

**MINUTES OF SETTLEMENT**  
**BLYTH ACADEMY CLASS ACTION**

Made on November 27, 2019

BETWEEN:

**KAREN WALMSLEY**

**Plaintiff**

and

**2016169 ONTARIO INC., 2170616 ONTARIO INC. and 2429131  
ONTARIO INC., alone or together o/a Blyth Academy**

**Defendants**

[together the "Parties"]

Proceedings pursuant to the *Class Proceedings Act, 1992* (Ontario)

**A. Recitals**

**WHEREAS**, on October 16, 2017, the Plaintiff commenced a proposed class action seeking to represent certain current and former teachers who worked in Ontario for the Defendants ["Blyth Academy"] claiming, among other things, compensation for overtime pay, vacation pay, and public holiday pay [the "Class Action"];

**AND WHEREAS** the Plaintiff retained the law firm Cavalluzzo LLP ["Class Counsel"] to pursue the Class Action;

**AND WHEREAS** the Plaintiff brought a motion to certify the Class Action, which motion resulted in the exchange of over ten (10) volumes of evidence, including over 3,000 documents exchanged electronically;

**AND WHEREAS** the motion to certify the Class Action was heard over two days, on February 20-21, 2019 by Justice Glustein of the Ontario Superior Court of Justice [the "Court"];

**AND WHEREAS** the Parties likewise engaged in over four (4) days of mediated settlement discussions, first with former Chief Justice Warren Winkler and then with Clifford Lax, Q.C.;

**AND WHEREAS**, as a result of these mediated talks and other discussions, the Parties entered into a tentative agreement to resolve the Class Action conditional on the execution of a comprehensive, formal settlement agreement;

**AND WHEREAS** the Parties wish to fully and finally resolve all matters in dispute between them in relation to the Class Action;

**NOW THEREFORE** for good and valuable consideration received, the Parties stipulate and agree that the Class Action shall be fully and finally settled and resolved on the terms and conditions set forth in these Minutes of Settlement [the "Settlement Agreement"]:

**B. This Settlement Agreement is Conditional on Two Court Approvals**

1. The Settlement Agreement is conditional upon:
  - (a) the Court issuing an order certifying the Class Action as a class proceeding;  
and,
  - (b) the Court approving this Settlement Agreement on the terms that follow.

2. The terms of the Settlement Agreement will only become effective following the expiration of any appeal rights and/or the dismissal of any appeals in relation to the Court's approval of this Settlement Agreement [the "Final Approval"].

**C. Certification of the Class Action**

3. The Parties agree that, for the purposes of settlement, this Class Action shall be certified as a class proceeding pursuant to the *Class Proceedings Act, 1992*, S.O. 1992, c. 6.

4. The Parties agree that the "Class Members" shall be defined as follows:

Any person who, from 2002 until August 31, 2019 [the "Class Period"], worked for Blyth Academy in Ontario and taught at least one course, but excluding those who worked exclusively as Principals or Vice-Principals or who exclusively taught Blyth Academy online courses.

5. The Parties agree that this Class Action shall be certified on the basis of the following common issue:

Whether any Class Member worked hours of work, including overtime hours, during the Class Period, for which they were not properly paid or otherwise compensated, as alleged.

**D. Settlement Funds and Other Payments**

6. Blyth Academy will pay a non-reversionary lump sum of \$2,500,000 [the "Main Settlement Fund"] into an interest bearing trust account within 14 days of Final Approval, to be allocated in accordance with the Distribution and Notice Plan set out in Schedule "A" to the Settlement Agreement. Blyth Academy will pay an additional \$100,000 into the

Main Settlement Fund at the time outlined in the Distribution and Notice Plan set out in Schedule "A" to the Settlement Agreement if the take-up conditions outlined in that Distribution and Notice Plan are satisfied.

7. Blyth Academy will pay a reversionary lump sum of \$25,000 [the "Pre-Limitations Fund"] into an interest bearing trust account within 14 days of Final Approval, to be allocated in accordance with the Distribution and Notice Plan set out in Schedule "A" to the Settlement Agreement.

8. Blyth Academy will provide confirmation in a form to be agreed by counsel of its compliance with the payment terms outlined at paragraphs 6 and 7 of the Settlement Agreement.

9. Blyth Academy will make a further payment of a \$6,000.00 Plaintiff's honorarium to Class Counsel, in trust, within fourteen (14) days of Final Approval.

**E. The Administration of the Settlement Agreement, Including Obtaining Final Approval**

10. As soon as possible, the Parties will jointly schedule a case conference for the purpose of obtaining directions from the Court on the administration of the Settlement Agreement and the steps leading to Final Approval.

11. At the Plaintiff's own expense, the Plaintiff will move, on March 3, 2020, for an Order in the form set out at Schedule "B" to the Settlement Agreement or such other form as approved by the Court:

- (a) certifying the Class Action in favour of the Class Members described in paragraph 4;
- (b) certifying the single common issue described in paragraph 5;
- (c) approving this Settlement Agreement; and,
- (d) setting out all other orders and relief necessary to carry out the administration of this Settlement Agreement.

[the Final Approval Order"].

12. Blyth Academy will consent to the relief referenced at paragraph 11 of the Settlement Agreement.

13. At the Plaintiff's own expense, the Plaintiff will also move, on March 3, 2020, for an Order on such terms as approved by the Court approving Class Counsel's fees, disbursements, and taxes.

14. Blyth Academy recognizes that Class Counsel's fees, disbursements, and taxes payable are a matter between Class Counsel and the Class, subject to approval by the Court. Blyth Academy agrees that it will not object to or oppose Class Counsel's request for approval of Class Counsel fees, disbursements, and taxes so long as it does not exceed the maximum payable under the retainer agreement with Class Counsel. Blyth Academy will make submissions regarding this issue if directed by the Court.

15. Class Counsel fees, disbursements and taxes shall be reimbursed and paid solely out of the trust account holding the Main Settlement Fund within fourteen (14) days of the deposit of the Main Settlement Fund or by such date as the Court may order.

16. Blyth Academy shall not be liable for any Class Counsel Fees, Class Counsel Disbursements, or taxes of any of the lawyers, experts, advisors, agents, or representatives retained by Class Counsel, the Plaintiff or the Class Members.

17. At the Plaintiff's own expense, the Plaintiff will also move, on March 3, 2020, for an Order discontinuing the Class Action on behalf of all persons who only taught Blyth Academy Online courses for Blyth Academy. The Parties will propose an Order in the form attached as Schedule "D" to this Settlement or such other Order as is deemed acceptable by the Court

18. The Parties will give notice of the March 3, 2020 hearing in accordance with the procedures outlined in the Distribution and Notice Plan found at Schedule "A" to the Settlement Agreement. The Parties will obtain whatever directions or orders are necessary from the Court to effectuate this notice.

19. Blyth Academy will pay the costs of the dissemination of all notices set out in the Notice Plan save and except those forms of notice Class Counsel has agreed to carry on at its own cost.

20. Blyth Academy will assume the entire cost of administering the Settlement Agreement, including the cost of sending follow-up communications, the cost of paying

Class Members from funds deposited in trust, the cost of sending new cheques in the case of lost or stolen cheques or other non-deposit by a Class Member, and any costs associated with any steps outlined in the Distribution and Notice Plan found at Schedule "A" to the Settlement Agreement.

