

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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**Amended 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.

1. 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 all of the stakeholders of insolvent debtors. As part of this framework, the CCAA prioritizes avoiding the social and economic losses resulting from the liquidation of an insolvent corporation. 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.
2. One of the principal means through which the CCAA achieves its objectives is by granting to a single supervising judge broad discretion to make a variety of orders that respond to the circumstances of each case. Through the exercise of judicial discretion, CCAA proceedings have evolved to permit a timely implementation of a variety of outcomes without the need of awaiting for legislative amendments.
3. It is not infrequently that judges are told, by those opposing a particular initiative at a particular time, that if they make a particular order that is requested it will be the first time in Canadian jurisprudence that such an order has been made. 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.
4. 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. Section 11 has been interpreted broadly, including "to sanction measures for which there is no explicit authority in the CCAA".
5. The only limit to the discretion given to the supervising judge under section 11 CCAA is that the supervising judge must be satisfied that the order sought is appropriate in the circumstances and that the applicant has been acting in good faith and with due diligence.
6. In the present case, more than 1,500 foreign students are currently facing emotional and financial distress as a result of circumstances completely outside of their control, namely the insolvency of the Debtors and the shortcomings on the part of the Provincial Government (MES) and the Federal Government (IRCC) in the context of the international student application process.
7. Despite being partly responsible for the precarious situation many students find themselves in, those governments refuse to collaborate with the Students' Representative Counsel to implement measures aimed at easing the burden faced by the students and to allow them to resume or pursue their dream of studying in Canada as quickly as possible and maybe even one day become Canadian permanent residents to their benefit and to the benefit of our community.
8. There is no precedent under CCAA for the relief sought by the Students' Representative Counsel pursuant to the Application; however, the absence of precedents has never prevented a CCAA Court from making an order when the circumstances were appropriate and the orders could be made within the framework and in the spirit of the CCAA legislation.

9. The only remedial objective that remains to be achieved in the current CCAA Proceedings is to avoid or minimize the social and economic losses resulting from the CCAA Proceedings and to maximize the recovery for creditors. The relief sought by the Students' Representative Counsel aims to do just that. It is respectfully submitted that there are no circumstances which would be more appropriate to seek the remedies being sought by the Application, namely:
- (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.

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

10. 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.
11. The testimony of Nisha Rani in Court on Wednesday in that respect was compelling.
12. 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.
13. 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.
14. 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.
15. 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.

16. 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
17. 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 approximately 400 of the Registered Students, the expiry date is April 30, 2022.
18. 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.
19. 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.
20. It is in this context that the Students' Representative Counsel is petitioning this Court.

**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**

21. 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]**
22. 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]**

23. The courts have developed new and creative remedies to ensure that the objectives of the CCAA are met. Judges are often told by 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.

- [9323-7055 Québec inc \(Arrangement relatif à\), 2019 QCCS 5904](#) at para 16, Collier J [**Source 10**], aff'd 2020 QCCA 659 [**Source 11**]
- [Metcalf & 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**]

24. Since the enactment of the CCAA in 1933, restructuring has 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 a 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**]

25. 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**]

26. 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**]

27. 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**

28. 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**]

29. 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]**

30. 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]**

31. 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]**

32. 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]**



33. 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**

34. The Students' Representative Counsel does not question the operability, the constitutionality or the validity of a provision of an Act of the Parliament of Québec, of any regulation made under such an Act, of a government or ministerial order or of any other rule of law, and the CCAA Proceedings are not a civil case, such that a notice to the Attorney General of Québec is not required pursuant to Article 76 of the *Code of Civil Procedure*.

— [Code of Civil Procedure, CQLR c C-25.01](#), art 76

In any civil, administrative, penal or criminal case, a person intending to question the operability, the constitutionality or the validity of a provision of an Act of the Parliament of Québec or the Parliament of Canada, of any regulation made under such an Act, of a government or ministerial order or of any other rule of law must give notice to the Attorney General of Québec. [...]

