

**SUPERIOR COURT
(Commercial Division)**

Canada
Province of Québec
District of Montréal
N°: 500-11-060613-227

IN THE MATTER OF THE PLAN OF ARRANGEMENT 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
9437-6852 QUÉBEC INC.**
Debtors

and

THE STUDENTS' REPRESENTATIVE COUNSEL
Applicant

and

RICHTER INC.
Monitor

**APPLICATION FOR THE ISSUANCE OF AN AMENDED AND RESTATED
STUDENT REPRESENTATION ORDER
(Section 11 of the *Companies' Creditors Arrangement Act*)**

**TO THE HONOURABLE DAVID COLLIER J.S.C., SITTING IN COMMERCIAL DIVISION, IN
AND FOR THE JUDICIAL DISTRICT OF MONTREAL, THE APPLICANT RESPECTFULLY
SUBMITS THE FOLLOWING:**

I. Introduction

1. Pursuant to the *Application for the issuance of an Amended and Restated Student Representation Order* (the "**Application**"), the Students' Representative Counsel (as defined hereinafter) is seeking an order from this Court:
 - (i) authorizing the Students' Representative Counsel to initiate an action in damages, for and on behalf of the Students (as defined hereinafter), against the Government of Québec (*Ministère de l'Enseignement supérieur, de la Recherche, de la Science et de*

la Technologie (the “**MES**”)) and the Government of Canada (Immigration, Refugees and Citizenship Canada (“**IRCC**”)) (the “**Student Recourse**”);

- (ii) declaring that the Student Recourse shall be filed in the Québec Superior Court file number 500-11-060613-227 so that the Student Recourse may be heard and adjudicated upon by this Court as part of the CCAA Proceedings (as defined hereinafter);
- (iii) declaring that the Students’ Representative Counsel shall be entitled to file with the Minister of Higher Education, Research, Science and Technology (the “**Minister**”), for and on behalf of the Students, the claim referred to in section 15 of the *Regulation respecting the application of the Act respecting private education*¹ (the “**Regulation**”);
- (iv) directing the Minister to remit the amounts owed to the Students in accordance with section 14 of the Regulation to the Students’ Representative Counsel *in trust* and to order that these funds shall be used to create a fund which will be used to finance the Student Recourse (the “**Student Recourse Fund**”);
- (v) declaring that, for the purposes of determining the validity of the claim of the Students in accordance with the Regulation, the Students shall be deemed to collectively have a claim in the amount of \$ 100,000.00 and that such claim shall be deemed to be an amount that will not be reimbursed to the Students; and
- (vi) authorizing the Students’ Representative Counsel, with the written consent of the Monitor (as defined hereinafter), to use the Student Recourse Fund to pay its professional fees and disbursements incurred in connection with the Student Recourse;

in the form of an order substantially similar to the draft order communicated herewith as **Exhibit A-1**.

2. As part of its court-ordered mandate, the Students’ Representative counsel has been exploring the available alternatives in order to maximize recovery for the Students with a view to minimizing the social and economic losses resulting from the insolvency of the Debtors. One of these alternatives is to institute proceedings against the individuals, corporations and various authorities which, through their actions or inaction, have contributed to the extreme prejudice suffered by the Students.
3. Given the limited funds which are currently available for distribution in the context of a plan of arrangement, if a plan of arrangement materializes, which funds would be insufficient to reimburse the Students in full and compensate them for the prejudice suffered, the Students’ Representative Counsel is of the view that it is appropriate at this time to initiate proceedings, in the context of these CCAA Proceedings for damages against the third parties whose actions or inaction have contributed to the prejudice suffered by the Students.
4. Consequently, the Students’ Representative Counsel is asking this Court to be authorized to undertake the Student Recourse, in the context of the CCAA Proceedings, against the MES and IRCC, for and on behalf of the Students.

¹ [CQLR c E-9.1, r 1](#)

5. The purpose of the proposed litigation proceeding that would be advanced by the Student Representative Counsel is consonant with a legitimate purpose under the CCAA, namely the establishment of a litigation pool with a view to maximizing recovery for the Students.
6. In the absence of a common recourse brought by the Students' Representative Counsel for and on behalf of the Students, an important amount of claims could potentially be advanced by the Students individually; however, this would be a costly and complicated endeavor for the Students – who have already suffered enough as a result of the Debtors' insolvency – who are from a foreign country, whose individual claim is relatively small and such claims would be subject to the inherent delays of the Québec justice system.