21. The Parties will give notice of the Final Approval Order in accordance with the procedures outlined in the Distribution and Notice Plan found at Schedule "A" to the Settlement Agreement.

22. Class Members may opt out of the Class Action within 30 days of the delivery of the notice of the Final Approval Order or any date agreed by the Parties and approved by the Court [the "Opt-Out Deadline"]. The Opt-Out Deadline will be specifically set out in the various notices given to Class Members.

23. Class Members wishing to opt out must do so by the Opt-Out Deadline by completing the Opt-Out Form found at Schedule "C" to the Settlement Agreement and by delivering it to the Class Counsel by regular mail, fax, or email. A Class Member that provides Class Counsel with substantially the same information as found in the Opt-Out Form by the Opt-Out Deadline will also be deemed to have opted out of the Class Action.

24. Class Counsel will provide Blyth Academy with a list of the Class Members who opted out by the Opt-Out Deadline within 7 days of the Opt-Out Deadline.

25. In the event the Settlement Agreement is not approved by the Court, the Court will be asked by the Parties for further directions in respect of the proceeding of the Class Action.

**F. The Releases in Favour of Blyth Academy**

26. The Settlement Agreement is binding on each Class Member who does not opt out by the Opt-Out Deadline.

27. Further, on the date of Final Approval, Blyth Academy will be fully and finally released from any and all claims, complaints, actions and demands by Class Members who have not opted out ["Settlement Class Members"] in relation to the Class Period and Class Action and the issues raised or which could have been raised in the Class Action for the Class Period. For greater certainty, and without limiting the generality of the foregoing, Blyth Academy is released from the claims, complaints, actions and demands of any Settlement Class Member in relation to the Class Action and for the Class Period, whether or not such Class Member receives compensation pursuant to the Settlement Agreement.

28. For greater certainty, the Settlement Class Members will forever be barred from advancing any claims that were raised or could have been raised in this Class Action during the Class Period, including, but not limited to, any claims for unpaid minimum wage earnings, vacation pay, public holiday pay, or overtime pay, directly or indirectly against Blyth Academy by way of any proceedings or procedure, whether court based or



administrative, including, but not limited to, any complaints or proceedings with the Ministry of Labour or the Canada Revenue Agency, or under the *Employment Standards Act, 2000*, S.O. 2000, and amendments thereto or any successor legislation thereto, or by way of advancing a claim against any person or entity who might claim in any manner or form contribution and indemnity at common law or in equity, or under provision of any statute or regulation, including the *Negligence Act* or amendments thereto, and/or any successor legislation thereto, and/or under the *Rules of Civil Procedure*.

29. Class Counsel and the Representative Plaintiff agree that they will not make any disparaging or other derogatory remarks about Blyth Academy, its officers, directors, employees, servants, or agents, to the media, including social media, or on online forums or discussion groups. Class Counsel and the Representative Plaintiff further agree that they will not encourage any other person or entity to make any derogatory statement or statements about Blyth Academy, its officers, directors, employees, servants, or agents to the media, including social media, or on online forums or discussion groups. This clause shall not operate to prevent Class Counsel or the Representative Plaintiff from communicating with the media or responding to media inquiries, but any such communications or responses shall comply with this clause. Similarly, Blyth Academy and its directors and officers also agree that they will not make any disparaging or other derogatory remarks about the Representative Plaintiff or Class Counsel to the media, including social media, or on online forums or discussion groups. Blyth Academy and its directors and officers further agree that they will not encourage any other person or entity to make any derogatory statement or statements about the Representative Plaintiff or

Class Counsel to the media, including social media, or on online forums or discussion groups. This clause shall not operate to prevent Blyth Academy and its directors and officers from communicating with the media or responding to media inquiries, but such communications or responses shall be required to comply with this clause.

**G. No Admission of Liability by Blyth Academy**

30. The Parties acknowledge that Blyth Academy denies the truth of the allegations made in the Class Action for the Class Period and, in fact, denies any liability whatsoever.

31. For greater certainty, the parties acknowledge that nothing in this agreement shall have the effect of changing the terms of any contract for services entered into between Blyth Academy and any of the Settlement Class Members, and the terms of any such contract for services remain in full force and in effect.

**H. Cooperation and Assurances**

32. The Parties, through counsel, will consent to such Orders and sign such other documentation as is reasonably required to give effect to the Settlement Agreement and undertake to seek no additional relief in respect of the Class Action for the Class Period nor make any submissions to the Court other than as may be required to obtain Final Approval of the Settlement Agreement.

**I. Motions for Directions**

33. Either or both of the Parties may apply to the Court as may be required for directions in respect of the interpretation, implementation and administration of this Settlement Agreement.

34. All motions contemplated by this Settlement Agreement shall be on notice to the Parties.

**J. Public Disclosure Respecting the Settlement and Settlement Agreement**

35. Class Counsel is not precluded from disclosing or referencing any aspect of the Settlement or Settlement Agreement that is a matter of public record once the Court has approved the giving of the notice of the Final Approval Order.

36. Nothing in the Settlement Agreement precludes communications between Class Counsel and Class Members, including communications advising Class Members of developments through updates posted to Class Counsel's webpage, telephone hotline, email, and otherwise.

**K. This Settlement Agreement is the Parties' Entire Agreement**

37. This Settlement Agreement constitutes the entire agreement among the Parties and supersedes all prior and contemporaneous understandings, undertakings, negotiations, representations, promises, agreements, agreements in principle and memoranda of understanding in connection with the subject matter of the Settlement Agreement.

38. The Recitals, schedules, and headings to this Settlement Agreement are true and form part of the Settlement Agreement.

39. The Settlement Agreement may not be modified or amended except in writing and on consent of all Parties and any such modification or amendment must be approved by the Court.

**L. The Binding Effect of the Settlement Agreement**

40. This Settlement Agreement will be binding upon and inure to the benefit of the Parties and their respective successors, assigns, heirs, administrators and/or legal representatives.

**M. The Law that Applies to the Settlement Agreement**

41. This Settlement Agreement will be governed by and construed in accordance with the laws of the Province of Ontario.

**N. Counterparts**

42. This Settlement Agreement may be executed in counterparts, each of which will be deemed to be an original and all of which taken together will be deemed to constitute one and the same instrument.

**O. Authorization to Execute this Settlement Agreement**

43. Each of the undersigned represents that he or she is fully authorized to enter into the terms and conditions of and to execute this Settlement Agreement on behalf of the Parties or law firms identified above their respective signatures.