35. In any event, the Students' Representative Counsel has given a *de bene esse* notice to the Attorney General of Québec. Given the urgency, the Students' Representative Counsel asks this court to shorten the delay required to give such notice such that the matter can be properly heard on April 19, 2022.
36. In the event that the Court considers that the Proposed Order affects the operability of the *Québec Immigration Act* and/or the *Québec Immigration Regulation*, the Students' Representative Counsel submits that the Court's discretion pursuant to section 11 of the CCAA supersedes any provincial legislation that "frustrates" the purpose of the CCAA. It has indeed been recognized that the discretion conferred by section 11 of the CCAA may be exercised despite any conflicting provincial legislation.

— [Triton Électronique inc \(Arrangement relatif à\)](#), 2009 QCCS 1202 at paras 34-35, Lalonde J [**Source 12**], cited with approval in [Canada v Canada North Group Inc](#), 2021 SCC 30 at para 31 [**Source 3**]:

Dans *Re : Pacific National Lease Holding Corp.* [(1993) 15 CBR (3d) 265 (BC CA) aux pp 271-272], un arrêt où le tribunal de première instance avait ordonné à la compagnie de ne pas payer l'indemnité due aux employés en vertu du *Employment Standards Act*, loi d'ordre public, le juge MacFarlane de la Cour d'appel de la Colombie-Britannique se prononçait comme suit: [...]

This case is not so much about the rights of employees as creditors, but the right of the court under the C.C.A.A. 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*, supra. Such a decision may inevitably conflict

with provincial legislation, but the broad purposes of the C.C.A.A. must be served. [...]

Ce que les tribunaux ont décidé à maintes reprises, c'est que la finalité de la LACC et les ordonnances qui en découlent ne sauraient être affectées, ni neutralisées par une autre loi, fut-elle d'ordre public ou non.

- [Sulphur Corporation of Canada Ltd, 2002 ABQB 682](#) at paras 37-38 [**Source 8**]
- [Skeena Cellulose Inc v Clear Creek Contracting Ltd, 2003 BCCA 344](#) at para 42 [**Source 9**]
- [Alberta \(Attorney General\) v Moloney, 2015 SCC 51](#) at paras 16, 18, 25, 26 [**Source 7**]

37. The CCAA's remedial objectives include avoiding the social and economic losses resulting from the 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 lax conduct of the Provincial and Federal Government supports the issuance of the Proposed Order**

38. As further detailed in the Application and as evidenced during the testimony of Nisha Rani, the Students are currently facing emotional and financial distress as a result of 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**

39. 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
40. 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
41. 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**

42. 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.

43. Despite the fact that the law only requires students to prove the availability of the funds, the Visa Office Instructions, issued by IRCC, 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

44. Furthermore, in the case of students applying through the accelerated application process set up by IRCC, “Student Direct Stream” (“**SDS**”), which is the case of almost all of the Students, the IRCC specifically requires these students to provide “proof of full payment of tuition for the applicant’s first year of study”.

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

The applicant **must** include [...] **proof of full payment of tuition for the applicant’s first year of study**

[Characters in bold as on the IRCC website]

45. This is even more concerning given the fact that these recommendations and requirements are in blatant breach 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

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*

46. In compliance with the SDS requirements and the Visa Office Instructions both issued by IRCC, and not informed that these instructions and 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.
47. 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.
48. In the case of Nisha Rani, her elder brother contracted a loan, secured by a security interest on the apartment where she lives with her mother, her three brother, their three wives and their four kids.
  - Testimony of N. Rani
49. The monthly interest on the loan contracted by Nisha Rani's brother totals 50,000 Rupees (approximately \$1,000 Canadian dollars) since February 2020.
  - Testimony of N. Rani
50. 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 means to reduce or eliminate this liability is to provide the Other Students the opportunity to study at the colleges owned by the Purchaser.
51. If the prescriptions of the applicable provincial law had been followed by IRCC and it had not issued the instructions and requirement referred to above, Students without a visa would not be creditors of the Debtors.

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

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

52. 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.
53. 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.

