



Court File No.

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

(Court Seal)

ROSY KAPOOR

Plaintiff

and

HIS MAJESTY THE KING IN RIGHT OF ONTARIO

Defendant

STATEMENT OF CLAIM

TO THE DEFENDANT

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff.
The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a Statement of Defence in Form 18A prescribed by the *Rules of Civil Procedure*, serve it on the Plaintiff's lawyer or, where the Plaintiff does not have a lawyer, serve it on the Plaintiff, and file it, with proof of service in this court office, WITHIN TWENTY DAYS after this Statement of Claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your Statement of Defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a Statement of Defence, you may serve and file a Notice of Intent to Defend in Form 18B prescribed by the *Rules of Civil Procedure*. This will entitle you to ten more days within which to serve and file your Statement of Defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF

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YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES,
LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID
OFFICE.

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

Date _____ Issued by _____
Local Registrar

Address of Superior Court of Justice
court office: 330 University Avenue
Toronto ON M5G 1R7

TO: His Majesty the King in Right of Ontario
c/o Attorney General of Ontario
Crown Law Office – Civil
McMurtry-Scott Building
720 Bay Street, 8th Floor
Toronto, ON M7A 2S9

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CLAIM

1. The Plaintiff, Rosy Kapoor, on her own behalf and on behalf of the Class, claims:
 - (a) an order certifying this action as a class proceeding and appointing her as the Representative Plaintiff for the Class;
 - (b) a declaration that the Impugned Conduct is illegal and breached section 15 of the *Charter* and section 1 of the *Code*, without lawful justification;
 - (c) a declaration that the Class is not required to pay any purportedly outstanding debt to Ontario in respect of the Clawed Back Amount, or any interest or penalties thereon;
 - (d) an accounting of all payments made by the Class in respect of the Clawed Back Amount as a result of the Director's Decision and/or all amounts which Class Members would have otherwise been entitled to receive under OSAP or ODSP but for the Director's Decision;
 - (e) an order for restitution in an amount equal to the amounts of ODSP support payable to the Plaintiff and the Class that were wrongfully withheld or otherwise wrongfully taken from the Plaintiff and the Class in respect of an assessed "overpayment" pursuant to the application of the Director's Decision;
 - (f) damages in the amount of \$100 million under section 24(1) of the *Charter*;

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- (g) an award of *Charter* and/or human rights damages to those students whose disadvantage was deepened by the Impugned Conduct, and particularly the unlawful, covert and discriminatory practice of clawing back grants to reimburse for educational disability-based expenses, when to do so was clearly unconstitutional, done in bad faith and represents an abuse of power;
- (h) a permanent injunction prohibiting Ontario from engaging in the Impugned Conduct going forward;
- (i) special, general, and aggravated damages against Ontario for breach of fiduciary duty;
- (j) punitive and exemplary damages;
- (k) the costs of notice and distribution pursuant to sections 17(3)(a), 22(1) and 26(9) of the *Class Proceedings Act, 1992*, S.O. 1992, c. 6;
- (l) prejudgment interest in accordance with section 128 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
- (m) post-judgment interest in accordance with section 129 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
- (n) the costs of this proceeding, plus all applicable taxes; and
- (o) such further and other relief as this Honourable Court may deem just.

I. OVERVIEW

2. This proposed class action is brought on behalf of students with disabilities who collect basic living support from the Ontario Disability Support Program, while also obtaining education-specific grants and loans from the Canada Student Loan Program (“CSLP”), which is jointly administered on behalf of the federal and Ontario governments through the Ontario Student Assistance Program.

3. Since 2009, Canada has provided the Canada Student Grant for Students with Disabilities (“CSG-D” or “the Grant”), a flat grant provided to eligible students to help defray the additional costs that disabled persons incur in their education as a result of their disabilities. Until the fall of 2021, Ontario properly treated that money as exempt from claw back from recipients of the Ontario Disability Support Program (“ODSP”) who received support from the Ontario Student Assistance Plan (“OSAP”), because it was intended to cover disability-based educational expenses, which non-disabled students would not have.

4. In the fall of 2021, Canada increased the Grant (from \$2,000 to \$4,000). At or around the time, Ontario’s Director of Income Maintenance (the “Director”) decided to stop treating the Grant as exempt from the claw back provisions and effectively began confiscating the entire \$4,000 Grant from the disabled students who received it.

5. As of the 2023-2024 Academic Year, the CSG-D amount has been reduced to \$2,800 and continues to be confiscated from students who are also receiving ODSP support.