II. Context

A. Procedural Context

7. On January 5, 2022, Rising Phoenix International Inc., 10864285 Canada Inc. (operator of *M College of Canada* (“**M College**”)), 11753436 Canada Inc., CDSQ Immobilier Inc., Collège de l'Estrie Inc. (operator of *Collège de l'Estrie* (“**CDE**”)), École d'Administration et de Secrétariat de la Rive-Sud Inc. (operator of *Collège de comptabilité et de secrétariat du Québec* (“**CCSQ**”)), 9437-6845 Québec Inc. and 9437-6852 Québec Inc. (collectively, the “**Debtors**” or the “**Vendors**”) filed with the Superior Court of Québec, Commercial Division (the “**Court**”), an *Application for the Issuance of a First Day Initial Order and an Amended and Restated Initial Order* under the *Companies' Creditors Arrangement Act* (the “**CCAA**”).
8. On January 6, 2022, the Court granted the First Day Initial Order initiating CCAA proceedings in respect of the Debtors (the “**CCAA Proceedings**”) and pursuant to which the Court appointed Richter Inc. (formerly Richter Advisory Group Inc.) as monitor (the “**Monitor**”) and all creditors were stayed from commencing or continuing any proceedings against the Debtors and/or the directors and officers of the Debtors up to and including January 14, 2022 (the “**Stay Period**”).
9. On January 16, 2022, the Debtors filed an *Amended Application for the Issuance of an Amended and Restated Initial Order* and on January 17, 2022, the Court granted the Amended and Restated Initial Order (as amended and restated or otherwise modified from time to time, the “**Initial Order**”) and extended the Stay Period up to and including February 28, 2022. The Stay Period has since been extended on several occasions, including most recently up to and including February 24, 2023.

B. Appointment of the Students' Representative Counsel

10. On February 9, 2022, Anish Sachdeva, Manjot Singh, Sukhrajpreet Singh, Sukhmanpreet Singh and Jaspreet Singh filed with the Court an *Application for the Issuance of a Student Representation Order*.
11. On February 15, 2022, the Court granted a student representation order (the “**Student Representation Order**”) pursuant to which McCarthy Tétrault LLP was appointed as representative counsel (the “**Students' Representative Counsel**”) to represent the interests of all persons who are creditors of the Debtors “*in light of tuition fees paid to the [Debtors]*”. A copy of the Student Representation Order is communicated herewith as **Exhibit A-2**.

C. The Transaction

12. On March 14, 2022, the Court rendered an approval and vesting order approving the transaction (the “**Transaction**”) contemplated by the Asset Purchase Agreement (the “**Purchase Agreement**”) by and between the Vendors, as vendors, and 6815464 Canada Ltd. (“**681**”), as purchaser, for the sale of virtually all the assets of the Vendors, including the permits of the M College, CDE and CCSQ (subject to applicable governmental approvals), all of the real estate, furniture, fixtures and computer equipment and other operating assets, and the service agreement pertaining to the operation of École de Secrétariat Notre-Dame des-Neiges (1985), dba CCSQ-Sherbrooke (“**CCSQ Sherbrooke**”) and, collectively with M College, CDE and CCSQ, the “**Colleges**”).
13. Reference to “Students” in this Application, and their grouping into the categories of “Graduating Students”, “Registered Students”, “Pipeline Students” and “Other Students” are in reference to students of the Colleges that are the object of the Transaction.
14. Pursuant to the Purchase Agreement and the Transaction contemplated thereby, 681 acquired the Proprietary Assets (as defined in the Purchase Agreement) of the Vendors and undertook to, *inter alia*:
 - (i) offer the previously available curriculum courses that have been paid for the approximately 504 students (the “**Other Students**”) and approximately 308 students listed in Schedule 2.4(e) of the Purchase Agreement (the “**Pipeline Students**”) prior to the CCAA filing date, or provide refunds, to the Pipeline Students. The Pipeline Students who obtain their study permits/visas and wish to study at the Colleges will be able to do so, if the required approvals and permits are successfully obtained. A Pipeline Student who received an acceptance letter and is prevented from coming to Canada to study, or decides not to come to Canada, will be refunded in full and in cash by 681, net of any deductions provided for in their education agreement and/or documentation with the Colleges and/or the applicable Quebec legislation and regulations;
 - (ii) provide for the continuation and the completion of all of the Vendors’ curriculum obligations to the remainder of the approximately 516 graduating students (the “**Graduating Students**”), who were expected to complete their educational program by the end of February 2022; and
 - (iii) provide for the continuation (restart) and the completion of all previously available curriculum courses that have been paid prior to the CCAA filing date to the remainder of the approximately 740 registered students listed in Schedule 2.4(f) of the Purchase Agreement (the “**Registered Students**”).
15. Following the closing of the Transaction, 681 assigned its rights and obligations under the Purchase Agreement to 13901823 Canada Inc. (“**139**” and collectively with 681, the “**Purchaser**”); however, the assignment did not relieve 681 of any of its obligations under the Purchase Agreement.