54. 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.
55. 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.
56. Taking into consideration that many of the Registered Students will shortly be completing their program, to require 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.
57. 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***

58. 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 prerequisite obligations, such as obtaining their Study Permit and meeting the other qualification conditions, within a reasonable time (this period has yet to be established).
59. 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.
60. Taking into consideration that, at this moment, the likely refund of the tuition fees paid by the Other Students relying on ill-advised instructions and requirement provided by the authorities will be inconsequential, most of the Other Students want to fulfill their dream to come to Canada to study, as evidenced by the testimony of Nisha Rani.

→ Testimony of N. Rani

61. 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**

62. 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 inexistant considering the fact that, after the expiry of this period of four months, the students will have to (i) leave the country, (ii) apply for a renewal of their CAQ and/or Study Permit to complete their studies if more time is required, (iii) apply to change their status allowing them to stay in Canada or (iv) apply for a PGWP if eligible. In the case of the last three scenarios, the Students will have to disclose their activities in Canada and provide evidence that they have been studying for the past four months.
63. 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
64. Futhermore, 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**

65. 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..

66. 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.
67. Furthermore, out of the Other Students, approximately 25% of them received an approval-in-principle (“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.
68. The AIP process provided that students who have been accepted at a DLI, had paid the tuition fees for the first year of study and secured a Guaranteed Investment Certificate can begin studying online abroad once an officer of IRCC has reviewed the information and documents provided to support the Study Permit application.
- News release by minister Mendicino – “Minister Mendicino announces changes to facilitate online learning for international students” dated July 14, 2020, Exhibit P-19
69. Such process had been put in place since:
- (a) the ability of the Students to enter Canada were limited by travel and health restrictions in place in Canada; and
  - (b) centers to submit biometrics or clinics to conduct an immigration medical exam were temporarily closed in India.
- News release by minister Mendicino – “Minister Mendicino announces changes to facilitate online learning for international students” dated July 14, 2020, Exhibit P-19
70. As in the case of Nisha Rani, many students received an AIP confirming that:
- (a) an officer had reviewed the information and documents provided;
  - (b) a preliminary eligibility assessment had been conducted (realistically having included an assessment of the information and documents provided); and
  - (c) once all requested information and documents (then not available, namely the biometrics and immigration medical exam) were provided, the assessment would be completed.
- Approval in Principle, Exhibit P-17
71. Notwithstanding the reasonable expectation of these 124 Students, IRCC refused their permit application with the motives for the refusal being 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.



72. 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.
73. In light of all of the above, 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**

74. 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.
75. 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.
76. Moreover, the potential prejudice to the Students absent the issuance of the Proposed Order greatly outweighs the absence of prejudice that the Provincial and Federal Government would sustain should the Proposed Order be issued.
77. 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**

78. 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

79. 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.
80. 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 cannot 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.
81. 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.
82. In light of the foregoing, the provisional execution of the Proposed Order is appropriate and should be ordered.

The whole respectfully submitted.

Montréal, April 14, 2022

McCarthy Tétrault LLP

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McCarthy Tétrault LLP  
Lawyers for the Applicant

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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**Amended List of Exhibits**

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<b>Exhibit P-1</b>	Proposed Order
<b>Exhibit P-2</b>	Extract of the MIFI website – “Required conditions to study in Québec” and “Required documents for your application”
<b>Exhibit P-3</b>	Extract of IRCC website – “Study permit: Get the right documents”
<b>Exhibit P-4</b>	Décret 494-2020 dated April 29, 2020, and the press release dated April 30, 2020 published by the MIFI, <i>en liasse</i>
<b>Exhibit P-5</b>	CCEP's <i>52e Rapport annuel, 2020-2021</i> in respect of the Colleges
<b>Exhibit P-6</b>	Extracts of the REQ for CCSQ, M College and CDE