6. The Director’s about-face, in the fall of 2021 and following, was not predicated on any change in the legislation or regulations governing the Ministry or Director’s authority over ODSP

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payments, nor was any rationalization offered for reversing the previous practice and starting to treat the CSG-D as non-educational (i.e. no longer treated as exempt income for the purposes of ODSP). Notably, the change was not based on an actual reassessment of student need and no notice was provided of the Director's reversal.

7. The decision of the Director to treat the Grant as non-educational and to consequently confiscate this money, was and is illegal. There was no legal authority for the Director to make this determination, and the claw back of the Grant is discriminatory and contrary to section 1 of the *Human Rights Code* of Ontario and section 15 of the *Charter*.

8. The Plaintiff, on behalf of the proposed class, seeks the return all of the Grant money improperly confiscated since 2021 and requests that the Court order declaratory and injunctive relief prohibiting Ontario from taking this money in the future.

II. DEFINED TERMS

9. In this Statement of Claim, the following terms have the following meanings:

- (a) “**Academic Year**” means the period commencing on or about September 1 in any year and ending on or about April 30 in the following year;
- (b) “**Canada**” means the Canadian Federal Government;
- (c) “**Charter**” means the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK)*, 1982 c 11;
- (d) “**Class**” or “**Class Member**” means all individuals in Ontario who were entitled to receive the Canada Student Grant for students with Permanent Disabilities (CSG-

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PD, now CSG-D) and were eligible to obtain student aid under the Ontario Student Assistance Program with support from the Ontario Disability Support Program;

- (e) “**Class Period**” means the period between January 1, 2021 and the date that the certification motion, including any appeals, is decided;
- (f) “**Clawed Back Amount**” means any amount received by a Class Member under the CSG-D which was treated as non-exempt from the ODSP assessment as a result of the Director’s Decision;
- (g) “**Code**” means the *Human Rights Code of Ontario*, R.S.O. 1990, c. H.19
- (h) “**CSG-D**” means the Canada Student Grant for Students with Disabilities, formerly the Canada Student Grant for Students with Permanent Disabilities (CSG-PD);
- (i) “**Director**” means the Director of Income Maintenance or the Director of the Ontario Disability Support Program appointed by the Minister;
- (j) “**Disability**” or “**Disabilities**” means either:
 - (i) “**Permanent Disability**” meaning any impairment, including a physical, mental, intellectual, cognitive, learning, communication or sensory impairment—or a functional limitation—that restricts the ability of a person to perform the daily activities necessary to participate in studies at a postsecondary level or in the workforce and is expected to remain for the person’s expected life; and/or

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- (ii) **“Persistent or Prolonged Disability”** means any impairment, including a physical, mental, intellectual, cognitive, learning, communication or sensory impairment—or a functional limitation—that restricts the ability of a person to perform the daily activities necessary to pursue studies at the postsecondary school level or to participate in the labour force and has lasted, or is expected to last, for a period of at least 12 months, and is not a permanent disability;
- (k) **“Director’s Decision”** means the decision made by the Director, in 2021, (and implemented by the Ministry on a class-wide basis), to treat monies provided to Students with Disabilities under the CSG-D as non-exempt for the purposes of the ODSP assessment;
- (l) **“Impugned Conduct”** means the defendant’s unconstitutional and unlawful conduct particularized in paragraphs 10 to 54;
- (m) **“Minister”** and **“Ministry”** means the Minister and Ministry of Community and Social Services;
- (n) **“Ontario”** means the government of Ontario named in this proceeding as the defendant, His Majesty the King in right of Ontario, pursuant to section 14 of the *Crown Liability and Proceedings Act*, 2019, SO 2019, c 7, Sched 17, and his agents, including but not limited to: (1) the Ministry of Colleges and Universities; (2) the Ministry of Community and Social Services; (3) any Minister of Ontario; and (4) the Director;

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- (o) “**OSAP**” means the Ontario Student Assistance Program;
- (p) “**ODSP**” means the Ontario Disability Support Program;
- (q) “**ODSP Act**” means the *Ontario Disability Support Program Act, 1997*, S.O. 1997, c. 25, Sched. B;
- (r) “**ODSP Regulations**” mean *General*, O. Reg. 222/98 and any regulation under the *ODSP Act*;
- (s) “**Student**” means an individual in Ontario who received OSAP funding; and
- (t) “**Student Debt**” means the sum of (1) the amount a Student has paid to service any of their Student Loans, and (2) the amount that they will have to pay to discharge their Student Loans in full, including any interest and penalties.