**P. Language of the Settlement Agreement / L'entente est rédigée en anglaise**

44. The whole text of this Settlement Agreement, as well as the documents appended to the Settlement Agreement, have been written in English

45. Cette entente de règlement a été rédigée en anglais.

**Q. Notice**

46. Where this Settlement Agreement requires a party to provide notice or any other communication or document to another, such notice, communication or document shall be provided by email, facsimile or letter by overnight delivery to the representatives for the party to whom notice is being provided, as identified below:

For the Plaintiff and for Class Counsel in the Proceeding:

Stephen Moreau and Kaley Duff  
Cavalluzzo LLP  
474 Bathurst Street, Suite 300  
Toronto, ON M5T 2S6  
Tel: 416.964.1115  
Fax: 416.964.5895  
Email: [smoreau@cavalluzzo.com](mailto:smoreau@cavalluzzo.com) or [kduff@cavalluzzo.com](mailto:kduff@cavalluzzo.com)

For the Defendants (Blyth Academy):

Elizabeth Bowker and Thanasi Lampropoulos  
Stieber Berlach LLP  
130 Adelaide Street West, 18th Floor,  
Toronto, ON M5H 3P5  
Tel: 416.366.1400  
Fax: 416.366.1466  
Email: [ebowker@sblegal.ca](mailto:ebowker@sblegal.ca) or [tlampropoulos@sblegal.ca](mailto:tlampropoulos@sblegal.ca)

**R. Date of Execution**

47. The Parties have executed this Settlement Agreement as of the date on the cover page.

KAREN WALMSLEY, on their own behalf and on behalf of the Class, by their counsel:

Name of Authorized Signatory:

Stephen J. Moreau  
Cavalluzzo LLP, Class Counsel

Signature of Authorized Signatory:

Stephen J. Moreau

Name of Authorized Signatory:

Kaley Duff  
Cavalluzzo LLP, Class Counsel

Signature of Authorized Signatory:

Kaley Duff

2016169 ONTARIO INC., 2170616 ONTARIO INC. and 2429131 ONTARIO INC., alone or together o/a Blyth Academy:

Name of Authorized Signatory:

ELIZABETH BOWKER  
STIEBER BERLACH LLP

Signature of Authorized Signatory:



Name of Authorized Signatory:

THANASI LAMPROPOULOS

Signature of Authorized Signatory:



## **SCHEDULE A – DISTRIBUTION AND NOTICE PLAN**

1. The mechanics of the implementation and administration of this Settlement Agreement shall be in accordance with this Distribution and Notice Plan.
2. All Capitalized Terms in this Distribution and Notice Plan are taken from the Settlement Agreement or are defined in paragraphs 37 and 38, below.
3. Class Counsel's and Blyth Academy's preparation of this Distribution and Notice Plan and Class Counsel's representation of the Class Members generally does not in any way extend to tax inquiries or tax advice relating to the Settlement Agreement, settlement payments to Class Members, or this Distribution and Notice Plan. Class Counsel is not providing tax advice to the Class or any Class Member. Class Members will be advised to seek independent tax advice.
4. All costs associated with giving notice to Class Members will be borne by Blyth Academy except that Class Counsel will assume the cost of posting notices on its website and sending emails to those on its own lists.

### **Identification of Class Members**

5. As outlined in the Settlement Agreement, Class Members are:

Any person who, from 2002 until August 31, 2019 [the "Class Period"], worked for Blyth Academy in Ontario and taught at least one course, but excluding those who worked exclusively as Principals or Vice-Principals or who exclusively taught Blyth Academy online courses.



6. Blyth Academy, with input from Class Counsel, completed an extensive review of its emails and contracts with Class Members in order to compile a list of last known contact information, including last known physical addresses, phone numbers, and email addresses.

7. Blyth Academy, with input from Class Counsel, also completed an extensive review of its emails and contracts with teachers who taught Blyth Academy Online courses in order to compile a separate list of the same kinds of last known contact information [the "BAO Group List"].

8. Full last known contact information was derived for nearly all class members who signed contracts with Blyth Academy for the 2015-2016 School Year onward and many contracts were located from prior years from which further contact details were derived.

#### **Particulars Regarding Direct Mailing, Text Messaging, and Emailing**

9. All direct mailings will be sent via regular mail to a Class Member's or BAO Group List member's most recent address as determined by the review conducted by Blyth Academy.

10. All text messages will be sent via text message to a Class Member's or BAO Group List member's most recent phone number as determined by the review conducted by Blyth Academy.

11. All emails will be sent via email to a Class Member's or BAO Group List member's most recent email address as determined by the review conducted by Blyth Academy.

12. All direct mailing, text messages, and emails will be sent by a third party hired and paid for by Blyth Academy, and approved by Class Counsel. This third party will re-send any notices by any combination of these three means of communication if the third party is made aware of any changes in address, phone number, and/or email address or if Blyth Academy supplies any other contact information it obtained and that may be required. The third party will maintain and update such contact lists as is necessary to give notice.

13. The third party hired to send all direct mail, text messages, and emails will communicate with Class Counsel and Blyth Academy concerning the notice and will take the following steps in favour of Class Counsel and Blyth Academy in a manner and form satisfactory to the Parties:

- (a) provide verification that the requisite notices have been sent;
- (b) outline efforts to update the contact lists; and,
- (c) outline any other steps taken or that they believe ought to be taken to give notice to the Class or to BAO Group List members.

14. For greater certainty, all Notification Letters and Payment Notification Letters will be sent on Blyth Academy letterhead.

### **The First Notice**

15. By January 4, 2020, Blyth Academy and Class Counsel will give notice of the hearing to approve the Settlement Agreement and to obtain the Final Approval Order.

The content of these notices is set out in appendices to this Distribution and Notice Plan and, together, constitutes the "First Notice".

16. This First Notice shall also be posted on Class Counsel's website, at [www.cavalluzzo.com/blythacademyclassaction](http://www.cavalluzzo.com/blythacademyclassaction) by January 4, 2020.

17. The First Notice will also be sent as part of an e-mailed E-Newsletter sent through the College of Teachers "Professionally Speaking" E-Newsletter process using the short form of notice appended to this Distribution and Notice Plan.

18. The First Notice shall also be sent by Blyth Academy by direct mailing via regular mail to identified Class Members and those on the BAO Group List using their last known address(es).

19. The First Notice shall also be sent by Blyth Academy by email to identified Class Members and those on the BAO Group List using their last known email address(es). The First Notice shall also be sent by Blyth Academy by email to all teachers employed with, contracted to, or working for Blyth Academy at the time it gives the First Notice.

20. The First Notice shall also be sent by Blyth Academy by text message to identified Class Members and those on the BAO Group List using their last known telephone number(s).

21. Blyth Academy will supply Class Counsel with proof, in a form acceptable to Class Counsel, that the First Notice has been sent by regular mail, by text, and by email in the manner outlined in this Notice Plan.

22. Class Counsel will also send an email to all individuals who have contacted Class Counsel about this class proceeding.

### **The Second Notice**

23. If the Settlement Agreement is approved, Blyth Academy will give notice of the Final Approval Order, the settlement, the opt-out process, and the claims process by April 14, 2020 or such other date as the Court orders. The content of these notices is set out in appendices to this Distribution and Notice Plan and, together, constitutes the "Second Notice".

24. The Second Notice shall be posted, mailed, text messaged and emailed via the same methods and to the same places as used with the First Notice but shall only be sent to Class Members. For greater certainty, the Second Notice will not be sent via regular mail, text, or email to those on the BAO Group List.

25. The Second Notice will also be sent as part of an emailed E-Newsletter sent through the College of Teachers "Professionally Speaking" E-Newsletter process using the short form of notice appended to this Distribution and Notice Plan.

### **The Notice of Discontinuance**

26. The Notice of Discontinuance found as an Appendix to this Distribution and Notice Plan shall be sent via regular mail and email to those on the BAO Group List by April 14, 2020.

### **Class Counsel Webinar Sessions**

27. Class Counsel will hold two to three live webinar sessions for existing Blyth Academy teachers as part of the process of providing the Second Notice. In these sessions, Class Counsel will explain the Settlement Agreement and answer any questions Blyth teachers may have about the class action. These sessions will be held at Blyth Academy Head Office at times that are convenient for Blyth teachers, and will be broadcast live to all Blyth Academy Ontario campuses. Blyth Academy will communicate the details of these events to its existing teachers.