- Exhibit P-7** 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-8** “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-9** Visa Office Instructions
- Exhibit P-10** List of Registered Students (under seal)
- Exhibit P-11** List of Other Students (under seal)
- Exhibit P-12** Email from the MIFI to the Monitor dated February 7, 2022
- Exhibit P-13** Email from the MIFI to the Students’ Representative Counsel dated February 28, 2022
- Exhibit P-14** Internal directives of IRCC
- Exhibit P-15** Extract of IRCC website – “Student Direct Stream: About the process” and “Student Direct Stream (SDS)”
- Exhibit P-16** List of Pipeline Students (under seal)
- Exhibit P-17** Approval in Principle
- Exhibit P-18** Letter refusing Study Permit application
- Exhibit P-19** News release by minister Mendicino – “Minister Mendicino announces changes to facilitate online learning for international students” dated July 14, 2020
- Exhibit P-20** Extract of the MIFI website – “Suspension of certain Foreign Student Program applications”
- Exhibit P-21** Extract of the MIFI website – “Processing of applications for temporary selection for studies has resumed”

Montréal, April 14, 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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-and-

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

-and-

RICHTER ADVISORY GROUP INC.  
Monitor

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***Amended Book of Exhibits***  
***(including exhibits UNDER SEAL)***

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September 3, 2020



Application: 



Hello,

While the COVID-19 pandemic has presented a number of challenges world-wide, Canada's whole-of-government approach is aimed at protecting the health of Canadians while minimizing the economic and social impact of restrictions. Immigration, Refugees and Citizenship Canada has implemented a temporary two-stage process to provide an update to international students who have not yet been able to provide all the required documents or information needed to have their application fully assessed in time for the fall semester.

You are receiving this notification as an officer has reviewed the information and documents you provided to support your study permit application. Based on this preliminary eligibility assessment, your application has advanced to the next stage of processing.

Additional information and documentation may be required in order to continue processing your application. If we previously requested that you complete biometrics and/or a medical examination and submit a police certificate, please do so as soon as you are able to. If you have not received a request from us for additional information or documents, please await further instructions.

Once we have received all requested information and documents, we will complete our assessment of your application and we will inform you of the final decision (approved or refused) made on your application.

While you await a final decision on your application you may commence your studies online.

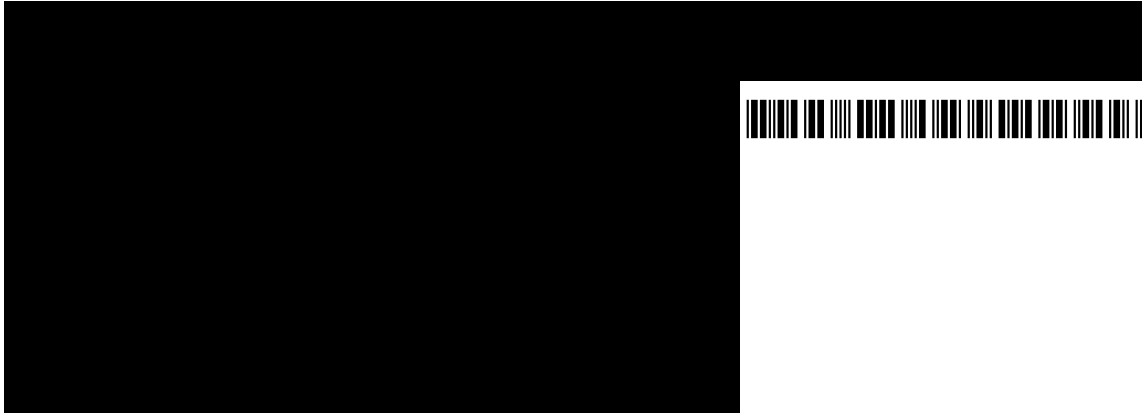
If you are a representative who has received this notification, please ensure to advise your client(s) of this important information.

Thank you,

Immigration, Refugees and Citizenship Canada



Date: August 14, 2021



Dear [REDACTED]

Thank you for your interest in studying in Canada. After careful review of your study permit application and supporting documentation, I have determined that your application does not meet the requirements of the Immigration and Refugee Protection Act (IRPA) and Immigration and Refugee Protection Regulations (IRPR). I am refusing your application on the following grounds:

- I am not satisfied that you will leave Canada at the end of your stay, as stipulated in subsection 216(1) of the IRPR, based on the purpose of your visit.
- Your proposed studies are not reasonable in light of: your qualifications, previous studies, mark sheets, academic record, level of establishment and/or your future prospects and plans.