III. FACTS

A. The Parties

10. The proposed Representative Plaintiff, Rosy Kapoor, is a resident of Ontario and was enrolled as a Student at Toronto Metropolitan University under their Arts and Contemporary Studies Degree program. Ms. Kapoor, who is deaf and has low vision, has been in receipt of support from both ODSP and OSAP for all of her years of study.

11. Ontario is the Defendant, having full control and discretion over the administration of the ODSP under the *ODSP Act* and *ODSP Regulations*, and being responsible and liable for the Impugned Conduct, including without limitation, the Director’s Decision.

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B. The Ontario Student Assistance Program (OSAP)

12. OSAP provides loans and other forms of financial assistance to students pursuing post-secondary education in Ontario. It is funded and operated jointly by Canada and Ontario, such that it is a single unified scheme for which both levels of government are responsible.

13. When a student applies to OSAP, they sign a Master Student Financial Assistance Agreement with both Canada and Ontario and apply jointly to Canada and Ontario for financial assistance provided by each level of government. The needs of each student are then assessed or estimated by OSAP, primarily using definitions established by federal legislation, and the student is provided funding in accordance with their assessed need. This funding includes both student loans which must be repaid once a student finishes their studies, and grants which need not be paid back. Educational expenses are considered when determining student loan amounts. These include basic amounts for tuition fees, other fees, books and research materials, supplies and equipment, local transportation and child care.

14. The grants that students are eligible for are determined by Ontario and Canada in the course of processing the OSAP application. Some of these grants are intended to cover disability-based educational needs, specific to Students with Disabilities, that are not taken into account when determining the basic loan amounts for all students.

(i) The Canada Student Grant for Persons with Disabilities (CSG-D)

15. There are a number of grants provided solely by Canada that are available to eligible students as financial assistance for educational purposes. The eligibility for these grants is assessed on a student-by-student basis as part of the OSAP application. One such grant is the CSG-D, which is a Grant available to Students with Disabilities for each year of study.

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16. In Ontario, the CSG-D is applied for through the OSAP application process. To be eligible for the CSG-D, an individual must have financial need, be a Student in a qualified program at a designated school, have a Disability recognized under the Canada Student Financial Assistance Program, and otherwise provide documentation demonstrating the Disability.¹

17. The CSG-D, along with the federally provided financial assistance provided to students, is governed by the *Canada Student Financial Assistance Regulations*, SOR/95-329. In 2009, these regulations introduced amendments, specific to the CSLP. One of these amendments was to change the CSG-D amount from the lesser of \$2,000 or a Student's itemized and assessed need, to a flat grant amount of \$2,000 per year of study to each student verified as being a student with a Disability. There are additional educational expense grants for those requiring more than \$2000 for itemizable disability-based expenses.

18. This change in the CSG-D from being a grant for itemized expenses (pre-2009) to a flat grant of \$2,000 demonstrated a recognition by Canada that Students with Disabilities as a group incurred additional education-related expenses as a result of their disabilities that were not experienced by non-disabled student. Many of these expenses were not amenable to itemization, either because they were not for disability-specific items or services (i.e. items or services that could only be used by a person with a disability) but were disability-based additional expenses, or otherwise were small and incremental, making prior application and approval administratively impractical. The intention of the Grant was thus to help level the playing field for students with

¹ For clarity, the Canada Student Financial Assistance Program currently recognizes students with Permanent Disabilities and/or Persistent or Prolonged Disabilities as being eligible to receive the CSG-D.

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disabilities and a recognition of the additional education-related expenses they incur as a result of their disabilities.

C. The Ontario Disability Support Program (ODSP)

19. Students, separate and apart from OSAP, may receive social assistance. Those who do are required to report it as part of their OSAP application. One source of such social assistance is ODSP, which provides income and employment support to people with disabilities in Ontario.

20. To be eligible for ODSP support, an individual must (1) be 18 years old or older, (2) be a resident of Ontario, (3) meet the financial requirements, and (4) have a physical or mental health disability, expected to last one year or longer, that substantially limits that individual's ability to work, look after themselves or carry out daily activities.

21. ODSP is administered by the Ministry and can assist an individual with living expenses, as well as provide medical or other benefits, depending on a person's assessed needs.