III. The Students' Representative Counsel's Should be Authorized to Institute the Student Recourse in the Context of the CCAA Proceedings

16. The 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, which dream has been put in peril by the actions and inaction of individuals, corporations and various authorities, including the MES and IRCC.
17. As of the date hereof, it is the understanding of the Students' Representative Counsel that the Graduating Students have effectively completed their studies and graduated and that the Registered Students have resumed their studies; however, most, if not all, of the Pipeline Students have not yet been reimbursed by the Purchaser in accordance with the Purchase Agreement and the Other Students are awaiting on the outcome of the CCAA Proceedings in order to receive a distribution, if any.
18. Despite the fact that some of the Students were able to complete their studies, the fact remains that all of the Students suffered an extreme prejudice as a result of either (i) the delay resulting from the Debtors' insolvency or (ii) the tuition fees paid in advance to the Debtors for which they did not receive the education paid for and have not yet been reimbursed.
19. In light of the foregoing, the Students' Representative Counsel is asking this Court to be authorized to undertake the Student Recourse, in the context of the CCAA Proceedings, seeking damages from the MES and IRCC to compensate the Students for the extreme prejudice suffered.
20. It is the intention of the Students' Representative Counsel to file as soon as practicable, subject to this Court's authorization, a recourse in damages for and on behalf of the Students for the gross shortcomings of the MES in its oversight of the Colleges and the recommendation or directive, as applicable, of IRCC which are in complete contradiction with provincial legislation and regulations aimed at preventing vulnerable students from paying tuition fees in advance and risking losing same in the event of the insolvency of a private learning institution.
21. The Students' Representative Counsel expects to fund the cost of the proceedings to be instituted for and on behalf of the Students: (i) by way of a litigation fund set up in the context of a plan of arrangement, if any, (ii) on a contingency basis and/or (iii) with the amounts to be recovered from the suretyship provided by the Debtors to the MES.
22. The Students' Representative Counsel respectfully submits that it is appropriate in the circumstances to authorize it to bring the Student Recourse as it will serve to achieve the remedial objectives of the CCAA by minimizing the social and economic impacts of the Debtors' insolvency on the Students, namely by establishing a litigation pool which would be used to reimburse and compensate the Students for the extreme prejudice they have suffered.
23. Furthermore, it is appropriate to order that the Student Recourse shall be instituted in the CCAA Proceedings so that it is heard and adjudicated upon by this Court as part of the CCAA Proceedings, namely to ensure that it is adjudicated on an expedited basis.

24. Many Students have already been waiting for more than one year to receive a refund of their tuition fees paid in advance to the Debtors. It is of the utmost importance that the Students' Representative Counsel be authorized to implement the recovery alternatives available to the Students as expeditiously as possible in order to bring closure to the Students.

IV. The Relief Sought in Connection With the Guarantee Should be Granted and the Court Should Create the Student Recourse Fund