You are welcome to reapply if you feel that you can respond to these concerns and can demonstrate that your situation meets the requirements. All new applications must be accompanied by a new processing fee.

Sincerely,  
CPC-Ottawa, NHQ - Centralized Processing Region  
365 Laurier Avenue West  
Ottawa ON  
K1A 1L1, Canada  
Application Enquiry: [CPC-CTD-Ottawa@cic.gc.ca](mailto:CPC-CTD-Ottawa@cic.gc.ca)

[www.cic.gc.ca](http://www.cic.gc.ca)



Government  
of Canada

Gouvernement  
du Canada

[Canada.ca](#) > [Immigration, Refugees and Citizenship Canada](#) > [Newsroom](#)

# Minister Mendicino announces changes to facilitate online learning for international students

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From: [Immigration, Refugees and Citizenship Canada](#)

## News release

**July 14, 2020—Ottawa**—International students make immense cultural and social contributions to Canada, and generate more than \$21 billion in economic activity. Since the onset of the pandemic, the Honourable Marco E. L. Mendicino, Minister of Immigration, Refugees and Citizenship, has made a number of [temporary policy changes](#) to support and reassure international students and learning institutions.

As the fall season is fast approaching, the Minister has announced additional measures to support international students beginning a new program online this fall with a Canadian learning institution, if their institution is offering the program online, so that they can pursue their education while ensuring everyone's safety.

These changes will give students more certainty about their ability to enter Canada once travel and health restrictions are eased in Canada and their own home countries. They mean that students will be eligible to work in Canada after graduation, even if they need to begin their studies online from overseas this fall.

The changes will continue Canada's reputation as a premier destination for international students and demonstrate the importance of the international student program and the contributions international students make to Canada.

The new measures include



- providing priority study-permit processing for students who have submitted a complete application online, to ensure that permits are processed as quickly as possible
- allowing students to count the time spent pursuing their studies online abroad toward their eligibility for a post-graduation work permit, if they have submitted a study permit application and if at least 50% of their program is completed in Canada
- providing reassurances to international students who cannot submit all of the documentation needed to complete processing of their applications, and who choose to pursue programs through distance learning, by implementing a temporary 2-stage approval process

The temporary process will allow applicants to count the time spent studying online abroad towards their post-graduation work permit once they receive an approval-in-principle, as long as they are able to satisfy all requirements and receive the full approval of their study permit application at a later date. As services begin to reopen, applicants will be required to submit remaining documents and receive an approved study permit before being allowed to travel to Canada.

This process is available to students starting a program in the fall semester who submit a study permit application before September 15, 2020. This measure will reassure students that they can enrol and begin their studies this fall online, even when they are not able to submit all required documentation due to pandemic-related closures.

While the COVID-19 pandemic has presented a number of challenges worldwide, Canada's whole-of-government approach is aimed at protecting the health of Canadians while minimizing the economic and social impact of restrictions. With these changes, it is expected that international students will continue contributing to the health and vitality of Canada and the local communities where they study from coast to coast to coast.

It is important for prospective students to note that commencing their studies online from abroad following approval-in-principle of a study permit application is not a guarantee that they will receive a full approval of their study permit application, or be authorized to pursue their studies in Canada. It is still possible that an applicant could receive a negative final decision on their study permit based on factors such as inadmissibility for criminality or security reasons, and the inability to predict how the COVID-19 situation and any associated travel restrictions will evolve.

## Quotes

“The pandemic has had a significant impact on international students and the Canadian institutions and communities that host them. This is why we have implemented a series of measures to support them. We value the contribution of young people seeking a high-quality education in Canada, and we’re making every effort to minimize how current challenges affect their plans and dreams for the future.”

