream to come to Canada to study.
47. Unless a streamlined process is implemented for the reconsideration of Study Permit applications denied by IRCC, the Other Students who wish to benefit from the offer of the Purchaser to assume the obligations towards them "in kind", would be subject to the payment of additional application fees and potentially lengthy administrative delays should they seek to submit a new application, and might not be in a position to meet the qualification conditions within a reasonable time in order to benefit from the option offered by the Purchaser.

(iii) **The Provincial and Federal Government would not be prejudiced by the issuance of the Proposed Order**

**A. CAQ and Study Permit extension/renewal**

48. The impact on IRCC and the MIFI to extend/renew for a period of four months the CAQ and/or Study Permit of the Registered Students, Pipeline Students and Other Students would be iexistant considering the fact that if no action was taken, after the expiry of this period of four months, the students will have to (i) apply for a renewal of their CAQ and/or Study Permit to complete their studies if more time is required, (ii) apply to change their status allowing them to stay in Canada or (iii) apply for a PGWP if eligible, and would have to disclose their activities in Canada and provide evidence that they have been studying for the past four months.
49. Furthermore, the MIFI has the power to, and has in the context of the COVID-19 pandemic, automatically renewed and extended CAQs
- Décret 494-2020 dated April 29, 2020, and the press release dated April 30, 2020 published by the MIFI, *en liasse*, Exhibit P-4
50. Finally, the Superior Court has in the past ordered the MIFI to proceed to the treatment of CAQ applications and to issue CAQs when appropriate to the students who had filed such applications.
- *Cégep de la Gaspésie et des Îles c Procureur Général du Québec* (11 April 2021) QC SC, Montréal 500-17-115185-210 (Jugement (Ordonnance de sauvegarde)) at paras 34-35 [**Source 6**]

**B. Streamlined Process**

51. The streamlined process proposed pursuant to the Proposed Order would require the Other Students to submit a reconsideration request via webform – an online standardized form used by immigration applicants and their representatives to transmit information and/or documents to IRCC regarding their applications – coupled with the use of a webform keyword to allow IRCC to quickly identify these applications (the “**Streamlined Process**”). The Proposed Order further provides that the proposed Streamlined Process is without prejudice to the right of IRCC to request further information and to ask the students to transmit any relevant information that could help IRCC in its reconsideration accounting for the changed circumstances that have likely occurred in the time that has passed..
52. The Streamlined Process would be in line with the practice of IRCC decision makers to sometimes accept to reconsider refused applications for temporary residence, which requests are usually submitted by email directly at the visa office that originally refused the application.
- Internal directives of IRCC, Exhibit P-14.

53. Furthermore, out of the Other Students, approximately 25% of them received an AIP (i.e. 124 out of 502, based on available information) and had already studied online for a year before IRCC refused their Student Permit application. In most cases, the motives for the refusal were a combination of (i) uncertainty that they would leave Canada after their studies, (ii) the proposed studies are not reasonable in light of their background and/or (iii) they did not meet the English requirement. These 25% of the Other Students had a legitimate expectation that their Study Permit application would not be refused on any of the previously mentioned grounds, given that IRCC had all the necessary information at the time it issued the AIP to determine whether or not those requirements were satisfied.
54. At the least, students should have received a Procedural Fairness letter giving them the opportunity to address any concerns of the adjudicating officer given IRCC knew that students would have invested funds and undertaken courses.

**(iv) This Court should issue the Proposed Order**

55. As appears from the foregoing, the situation the Students are currently facing is, apart from the insolvency of the Debtors, due to the dysfunctional international student application process and the incoherencies between the federal and provincial legislation.
56. The relief sought would allow a maximal number of Students to benefit from the Transaction and avoid the great prejudice that they would suffer if they were required to apply for a CAQ/Study Permit renewal/extension and/or reapply for the issuance of a Study Permit. In turn, this would further the objectives of the CCAA by maximizing creditor recovery.
57. Moreover, the potential prejudice to the Students absent the issuance of the Proposed Order greatly outweigh the potential prejudice, if any, that the Provincial and Federal Government would sustain should the Proposed Order be issued.
58. It is respectfully submitted that, in the instant case, it is undoubtedly appropriate to issue the Proposed Order since same advances the policy objectives underlying the CCAA, in two ways:
- (a) by allowing a maximum number of Students to benefit from the option offered by the Purchaser to assume the obligations of the Debtors towards them, “in kind”, by providing the education services for which they paid, hence mitigating their losses resulting from the insolvency of the Debtors; and
  - (b) by allowing for the maximization of the recovery for the remainder of the Students, since the Proposed Streamlined Process would allow the Other Students who wish to benefit from the option to study in Canada (to the extent that the reconsideration is favourable to them) to do so, hence reducing the number of Students left with a claim for a refund and thus allowing for higher recovery for the latter.

— [9354-9186 Québec inc v Callidus Capital Corp, 2020 SCC 10](#) at paras 49-50  
**[Source 2]**

**III. Provisional execution of the Proposed Order should be granted**

59. The provisional execution of the Proposed Order to intervene herein is necessary in order to prevent a situation where some of the Students would be in Canada illegally and to ensure that diligent advancement of the CCAA Proceedings.
- *Code of Civil Procedure, CQLR c C-25.01, art 661*
60. For many, if not all, Registered Students, their CAQ and/or Study Permit is set to expire prior to the date when they are likely to complete their studies. In fact, the Students' Committees have informed the Students' Representative Counsel that for many of the Registered Students, the expiry date is April 30, 2022. It is therefore urgent that this Court intervene and order the renewal/extension of the CAQ and/or Study Permits of Registered Students to prevent their expiry and thus allow the Registered Students to fully benefit from the Transaction.
61. Furthermore, the Debtors and the Monitor wish to quickly file a plan of arrangement so that a distribution can be made to the creditors. In order to do so, a claims process in respect of the Debtors must be conducted and such claims process can-not be conducted unless the Debtors know who their creditors are. In this sense, it is of utmost importance that the Other Students' Study Permit applications be reconsidered as soon as possible to allow the CCAA Proceedings to continue to advance diligently.
62. Finally, many Students have already been waiting for many months and even more than one year to study in Canada or to receive a refund of their tuition fees paid to the Colleges at the invitation of the Canadian government. It is of the utmost importance that these issues are resolved as expeditiously as possible to bring closure to the Students.
63. In light of the foregoing, the provisional execution of the Proposed Order is appropriate and should be ordered.

The whole respectfully submitted.

Montréal, April 13, 2022

McCarthy Tétrault LLP

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McCarthy Tétrault LLP  
Lawyers for the Applicant

SUPERIOR COURT  
(COMMERCIAL DIVISION)

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CANADA  
PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL  
N° : 500-11-060613-227

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**In the matter of the *Companies' Creditors Arrangement Act* of:**

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10864285 CANADA INC.  
11753436 CANADA INC.  
CDSQ IMMOBILIER INC.  
COLLÈGE DE L'ESTRIE INC.  
ÉCOLE D'ADMINISTRATION ET DE SECRÉTARIAT DE  
LA RIVE-SUD INC.  
9437-6845 QUÉBEC INC.  
9437-6852 QUÉBEC INC.  
Debtors**

-and-

**MCCARTHY TÉTRAULT LLP, in its capacity as  
Students' Representative Counsel  
Applicant**

-and-

**RICHTER ADVISORY GROUP INC.  
Monitor**

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***Factum in support of the Application for the Issuance  
of an Order Extending the CAQ and/or Study Permit of  
Certain Students and Implementing a Streamlined  
Process for the Reconsideration of Refused Study  
Permit Applications***

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