### **Opting Out Process**

28. As set out in the Settlement Agreement, Class Members may opt out of the Class Action by delivering to Class Counsel a completed Opt-Out Form in the form attached as Schedule "C" to the Settlement Agreement.

29. Class members are to deliver the completed Opt-Out Form to Class Counsel by mail, fax, or email at the following address, by no later than 5:00 p.m. on the Opt-Out Deadline:

Blyth Academy Class Action  
Cavalluzzo LLP  
Barristers & Solicitors  
474 Bathurst Street, Suite 300  
Toronto, Ontario  
M5T 2S6  
Tel: 844-253-7730  
Fax: 416-964-5895  
Email: [BlythClassAction@cavalluzzo.com](mailto:BlythClassAction@cavalluzzo.com)

30. No Class Member may opt out after the Opt-Out Deadline established by the Court.
31. Within seven (7) days after the Opt-Out Deadline, Class Counsel will report to Blyth Academy by affidavit and provide the names and addresses of those persons, if any, who have opted out of the Class Action.

#### **Payment of Funds**

32. As outlined in paragraph 6 of the Settlement Agreement, Blyth Academy will pay a non-reversionary lump sum of \$2,500,000 [the "Main Settlement Fund"] into an interest bearing trust account within fourteen (14) days of Final Approval.
33. As outlined in paragraph 7 of the Settlement Agreement, Blyth Academy will pay a reversionary lump sum of \$25,000 [the "Pre-Limitations Fund"] into an interest bearing trust account within fourteen (14) days of Final Approval.
34. Blyth Academy will provide confirmation in a form acceptable to Class Counsel of its compliance with the payment terms outlined at paragraphs 6 and 7 of the Settlement Agreement.

35. Blyth Academy will, within fourteen (14) days of the deposit of the Main Settlement Fund or by such date as the Court may order, pay from the Main Settlement Fund the approved amount to Class Counsel, in trust, on account of Class Counsel's fees, disbursements, and HST.

36. Blyth Academy will thereafter maintain the balance of the Main Settlement Fund in the same interest bearing trust account to accrue interest until such time as payments can be made to Class Members. For the purposes of calculating the amounts to be paid to Class Members from the Main Settlement Fund, "Net Proceeds" shall hereafter mean the portion of the Main Settlement Fund remaining after the payment of approved Class Counsel fees, disbursements, and taxes, plus (if applicable), the further \$100,000 payment payable if the take-up conditions articulated at paragraph 42 are met, plus any interest accrued as of the date Class Counsel and Blyth Academy will agree to as the date of distribution.

### **The Claims Determination Process**

#### ***Definitions***

37. For the purposes of this section, the following terms will have the following meanings:

- (a) "Appeal Form" means the form entitled "Appeal Form" appended to this Distribution and Notice Plan;
- (b) "Claims Form" means the form entitled "Claims Form" appended to this Distribution and Notice Plan;

- (c) "Cluster of Contracts" means a group of three (3) or more Contracts that commenced within the same Term. For greater certainty, no Employment Agreement and no Summer Contract may be counted as part of any Cluster of Contracts;
- (d) "Contract" means any contract or agreement entered into between a Class Member and Blyth Academy that is not an Employment Agreement nor a Summer Contract nor a Part-Year Downsview Contract nor an Online Contract and which, for greater certainty, includes,
  - (i) a contract to teach any course or subject whatsoever;
  - (ii) a contract to teach a private course;
  - (iii) a contract to teach a semi-private course;
  - (iv) a contract to teach a student, students, and/or a course at night;
  - (v) a contract to teach a student, students, and/or a course on weekends; and,
  - (vi) a contract to provide curriculum lead, department lead, curriculum head, department head, or guidance counsellor services.
- (e) "Employment Agreement" means any contract or agreement entered into between a Class Member and Blyth Academy and which provided that the Class Member was being hired to work for Blyth Academy as an employee;
- (f) "Main Quotient" means the end result of the application of the formula set out in paragraphs 69-70, below;



- (g) "Notification Letter" means the form entitled "Notification Letter" appended to this Distribution and Notice Plan;
- (h) "Online Contract" means a contract to teach a Blyth Academy Online course;
- (i) "Part-Year Downsview Contract" means a contract or agreement entered into between a Class Member and Blyth Academy for the provision of teaching at Blyth Academy's Downsview campus during the 2015-2016 School Year;
- (j) "Payment Notification Letter" means the form entitled "Payment Notification Letter" appended to this Distribution and Notice Plan;
- (k) "Pre-Limitations Work" means any work performed by a Class Member for Blyth Academy for any period of time prior to September 1, 2015;
- (l) "Referee" means the person agreed to by the Parties who will review any appeals launched by a Class Member in accordance with the procedure outlined in this Distribution and Notice Plan;
- (m) "School Year" means a period of one year beginning September 1 of a given year and ending on August 31 of the following year but does not include the September 1, 2019 – August 31, 2020 school year or any subsequent school year;
- (n) "Summer Contract" means a contract or agreement entered into between a Class Member and Blyth Academy that is not an Employment Agreement and which provides that the Class Member will teach a student, students,

or a course during the period designated by Blyth Academy during a School Year for the teaching of summer courses; and,

(o) "Term" means,

(i) for the 2015-2016 School Year,

1. the period September 8, 2015 to November 18, 2015, as Term 1;
2. the period November 19, 2015 to February 2, 2016, as Term 2;
3. the period February 3, 2016 to April 22, 2016, as Term 3;
4. the period April 24, 2016 to June 30, 2016, as Term 4;

(ii) for the 2016-2017 School Year,

1. the period September 6, 2016 to November 16, 2016, as Term 1;
2. the period November 17, 2016 to February 3, 2017, as Term 2;
3. the period February 4, 2017 to April 24, 2017, as Term 3;
4. the period April 26, 2017 to June 30, 2017, as Term 4;

(iii) for the 2017-2018 School Year,

1. the period September 7, 2017 to November 17, 2017, as Term 1;
2. the period November 14, 2017 to February 2, 2018, as Term 2;
3. the period February 6, 2018 to April 24, 2018, as Term 3;
4. the period April 25, 2018 to June 29, 2018, as Term 4;

(iv) for the 2018-2019 School Year,

1. the period September 6, 2018 to November 13, 2018, as Term 1;
2. the period November 14, 2018 to February 1, 2019, as Term 2;
3. the period February 5, 2019 to April 18, 2019, as Term 3;
4. the period April 23, 2019 to June 23, 2019, as Term 4.

38. For greater certainty, and owing to the fact that Class Members are those that taught in Ontario, contracts or agreements to teach outside of Ontario do not constitute Contracts, Employment Agreements, Part-Year Downsview Contracts, or Summer Contracts, nor can they be used to form part of a Cluster of Contracts.

### ***The Claims Form***

39. In order to receive any payment, Class Members will be required to complete and return a Claims Form to Blyth Academy or otherwise advise Blyth Academy of the information set out in the Claims Form. Claims Forms or information set out in the Claims Forms must be received by Blyth Academy by May 31, 2020 in order for the Class Member to receive compensation.

40. An incomplete or improperly completed Claims Form will not be grounds to deny a Class Member compensation. Blyth Academy will, upon receipt of any incomplete or improperly completed Claims Form, contact the Class Member and use good faith efforts to correct any deficiencies with the Claims Form.