25. In accordance with the *Act Respecting Private Education*² and the Regulation, the Debtors have provided a security by means of a guarantee policy bearing number TMS 903 10718 in the amount of \$100,000.00 in favour of the Minister (the "**Guarantee**").
26. On September 15, 2022, the Students' Representative Counsel has asked the Minister to remit the amount owed to Students under the Guarantee to the Students' Representative Counsel, as appears from a letter to the Québec attorney general dated September 15, 2022, communicated herewith as **Exhibit A-3**.
27. On September 16, 2022, the Québec attorney general informed the Students' Representative Counsel that: (i) the amounts could only be paid to the Students directly, (ii) a claim must be filed by the Students in order for them to be entitled to receive a refund from the Guarantee and (iii) that despite the termination notice received by Trisura Insurance Company, the Guarantee would remain in place at least until July 1st, 2023, as appears from a letter from the Québec attorney general dated September 16, 2022, communicated herewith as **Exhibit A-4**.
28. The Students' Representative Counsel is seeking the assistance of this Court in order to facilitate the recovery of the amounts owed to the Students under the Guarantee and asking this Court to:
- (i) declare that the Students' Representative Counsel shall be entitled to file with the Minister, for and on behalf of the Students, the claim referred to in section 15 the Regulation;
 - (ii) direct the Minister to remit the amounts owed to the Students in accordance with section 14 of the Regulation to the Students' Representative Counsel *in trust* and to order the creation of the Student Recourse Fund;
 - (iii) declare that, for the purposes of determining the validity of the claim of the Students in accordance with the Regulation, the Students shall be deemed to collectively have a claim in the amount of \$ 100,000.00 and that such claim shall be deemed to be an amount that will not be reimbursed to the Students; and
 - (iv) authorizing the Students' Representative Counsel, with the written consent of the Monitor, to use the Student Recourse Fund to pay its professional fees and disbursements incurred in connection with the Student Recourse.
29. Absent the relief sought, the Students are unlikely to individually file claims with the Minister. Furthermore, it is highly unlikely, if not certain, that the Students will be fully reimbursed for the tuition fees paid in advance to the Debtors through a distribution or a plan of arrangement,

² [RLRQ c E-9.1](#)

if any. In this context, it is unfair to delay the recovery of the Guarantee, when such amounts could be used to finance the Student Recourse and , incidentally, to maximize the recovery for the Students.

30. The Students' Representative Counsel respectfully submits that the relief sought in connection with the creation of the Student Recourse Fund is appropriate in the circumstances as it will further the objectives of the CCAA.
31. The Monitor has informed the Students' Representative Counsel that it is supportive of the relief sought pursuant to the Application.
32. Given the need to advance the restructuring as quickly as possible, it is respectfully submitted that this Court order the provisional execution of the order sought pursuant hereto, notwithstanding any appeal.

THEREFORE, MAY THIS COURT:

GRANT this *Application for the issuance of an Amended and Restated Student Representation Order*.

RENDER an order substantially similar to the *Amended and Restated Students' Representation Order* (Exhibit A-1).

THE WHOLE without costs, save in case of contestation.

Montréal, February 21, 2023

McCarthy Tétrault, s.e.n.c.r.l., s.r.

McCarthy Tétrault LLP

Students' Representative Counsel

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9437-6852 QUÉBEC INC.
Debtors

and

THE STUDENTS' REPRESENTATIVE COUNSEL
Applicant

and

RICHTER INC.
Monitor

NOTICE OF PRESENTATION

To: the Service List

TAKE NOTICE that the *Application for the Issuance of an Amended and Restated Student Representation Order* will be presented for adjudication before the Honourable David Collier J.S.C. or one of the Honourable Judges of the Superior Court of Quebec, Commercial Division, at the Montréal Courthouse located at 1 Notre-Dame Street East, **on February 24, 2023 at 9:00 AM** in a room to be communicated subsequently to the Service List.

DO GOVERN YOURSELVES ACCORDINGLY.

Montréal, February 21, 2023

McCarthy Tétrault, s.e.n.c.r.l., s.r.l.

McCarthy Tétrault LLP
Students' Representative Counsel

SUPERIOR COURT
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and

THE STUDENTS' REPRESENTATIVE COUNSEL
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RICHTER INC.
Monitor

LIST OF EXHIBITS
(Application for the Issuance of an Amended and Restated
Student Representation Order)

Pièce	Description
A-1	Draft Amended and Restated Student Representation Order
A-2	Student Representation Order
A-3	Letter to the Québec attorney general dated September 15, 2022
A-4	Letter from the Québec attorney general dated September 16, 2022

Montréal, February 21, 2023

McCarthy Tétrault, s.e.n.c.r.l., s.r.l.

McCarthy Tétrault LLP
Students' Representative Counsel

SUPERIOR COURT
(COMMERCIAL DIVISION)

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

**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-

STUDENTS' REPRESENTATIVE COUNSEL

Applicant

-and-

RICHTER ADVISORY GROUP INC.

Monitor

***APPLICATION FOR THE ISSUANCE OF AN AMENDED AND
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