22. Where a Student receives support from ODSP, they must disclose this in their OSAP application. The OSAP application asks Students to disclose if they receive ODSP income and the total amount they will receive during their study period. Importantly, once a Student's OSAP support is determined, they must report the OSAP funding they will receive to their ODSP caseworker. This is required because a Student's ODSP payments may be adjusted or re-assessed based on the amount of OSAP funding they receive for non-educational (i.e. basic living) expenses, in order to ensure that these expenses are not double-funded.

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D. Ontario Improperly Confiscates the CSG-D

23. Because ODSP must consider all of an individual's sources of income, any amounts received from OSAP are considered by caseworkers to assess an individual's ODSP support. Historically, because many of the federal grants are flat-rate grants, it would be possible that students would receive grant funding in excess of their assessed need, however, most of these grants were exempt for the purposes of calculating ODSP entitlement because they were applied to expenses approved by the Director for disability-related items or services.

24. Until 2021, the CSG-D was treated as exempt for the purposes of assessing ODSP entitlement pursuant to sub-sections 43(1)(2.1) and (1)(1)(iii) of the ODSP Regulations.

25. In or around the 2021-2022 Academic Year, Ontario implemented the new Director's Decision to treat the CSG-D as a non-exempt source of income for the purposes of calculating or re-assessing a Student's ODSP support. The Director's Decision was implemented by the Ministry, notwithstanding that there was no change in the authority granted under the *ODSP Act* or *ODSP Regulations*, nor any rational basis to conclude that the circumstances of Students with Disabilities had changed such that the Grant was no longer necessary to fund disability-related educational expenses.

26. Students with Disabilities, such as the Plaintiff and the proposed Class, who simultaneously were in receipt of the CSG-D and received support under ODSP, have since been assessed a dollar-for-dollar "overpayment" of ODSP or OSAP funds. These students either had their ODSP support reduced on a dollar-for-dollar basis or otherwise had their OSAP support reduced on a dollar-for-dollar basis for the full amount of the CSG-D, notwithstanding that the CSG-D is a flat grant

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provided by the federal government to Students with a Disability for educational expenses. Put differently, the Grant has been effectively seized or confiscated by Ontario. Additionally, students who became aware of the Director's Decision may have suffered financial loss by changing their election from ODSP to the less favourable OSAP coverage of their basic living expenses in order to avoid the claw-back of the CSG-D.

27. Notably, the timing of the change coincided with the federal government's increase of the CSG-D flat rate amount from \$2,000 to \$4,000 in response to the global COVID-19 pandemic. Currently and into the 2024-2025 Academic Year, the CSG-D flat rate amount has been reduced to \$2,800. This amount continues to be confiscated in full from Students receiving ODSP support by the Director and the Ministry.

E. Adverse Impacts on Students with Disabilities

28. Students with Disabilities have all the same basic living and educational expenses as non-disabled students but, in addition, must bear the brunt of expenses that arise as a direct result of their disabilities. These can take many forms but, by way of example, can include increased costs for educational mobility and transportation; additional supplies and materials; reformatted books and research materials; additional and adapted technology, educational products and assistive devices; additional software; support, scribing and tutoring and other support services and tuition for special, preparatory, remedial or additional courses which Students with Disabilities may need to complete in the course of their studies. In 2009, when Canada made the CSG-D into a flat grant, it did so in because these additional costs could not be readily or efficiently itemizable nor feasibly assessed in advance unless based on estimates. Canada intended and Ontario accepted that the

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CSG-D was intended to defray the initial \$2,000 worth of education-related expenses resulting from disabilities, as evidenced by Ontario treating the Grant as exempt income from 2009 to 2021.

29. The Clawed Back Amount under the Director's Decision directly deprives the Plaintiff and the Class of their ability to pay for these additional expenses, thereby adversely impacting them relative to their non-disabled peers and depriving them of equal access to their education. It further exacerbates existing disadvantages already faced by Students with Disabilities.

30. These existing disadvantages include the following:

- (a) **Increased Length of Time to Complete Studies:** On average, Students with Disabilities take longer to complete their course of studies. This causes additional financial hardship because provincial and federal student loan programs operate on a "time in study structure" whereby a Student's Student Debt increases with the amount of time that the Student takes to complete their course of study.
- (b) **Lower Educational Attainment and Lifetime Earnings:** On average, people with Disabilities have lower levels of educational attainment than people without Disabilities, and their rate of educational attainment takes longer, thereby consuming time that could otherwise have been used earning income and accumulating investments and savings. Lower and longer educational attainment results in lower lifetime income and higher rates of poverty.
- (c) **Higher Cost of Education:** In addition to the costs of disability supports and services, some Students with Disabilities may need to attend other specialized,

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preparatory, or remedial educational programs and institutions for their disabilities, which are more expensive.