### ***Blyth Academy's Review***

41. By June 30, 2020, Blyth Academy will consult the Claims Form, any other information and documents received by a Class Member with or apart from the Claims Form, contracts in its possession, payroll records in its possession, and any other document it deems relevant in order to determine, for each Class Member, the following:

- (a) whether the Class Member engaged in any Pre-Limitations Work or not;

- (b) how many Contracts the Class Member had entered into for each School Year;
- (c) how many Clusters of Contracts the Class Member had entered into for each School Year;
- (d) how many Part-Year Downview Contracts the Class Member had entered into; and,
- (e) how many Summer Contracts the Class Member had entered into for each School Year.

42. If at least 90% of Class Members entitled to proceeds from the Main Settlement Fund deliver a timely Claims Form or deliver the information outlined in the Claims Form in a timely fashion, then Blyth Academy shall, at the conclusion of its review and prior to proceeding to Step 6, make an additional payment into the Main Settlement Fund in the amount of \$100,000.

43. Blyth Academy will track its efforts in coming to the conclusions at paragraphs 41 and 42 in a form and manner acceptable to Class Counsel.

***Notice to Class Members of a Determination***

44. By July 31, 2020, Blyth Academy will send each Class Member who delivered a timely Claims Form or who delivered the information outlined in the Claims Form in a timely fashion an individualized Notification Letter listing, for each Class Member, the conclusions Blyth Academy came to regarding the Class Member as set out in paragraph 41.

45. Blyth Academy will send each Class Member's Notification Letter using the mailing address, email address, and/or phone number supplied by the Class Member on the Claims Form or supplied by the Class Member in some other satisfactory manner. The Parties agree that the intention is to make best efforts to ensure that the Class Member receives the Notification Letter and that, as a result, it may be necessary to send the Notification Letter by more than one means of delivery.

46. Blyth Academy will enclose with the Notification Letter an Appeals Form, which Appeals Form will outline how the Class Member can appeal Blyth Academy's conclusions as set out in the Notification Letter.

### ***Appeals***

47. Any Class Member dissatisfied with the contents of the Notification Letter may appeal to a Referee by completing an Appeal Form and submitting it to the Referee by regular mail, fax, or email.

48. In order to appeal, the Referee must have received the Class Member's Appeal Form and any enclosures within twenty-one (21) days of the date on which the Class Member received the Notification Letter.

49. Any Class Member who commences an appeal must pay a fee of \$100.00 to the Referee, in trust, in order to commence such appeal.

50. For each appeal, Blyth Academy will provide the Referee and the affected Class Member with a copy of any documents Blyth Academy relied on to make its determination within four (4) weeks of the filing of the appeal.

51. The affected Class Member will then have two (2) weeks in which to email any submissions they may wish to make in support of their appeal.

52. Blyth Academy will then have two (2) weeks in which to email any submissions they may wish to make in support of their initial determination in the Notification Letter.

53. Within two (2) weeks of the date on which the Blyth Academy's submissions were due, the Referee will issue a decision in the form of a fresh Notification Letter sent to the affected Class Member by email.

54. If the Class Member's appeal is successful in any way, the \$100.00 fee paid by the Class Member will be reimbursed by the Referee. If the Class Member is not successful, the Class Member will not be reimbursed the \$100.00 fee paid to the Referee.

55. If a Class Member does not appeal, they shall be deemed to have accepted the contents of the Notification Letter sent to them by Blyth Academy.

56. All of the Referee's fees, costs, and expenses shall be paid by Blyth Academy save and except that portion of the Referee's fees, costs, and expenses paid by each Class Member who appeals unsuccessfully.

***Calculation of Payment and Payment Notification***

57. Once all appeals have been resolved and the deadline for all appeals has passed, Blyth Academy will calculate the amounts owing to each Class Member who submitted a Claims Form or who otherwise advised Blyth Academy of the information set out in the Claims Form or information.

58. Blyth Academy's calculations will follow the formulae and steps set out in the present section and will be conducted in a form and manner that will permit ongoing reporting to Class Counsel.

59. All figures calculated by Blyth Academy will be rounded down to the nearest 1/100 (hundredths) of a decimal point.

**Step 1 – Pre-Limitations Work**

60. For each Class Member who engaged in Pre-Limitations Work, Blyth Academy will first assign a value of \$100.00.

61. Blyth Academy will then add up all of the values assigned on account of Pre-Limitations Work for all affected Class Members and divide the total by the monies available in the Pre-Limitations Fund as of December 31, 2020.

62. If the quotient derived from the calculation in paragraph 61 is equal to or less than 1.0, each Class Member who engaged in Pre-Limitations Work will be paid \$100.00 on account of the Pre-Limitations Work.

63. If the quotient derived from the calculation in paragraph 61 is greater than 1.0, each Class Member who engaged in Pre-Limitations Work will be paid an amount on account of the Pre-Limitations Work using the following formula:

$$\$100 / \text{quotient derived from the paragraph 61 calculation}$$

64. All monies paid to Class Members on account of Pre-Limitations Work will be paid from monies available in the Pre-Limitations Fund as of the date payment is made.

65. No Class Member will receive any monies from the Main Settlement Fund or any portion of the Net Proceeds on account of their Pre-Limitations Work.

66. If there remains any amount in the Pre-Limitations Fund after the distribution has been made on account of Pre-Limitations Work, these remaining funds will be returned to Blyth Academy. For greater certainty, it is agreed that all interest accruing in the Pre-Limitations Fund after the distribution is made from the Pre-Limitations Fund is the property of Blyth Academy and is to revert to Blyth Academy once the six-month stale date period described below has passed.

Step 2 – Initial Assignment of Values for Employment Agreements, Contracts, Clusters of Contracts, and Summer Contracts

67. For each Class Member, Blyth Academy will assign the following amounts:

- (a) for each Employment Agreement, \$5,300;
- (b) for each Contract, \$125;
- (c) for each Cluster of Contracts, \$2,100;



- (d) for each Part-Year Downsview Contract, \$2,500; and,
- (e) for each Summer Contract, \$200.

68. For greater certainty, when a Contract forms part of a Cluster of Contracts, Blyth Academy will not separately assign any value for each Contract within the Cluster of Contracts but will only assign the total value of \$2,100 for the Cluster of Contracts.

Step 3 – Determining the Main Quotient

69. Blyth Academy will then add up all of the values assigned on account of Employment Agreements, Contracts, Clusters of Contracts, Part-Year Downsview Contracts, and Summer Contracts and divide the total by the Net Proceeds.

70. The quotient derived from this calculation will be rounded down to the nearest 1/100 (hundredths) of a decimal point [the "Main Quotient"].

Step 4 – Calculation of Amounts to be Paid for Employment Agreements, Contracts, Clusters of Contracts, and Summer Contracts

71. For each Class Member, Blyth Academy will determine the amounts to be paid on account of each Employment Agreement, Contract, Cluster of Contracts, Part-Year Downsview Contracts, and Summer Contract as follows:

- (a) for each Employment Agreement, the lesser of,
  - (i) \$5,300 divided by the Main Quotient or
  - (ii) \$10,600;
- (b) for each Contract, the lesser of,
  - (i) \$125 divided by the Main Quotient or
  - (ii) \$250;

- (c) for each Cluster of Contracts, the lesser of,
  - (i) \$2,100 divided by the Main Quotient or
  - (ii) \$4,200;
- (d) for each Part-Year Downsvie Contract, the lesser of,
  - (i) \$2,500 divided by the Main Quotient or
  - (ii) \$5,000; and,
- (e) for each Summer Contract, the lesser of,
  - (i) \$200 divided by the Main Quotient or
  - (ii) \$400.