– The Honourable Marco E. L. Mendicino, P.C., M.P., Minister of Immigration, Refugees and Citizenship

## Quick facts

- In 2019, Canada hosted over 650,000 international students at the post-secondary education level.
- More than 58,000 former international students have become Canadian permanent residents.
- The temporary stages for approval are approval-in-principle and eligibility/admissibility:

- Applicants who pass the approval-in-principle stage—which includes showing that they have been accepted at a Canadian learning institution, have the available funds and are otherwise eligible for the study permit—will be notified of a first-step approval.
- Once the approval-in-principle is issued, applicants can begin studying online abroad and have that time count towards their post-graduation work permit, provided they meet other criteria and that they eventually receive full approval of their study permit.
- An applicant will receive final approval once they have met all eligibility and admissibility requirements, including submitting biometrics and necessary documents such as an immigration medical exam and a police certificate. Only once a final approval is received will an applicant be able to travel to Canada.

## Associated links

- [News release: Canada provides update on exemptions to travel restrictions to protect Canadians and support the economy](#)
- [News release: Removing barriers for international students working in essential services to fight COVID-19](#)
- [Web notice: Flexibility in post-graduation work permit rules to help international students and Canadian post-secondary institutions](#)
- [Website: How COVID-19 is affecting immigration, refugee, citizenship and passport services](#)

## Contacts

### Contacts for media only

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### **Date modified:**

2020-07-14

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## Suspension of certain Foreign Student Program applications

December 30, 2020 — A decision by the Minister of Immigration, Francization and Integration taken for reasons of public interest took effect today. It concerns the reception and processing of certain applications for temporary selection for studies.

By this decision, the Minister is temporarily suspending the reception of applications for temporary selection for studies, as well as the processing of applications for temporary selection for studies already received from persons admitted to ten (10) teaching institutions that are under audit or investigation by the Ministère de l'Enseignement supérieur (MES). The institutions concerned are the following:

- M College of Canada;
- Matrix College of Management, Technology and Healthcare;
- Canada College inc.;
- Herzing College (Institute);
- CDE College;
- Montréal College of Information Technology;
- Institut supérieur d'informatique (ISI);
- Universel College – Gatineau Campus;
- Collège CDI;
- Montréal Campus of Cégep de la Gaspésie et des Îles.

Therefore, the processing of any application received before December 30, 2020, for which no decision had yet been made is suspended. The reception of new applications is also suspended as of December 30, 2020.

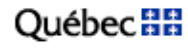
This decision will remain in force until March 31, 2021.

This decision has no repercussions on foreign students currently studying at those institutions and who hold a valid Québec Acceptance Certificate and study permit.

For more information, consult the *Gazette officielle du Québec*.

### Update:

January 12, 2021 – **Processing of applications for temporary selection for studies has resumed**





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## Processing of applications for temporary selection for studies has resumed

Montréal, January 12, 2021 – The Ministère de l’Immigration, de la Francisation et de l’Intégration has acknowledged the Superior Court of Québec’s decision, granting the request from the Cégep de la Gaspésie et des Îles and ordering the processing of applications for temporary selection for studies at the CEGEP’s Montréal campus.

The Ministère de l’Immigration, de la Francisation et de l’Intégration therefore announces that it will comply with the court’s decision and that it will resume the reception and processing of applications for temporary selection for studies from admitted foreign nationals within all the educational institutions named in order 2020-008, published on December 30, 2020.

The Minister, by the ministerial order 2021-001 of January 15, 2021, and published in the *Gazette officielle du Québec* of January 20, 2021, has taken the decision to put an end to the decision taken by ministerial order 2020-008.

Audits and investigations by the Ministère de l’Enseignement supérieur are ongoing. The Ministère confirmed its intention to cooperate with all of the parties involved in the process in order to ensure the integrity of its programs and Québec’s immigration system.

For more information, please consult the [press release](#) published today.



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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11753436 CANADA INC.  
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9437-6852 QUÉBEC INC.  
Debtors**

-and-

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

-and-

**RICHTER ADVISORY GROUP INC.  
Monitor**

---

***Amended 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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