- (d) **Ineligibility for Scholarships and Full-time Attendance:** Many scholarships, bursaries, and awards are only available to students in full-time education. CSLP financial support more generously covers educational costs for full-time students as opposed to part-time students. Such full-time course loads may not be possible for some Students with Disabilities.

31. The confiscation of the CSG-D imposes adverse effects by neutralizing the major means through which students with disabilities have historically received accommodation under the CSLP to help defray some of their disability-based education costs and creates barriers for Students with Disabilities, thereby reinforcing these disadvantages and making it more difficult for them to access post-secondary education.

F. The Experience of Rosy Kapoor

32. Rosy Kapoor has a Permanent Disability. As a deaf person with low vision, she has experienced the first-hand effects of the Director's Decision, as particularized above.

33. Ms. Kapoor began studying at Toronto Metropolitan University in 2018 and graduated in 2023. In order to pay for the costs of her education, she has relied on the financial support that she received from OSAP.

34. Separate and apart from the support she received from OSAP, Ms. Kapoor relies on support payments she receives from ODSP to assist with her living expenses and housing expenses.

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35. Ms. Kapoor has been a recipient of financial assistance from both ODSP and OSAP for all of her years of study.

36. Since 2018, Ms. Kapoor was eligible to receive the CSG-D and did so. Beginning in 2018, Ms. Kapoor was informed that her receipt of the CSG-D would have no impact on her ODSP payments, which she relies on for her daily living expenses and needs.

37. Notwithstanding the consistent treatment of the CSG-D as exempt for the purposes of her ODSP payments for the multiple years Ms. Kapoor had been studying, on or about April 1, 2023, Ms. Kapoor checked her online account to find a notice that her ODSP support had been reassessed and she was deemed to have a new “overpayment” of approximately \$6,635.45. She contacted her new ODSP worker, Jay Stephen, who informed her that there was “a new policy” in place and that, while no penalties were being imposed for the period between 2018-2021, she was being assessed a penalty for the last two years of her post-secondary education. Around March 29, 2023, she also received a copy of an “overpayment notice” which stated that Ontario had determined a “new overpayment” applying to the Academic Year beginning in September 2021 to March 2023. The “reason for new overpayment” stated in the notice was for “non-education funding from OSAP.”

38. In order to “pay back” the overpayment (i.e., the Clawed Back Amount), Ms. Kapoor was told that her monthly ODSP income support would be reduced by \$101.90, with the possibility that the deduction may change.

39. Throughout April 2023 and into May 2023, Ms. Kapoor tried to communicate with ODSP representatives, including her caseworker, to determine the source of the “overpayment”. In response to her inquiries, Ms. Kapoor was told that ODSP caseworkers “created an overpayment

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due to [her] receiving non-educational funding from OSAP” which Ms. Kapoor now understands to be the CSG-D grant. On or about April 18, 2023, Ms. Kapoor formally requested an internal review of the decision.

40. A Ministry letter dated April 27, 2023, informed Ms. Kapoor that an internal review was conducted and the overpayment decision was upheld. Ms. Kapoor continues to dispute this decision and continues to receive reduced income support from ODSP as a result thereof.

IV. CAUSES OF ACTION

A. Breach of the *Charter* and the *Human Rights Code*

41. As described above at paragraphs 11-27, Ontario operates, administers, and is responsible and liable for the operation of ODSP and OSAP. The Director’s Decision resulted in the confiscation of the Grant which disproportionately targets and adversely impacts the Plaintiff and the proposed Class as Students with Disabilities, and, as a result, it violates section 15 of the *Charter* and s. 1 of the *Code*. This violation cannot be saved by section 1 of the *Charter* nor sections 11 or 17 of the *Code*.

42. In particular, as described above at paragraphs 28-31, the Director’s Decision causes all members of the Class to suffer adverse effects which reinforce existing stereotypes and other disadvantages faced by people with disabilities, creating further barriers for them. It withholds and confiscates funding to Students with Disabilities for their educational expenses, and, as in the case of Ms. Kapoor, this decision impacts ODSP income support on which they rely for non-educational living expenses. It is discriminatory on the basis of mental and physical disability, an enumerated ground under both the *Charter* and the *Code*.