72. For greater certainty, when a Contract forms part of a Cluster of Contracts, Blyth Academy will not separately add any amount on account of each Contract within the Cluster of Contracts but will only pay the lesser of \$2,100 divided by the Main Quotient or \$4,200 for each Cluster of Contracts.

73. For each Class Member, Blyth Academy will add up all of the payments calculated at Step 4 to derive a total amount to be paid to each Class Member on account of each Employment Agreement, Contract, Cluster of Contracts, Part-Year Downsvie Contract, and Summer Contract.

Step 5 –Application to Court, if Applicable

74. In the event that the total amounts to be paid to Class Members as of the date of distribution is less than the Net Proceeds as of the date of distribution, then the additional monies will be disposed of as follows:

- (a) up to \$50,000 will be paid to the Workers Action Centre by way of a *cy près* payment; and,
- (b) If the additional monies exceed \$50,000, the Parties will apply to the Court for directions concerning the disposition of any additional monies remaining in excess of the \$50,000 paid to the Workers Action Centre.

75. The Parties agree that, in the event such an application is made, neither Party will seek to have any additional monies paid to Blyth Academy and under no circumstances will Blyth Academy receive any portion of the additional monies.

Step 6 – Payment Notification Letter

76. By December 31, 2020, Blyth Academy will:

- (a) send each Class Member an individualized Payment Notification Letter; and,
- (b) either deposit the Class Member's payment into their banking account if requested or deliver, with the individualized Payment Notification Letter, a cheque or cheques totalling the amount to be paid.

77. It is understood and agreed that Blyth Academy may need to make two payments and/or send two cheques where it is paying a Class Member an amount on account of Pre-Limitations Work and another amount on account of each Employment Agreement, Contract, Cluster of Contracts, Part-Year Downsview Contract, and Summer Contract.

Tax Matters

78. Blyth Academy will provide T4A forms to Class Members on account of all monies paid save and except monies paid on account of Employment Agreements.

79. Blyth Academy will remit required withholdings and provide T4 forms to Class Members on account of all monies paid on account of Employment Agreements.

No Appeal

80. Class Members cannot appeal or otherwise seek to have reviewed the final determinations and payments as outlined in the Payment Notification Letters.

**Reports to Class Counsel and Class Counsel's Monitoring Role**

81. Class Counsel will oversee the Distribution and Notice Plan and provide advice and assistance to Blyth Academy, through its counsel, regarding this Distribution and Notice Plan and the claims administration process generally.

82. Blyth Academy, through its counsel, will provide Class Counsel with ongoing reports of its progress in a form acceptable to Class Counsel. Without limiting the generality of this reporting obligation, and without purporting to replace the other notices and information Blyth Academy has agreed to provide elsewhere in the Settlement Agreement and in the Distribution and Notice Plan, the reports will include reports concerning the following:

- (a) statistics and details concerning Blyth Academy's efforts to give the First Notice and the Second Notice, including the number of notices, emails, and texts returned as undeliverable;
- (b) the number of Class Members who have filed a Claims Form or other information for the purposes of initiating a claim;
- (c) details concerning Blyth Academy's efforts to follow-up with Class Members;
- (d) the number of appeals filed to the Referee;
- (e) monies available at any given time in the Pre-Limitations Fund;
- (f) the Net Proceeds available, with access to bank or account statements being provided if requested;
- (g) the application by Blyth Academy of the formulae set out in this Distribution and Notice Plan; and,
- (h) attempts to make contact with Class Members.

#### **Undeliverable and Uncashed Cheques**

83. In the event that a cheque provided to any Class Member is returned as undeliverable or due to a change of address, Blyth Academy will make reasonable efforts to locate the Class Member and will notify Class Counsel within 10 days and Class Counsel will have an opportunity to locate the Class Member.

84. In the event that a cheque provided to any Class Member is uncashed after 6 months, the cheque will be considered stale and the funds will be donated to the Workers' Action Centre as of the stale date.

85. For greater certainty, provisions for the donation of funds as a result of a cheque being deemed stale applies whether the funds are drawn from the Net Proceeds for Distribution or from the Pre-Limitations Fund.

### **Residual Distribution**

86. Unless otherwise ordered by the Court as a result of the application referenced in paragraph 74, if there remains any amount of the Net Proceeds after the distribution has been made in accordance with this Distribution and Notice Plan, these monies will be donated by way of a *cy près* distribution to the Workers' Action Centre.

87. All donations to the Workers' Action Centre on account of any remaining monies and stale dated cheques may be made at the same time.

### **Final Report**

88. Within sixteen (16) months of the Final Approval, Blyth Academy will provide Class Counsel with a final report indicating the amounts paid to Class Members and the amounts paid to the Workers' Action Centre.

## **APPENDICES**

**(Forms Referred to in the Distribution and Notice Plan)**

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## **First Notice Email**

Dear Current and Former Blyth Academy Teachers,

### **RE: Blyth Academy Class Action**

You have been identified as a potential Class Member in the Blyth Academy Class Action. This Class Action, brought on behalf of a group of Blyth Academy teachers, alleges that Blyth Academy systemically misclassified teachers at its Ontario campuses as independent contractors, and illegally denied them vacation pay, public holiday pay, and overtime pay. The Class Action claims damages on account of these unpaid wages. The Class Action also claims unpaid overtime on behalf of Blyth employee teachers.

Blyth Academy has denied all of these allegations.

The Parties to this Class Action are a former teacher, Karen Walmsley, and Blyth Academy. Walmsley and Blyth Academy have settled the Class Action, but the Ontario Superior Court must approve their agreement in order for the settlement to take effect.

As a potential Class Member, your rights might be affected by this settlement. You have the right to object to the settlement or to show your support for it.

If the settlement is approved, you have the right to opt out of the Class Action or to make a claim for a payment under the terms of the settlement.

If you wish to learn more about the Class Action, the settlement, and the steps you can take, we would urge you to visit the following web page:

[cavalluzzo.com/blythacademyclassaction](http://cavalluzzo.com/blythacademyclassaction)

If you would like more information, you may also contact the lawyers who represent Walmsley. To reach the lawyers at Cavalluzzo LLP, please call 844-253-7730 or email [BlythClassAction@cavalluzzo.com](mailto:BlythClassAction@cavalluzzo.com). They will be happy to assist.

Sincerely,

[Blyth Academy OR Stephen Moreau and Kaley Duff, Cavalluzzo LLP]

[Insert Logo and/or Signatures as Needed]



**First Notice Text Message**

Were you a teacher at Blyth Academy between 2002 and August 31, 2019? If so, you might be entitled to a payment under a Class Action settlement. For more information, please visit [cavalluzzo.com/blythacademyclassaction](http://cavalluzzo.com/blythacademyclassaction) or call 844-253-7730.

## **First Notice, Including Direct Mailing**

### **LEGAL NOTICE**

**Were you a teacher at one of Blyth Academy's Ontario campuses from 2002 to August 31, 2019?**

**You might be entitled to a payment as part of a class action settlement. Please read this notice carefully.**

[If Direct Mailing -- Dear \_\_\_\_\_,]

#### ***Notice of Class Action Settlement and Claim Discontinuance***

A settlement agreement was recently reached in the Blyth Academy Class Action. [For the Direct Mailing – You are receiving this letter because we believe you might be entitled to a payment under this settlement.] OR [For the non-Mailing – If you ever taught at Blyth Academy in Ontario, you might be entitled to a payment under this settlement].

Teachers who *exclusively* taught Blyth Academy Online courses are not part of this settlement. The Action on behalf of teachers who only taught Blyth Academy Online courses will be discontinued. Please read section B7 for more information.

Please read this notice carefully for details of the Proposed Settlement.

The Ontario Superior Court authorized this notice. This is not a solicitation from a lawyer.

#### ***Proposed Settlement of the Blyth Academy Class Action***

A former Blyth Academy teacher, Karen Walmsley (the "**Representative Plaintiff**"), sued Blyth Academy on behalf of Blyth Academy teachers. The class action lawsuit claimed:

- Blyth Academy misclassified its teachers as "independent contractors" when they were in fact "employees";
- As a result, Blyth did not compensate these teachers for overtime, public holiday pay, and vacation pay; and,
- Additionally, Blyth Academy did not compensate its "employee" teachers for the overtime hours they also worked.

Blyth Academy has denied all of these allegations.

After extensive litigation and settlement discussions, Walmsley and Blyth Academy have now reached a proposed settlement that provides compensation to eligible teachers.

However, in order to finalize the settlement and begin the claims process, a judge of the Superior Court in Toronto must first approve this proposed agreement.

The Court's approval hearing will be held on March 3, 2020. On that day, the Parties will present evidence and argue that the proposed settlement is fair and reasonable. Class Members can participate if they wish. For more information on your right to participate, please read the section "Your Legal Rights and Options in this Proposed Settlement", below.

<b>WHAT THIS NOTICE CONTAINS:</b>
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**A. BASIC INFORMATION**

1. Why did I get this notice?
2. What is a class action?
3. What is this class action about?
4. Has there been a trial?
5. Why is there a proposed settlement?

**B. WHO IS INCLUDED IN THE PROPOSED SETTLEMENT?**

6. Who is included in the proposed settlement?
7. I'm a Blyth Academy Online teacher. What does the settlement mean for me?
8. What if I am not sure whether I am included in the proposed settlement?

**C. PROPOSED SETTLEMENT**

9. What does the proposed settlement provide?
10. What am I giving up in the proposed settlement?
11. May I remove myself from the proposed settlement?

**D. HOW TO RECEIVE A PAYMENT?**

12. How will I receive a payment?
13. How will payments be calculated?
14. What if I disagree with the decision?
15. What if my claim is denied?

**E. THE LAWYERS REPRESENTING YOU**

16. Who is Class Counsel?
17. Do I have to pay Class Counsel anything?

**F. OBJECTING TO THE PROPOSED SETTLEMENT**

18. How do I tell the Court if I support the proposed settlement?
19. How do I tell the Court if I do not like the proposed settlement?

**G. THE APPROVAL HEARING**

20. When/where will the Court decide whether to approve the proposed settlement?
21. What if I do nothing?

**H. GETTING MORE INFORMATION**

22. How do I get more information?

## **A. BASIC INFORMATION**

### **1. Why did I get this notice?**

The Ontario Superior Court of Justice authorized this notice to let you know about a proposed settlement. *[For the Direct Mailing Only – Based on Blyth Academy's records, we believe you may be a Class Member.]*

This notice explains the lawsuit, the proposed settlement, and your legal rights.

### **2. What is a class action?**

In a class action, one or more people called the “representative plaintiff(s)” sue on behalf of people who have similar claims, called the “class” or “class members”.

In a class action, the court can resolve all or some of the class members' claims at the same time. People who meet the definition of a "class member" are automatically included in the claim, unless they choose to "opt out". Opting out is explained in more detail below.

### **3. What is this class action about?**

Karen Walmsley (the “Representative Plaintiff”), commenced the lawsuit and is represented by Cavalluzzo LLP (“Class Counsel”). Blyth Academy is defending the case and is represented by Stieber Berlach LLP (“Defence Counsel”).

The lawsuit alleges that Blyth Academy misclassified its Ontario teachers as independent contractors when they were truly employees. As employees, these teachers were entitled to receive vacation pay, public holiday pay and overtime pay.

As well, the lawsuit alleges that Blyth Academy did not pay overtime to its employee teachers.

The lawsuit claims for all lost wages, including public holiday pay, vacation pay, and overtime pay, and all damages, including punitive damages, that flow from Blyth's failure to properly classify and compensate its teachers.

Blyth Academy has denied all of the allegations advanced in this class action.

### **4. Has there been a trial?**

This case has not yet gone to trial. A judge has not made any decision on the merits of this lawsuit.

On February 20-21, 2018 there was a "certification motion" hearing. At this hearing, Class Counsel argued the issues in the Statement of Claim should be certified as a class action.

The Parties reached the proposed settlement before the Court released its decision on certification.

**5. Why is there a proposed settlement?**

The Representative Plaintiff and Blyth Academy have agreed to the proposed settlement.

By agreeing to the proposed settlement, the parties avoid the costs and uncertainty of a trial and the potential delays in obtaining judgment. It also means that the Class Members will not need to testify in court.

The Representative Plaintiff and Class Counsel think the proposed settlement is in the best interests of all Class Members.

<b>B. WHO IS INCLUDED IN THE PROPOSED SETTLEMENT?</b>
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**6. Who is included in the proposed settlement?**

The Class Members included in the proposed settlement are:

Any person who, from 2002 until August 31, 2019 [the "Class Period"], worked for Blyth Academy in Ontario and taught at least one course, but excluding those who worked exclusively as Principals or Vice-Principals or who exclusively taught Blyth Academy online courses.

You are a Class Member if you meet this definition. This includes part-time teachers, those who taught private and semi-private classes, and teachers who taught full courses. This does not include teachers who exclusively taught online courses.

Estates of Class Members may be eligible. A claim must be filed by the Estate Executor for deceased class members.

If the settlement is approved, all Class Members, except those who validly opt out of the settlement, will be bound by the proposed settlement and will be covered by the releases in the proposed settlement.

**7. I'm a Blyth Academy Online teacher. What does the settlement mean for me?**

As part of the settlement, the class action on behalf of teachers who exclusively taught online courses will be discontinued. This means that if you only taught Blyth Academy Online courses, you are not part of the class action settlement, and the settlement will not affect your ability to pursue any cause of action that has been advanced on your behalf in this class action. If you

taught some online courses, but you also taught at one of Blyth Academy's Ontario campuses, you remain part of the class. However, the proposed settlement does not compensate you for the online courses you taught.

If you exclusively taught online courses and you would like to start your own legal claim against Blyth Academy in respect of any causes of action raised in this class action, you should be aware that your claim must be commenced within a specified time period or it might be legally barred. Although the running of any limitation periods applicable to the causes of action advanced in this class action was paused while the class action was ongoing, it will start running again once the action is discontinued. If you would like to pursue legal action against Blyth, we recommend you take all necessary legal steps—including seeking legal advice—to protect any claim you may have.

**8. What if I am not sure whether I am included in the proposed settlement?**

If you are not sure whether you are included in the proposed settlement, you may call 844-253-7730 or visit [cavalluzzo.com/blythacademyclassaction](http://cavalluzzo.com/blythacademyclassaction).

<b>C. PROPOSED SETTLEMENT</b>
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**8. What does the proposed settlement provide?**

If approved, the settlement provides that Class Members are eligible for compensation.