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B. Unjust Enrichment

43. Ontario has been unduly enriched and the Plaintiff and the Class correspondingly deprived by the actions of Ontario, without any juristic reason. In particular:

- (a) All Students with Disabilities, who were entitled to receive the CSG-D to assist them with the additional costs of their education as a result of their disabilities, were deprived of this money earmarked for their education, with the Clawed Back Amount affecting the ODSP income support they receive for non-educational living expenses;
- (b) Ontario received a positive benefit by applying the federally-provided CSG-D payments which they confiscated from the Class for its own use or reducing its funding obligations to the Plaintiff and the Class;
- (c) Ontario acted without any legal authority, or otherwise with no change in authority, in confiscating the Clawed Back Amounts from the Class, and Ontario is unlawfully enriched. As such, Ontario has no juristic reason for appropriating the Clawed Back Amounts.

C. Breach of Fiduciary Duty

44. At all material times, including prior to and upon the implementation of the Director's Decision, Ontario was aware that the CSG-D was provided by Canada to Students with a Disability for the sole purpose of assisting them with their needs during the course of their studies. The CSG-D, which is provided to Students with Disabilities for each year of study, was clearly not to be used by Ontario to subsidize its own funding obligations to Students receiving ODSP and OSAP

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or otherwise appropriating the CSG-D by arbitrarily classifying the grant as non-educational in whole or in part.

45. Ontario was in a fiduciary relationship with the Class because:

- (a) Ontario fully controlled and exercised power or discretion of the administration of ODSP under the *ODSP Act* and *ODSP Regulations*;
- (b) Ontario has the ability to unilaterally exercise that power or discretion so as to adversely impact the legal or practical interests of the Class; and
- (c) The Class is particularly vulnerable to or at the mercy of Ontario.

46. This fiduciary relationship obliged Ontario to place the interests of the Class ahead of its own interests.

47. In breach of that fiduciary relationship, Ontario appropriated and continues to appropriate the Clawed Back Amounts for its own purposes on the basis of alleged overpayments, which it construed as debts that it claimed were owed by Students with Disabilities, such as the Plaintiff and the Class.

48. The manner in which Ontario has camouflaged its purported entitlement to recoup funds provided under the CSG-D as a discretionary adjustment, including their “creating” of retroactive overpayments for the Class, reveals a conscious bad faith attempt to seize monies which are dedicated to the Plaintiff and the Class.

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49. Ontario is correspondingly bound to account to the Class for the Clawed Back Amounts unlawfully appropriated, plus interest.

V. DAMAGES

50. As a result of the conduct particularized herein, the Class has suffered damages, which include:

- (a) Payment of or an obligation to pay the Clawed Back Amounts, including but not limited to:
 - (i) The difference between the amount of ODSP and OSAP they would have been entitled to had their Disability not entitled them to receive the CSG-D and the amount of the reduced ODSP or OSAP they are entitled to by virtue of being eligible for the CSG-D;
 - (ii) The time value for the Clawed Back Amounts; and
 - (iii) Any interest accrued on the amounts in (i) and (ii);
- (b) Increased educational costs and/or other increased financial pressure, which affects their ability to continue their course of study in addition to their cost of living, and consequently their quality of life;
- (c) As a result of (b), continuing and worsening disadvantages including lower employment rates, salaries, and lifetime wealth.

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51. Pursuant to section 24(1) of the *Charter*, the Plaintiff and the Class are entitled to:

- (a) Pecuniary damages in the amount described in paragraph 50(a); and
- (b) General damages in respect of the harms described in paragraphs 50(b) and 50(c).

52. The Plaintiff and the Class is alternatively entitled to such pecuniary and general damages pursuant to section 46.1(1) of the *Code*.

53. Further or in the alternative, pursuant to section 46.1(1)(2) of the *Code*, the Plaintiff and the Class are entitled to an order for restitution in an amount equal to the Clawed Back Amounts that were wrongfully withheld or otherwise wrongfully taken from the Plaintiff and the Class pursuant to the application of the Policy.

54. Further or in the alternative, the Plaintiff and the Class are entitled to special, general, and aggravated damages against Ontario for breach of fiduciary duty and unjust enrichment.

VI. OTHER

55. This is an appropriate case to calculate damages on an aggregate basis using statistical evidence pursuant to section 24 of the *Class Proceedings Act, 1992*, S.O. 1992, c. 6.

56. The Plaintiff proposes this action be tried in Toronto.

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September 9, 2024

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Plaintiff

-and- **HIS MAJESTY THE KING IN RIGHT OF ONTARIO**
Defendant

Court File No.

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT TORONTO

STATEMENT OF CLAIM

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