- In order to receive payment, Class Members must fill out a claims form that details, to the best of their abilities, their teaching history with Blyth Academy.
- Blyth Academy will receive these forms and will review their own records to corroborate each teacher's claim form.
- Blyth Academy will send a notification letter to each teacher and explain what it has concluded regarding the teacher's teaching history.
- If a Class Member disagrees with Blyth Academy's assessment, they can file an appeal.
- Once all appeals are complete, Blyth Academy will calculate the amount of each teacher's payment using a pre-determined formula.

The Proposed Settlement is for a total possible payment of \$2,525,000 (or \$2,625,000 if a large number of teachers apply). This amount will be distributed on a pro-rata basis according to the number of Class Members that apply for payment and according to the number and type of contracts each Class Member taught.

A full copy of the proposed Settlement Agreement is available for your review at: [cavalluzzo.com/blythacademyclassaction](http://cavalluzzo.com/blythacademyclassaction).

**9. What am I giving up in the proposed settlement?**

Once the proposed settlement becomes final, you will have given up your right to sue Blyth Academy for the claims outlined in the Statement of Claim. In other words, you will be “releasing” Blyth Academy from liability for the claims set out by this Class Action. This means you cannot sue Blyth Academy for anything in respect of pay for alleged overtime hours worked, public holiday pay, vacation pay from 2002 to August 31, 2019.

The proposed Settlement Agreement describes the released claims with specific descriptions, so please read it carefully. If you have any questions about what this means, you may contact Class Counsel or you may engage your own lawyer. If you decide to retain your own lawyer, you are responsible for paying their legal fees.

**10. Can I Opt Out of the Proposed Settlement?**

Yes. If the proposed settlement is approved, a notice will be sent describing the process for removing yourself from the Proposed Settlement. This is called “Opting Out”.

If you do not wish to be a part of the class action you must Opt Out before a date that will be set by the Court. If you opt out, you will not be bound by any order made in this class action and you will not be eligible for compensation. You may hire and pay for your own lawyer and commence your own lawsuit.

If you want to commence your own lawsuit, you must Opt Out. If you Opt Out, you must abide by all applicable limitation periods. We strongly recommend you consult a lawyer before making a decision to opt out.

Further information on how to Opt Out – and the deadline by which you must do so – will be available if the proposed Settlement Agreement is approved.

<b>D. HOW TO RECEIVE A PAYMENT IF THE PROPOSED SETTLEMENT IS APPROVED</b>
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**11. How will I receive a payment?**

To ask for a payment, all Class Members must complete and submit a Claim Form. Blyth Academy will assess all claims using a strict formula that the Parties have agreed upon. Eligible Class Members will not need to testify in court. Once the claim is verified, Class Members will receive compensation as soon as reasonably possible.

Before anyone can file a Claim Form or be assessed, the Ontario Superior Court must decide whether to grant final approval of the proposed settlement (see “**The Approval Hearing**” below).



If the settlement is approved, we will provide more information about the claims process, including the Claim Form, in a further notice.

### **12. How will payments be calculated?**

Blyth Academy, in consultation with Cavalluzzo LLP, will review your Claim Form and determine if you qualify for a payment. If you do, Blyth Academy, in consultation with Cavalluzzo LLP, will determine the amount of your payment based on the pre-set formula described in the Settlement Agreement.

Importantly, the majority of the settlement is for a fixed amount, meaning that Blyth Academy does not "save" money by denying claims.

The amount each Class Member will receive will depend on a number of factors. They are:

- (1) the number of Class Members that apply for payment;
- (2) when you taught for Blyth Academy;
- (3) the number of employment agreements and contracts you entered into with Blyth Academy;
- (4) the types of agreements you signed; and,
- (5) the number of courses you taught per term.

For example, the proposed settlement provides as a starting point that a Class Member will receive \$5,300 for each employment agreement they entered into between September 2015 and August 2019. However, the \$5,300 figure will increase or decrease depending on the number of Class Members who apply for payment. Importantly, the figure can never exceed \$10,600 per employment agreement.

The Settlement Agreement also draws an important distinction between those who taught before August 31, 2015 and those that taught after. The Agreement stipulates that amounts awarded for courses taught before August 31, 2015 will be lower. This is in recognition of the fact that it is very difficult to advance these older claims, and so they have a lower chance of success.

Finally, the net figure payable to Class Members will depend on: (a) how much of the \$2,525,000 or \$2,625,000 is allocated to pay Class Counsel's legal costs; and, (b) for Class Members receiving payment for their employment agreements, the amounts withheld to the CRA.

The full settlement agreement at [cavalluzzo.com/blythacademyclassaction](http://cavalluzzo.com/blythacademyclassaction) explains fully how much is being paid and how it is being distributed.

### **13. What if I disagree with the decision?**

If you disagree with how Blyth Academy describes your teaching experience, you can appeal their assessment. All appeals will be decided by a neutral referee.

## **E. THE LAWYERS REPRESENTING YOU**

### **15. Who is Class Counsel?**

Cavalluzzo LLP represents the Representative Plaintiff and the Class Members. If you want to be represented by or receive advice from another lawyer, you may hire one at your own expense.

### **16. Do I have to pay Class Counsel anything?**

No.

Class Counsel is asking for the approval of fees and disbursements in the amount of \$750,000.00 plus disbursements plus HST. This amount will be paid directly by Blyth Academy from the total amounts set aside to settle the class action. Class Counsel will not be paid unless the Ontario Superior Court declares that the proposed legal fees are fair and reasonable.

You will not need to pay any legal fees out of your own pocket for services from Class Counsel relating to the Class Action. If a Class Member retains other lawyers or a personal representative, that Class Member is responsible for paying their own lawyer or representative's fees, disbursements, and taxes.

## **F. PARTICIPATING IN THE PROPOSED SETTLEMENT HEARING**

You may participate in the hearing to voice your support for the proposed settlement, you may object to the proposed settlement if you disagree with all or part of it, and you may also voice support or disapproval of the proposed legal fees payments. The Court will consider your views.

Participation in the hearing is optional. You may choose to wait for the outcome of the hearing.

### **17. How do I tell the Court if I support the proposed settlement?**

To express your support for the proposed settlement, the proposed legal fees, or both, you may write a letter that includes the following:

- Your name, address, and telephone number;
- A statement saying that you support the Blyth Academy Class Action proposed settlement, legal fees, or both;
- The reasons you support the proposed settlement, legal fees, or both, along with any supporting materials; and,
- Your signature.

You may mail or email your letter to:

Blyth Academy Class Action  
c/o Cavalluzzo LLP, 474 Bathurst Street, Suite 300  
Toronto, Ontario, M5T 2S6  
Email: [BlythClassAction@cavalluzzo.com](mailto:BlythClassAction@cavalluzzo.com)

**18. How do I tell the Court if I do not like the proposed settlement or legal fees?**

To object to the proposed settlement, you may either:

- (a) **Make a written objection:** Write a letter or email that includes the following information:
  - Your name, address, and telephone number;
  - A statement saying that you object to the Blyth Academy Class Action proposed settlement or the legal fees or both;
  - The reasons you object to the proposed settlement, fees, or both, along with any supporting materials; and
  - Your signature.
- (b) **Make an oral objection at the approval hearing:** You must fill out an Objection Form and indicate that you intend to appear at the hearing to object. The approval hearing before the Court is scheduled to be heard in Toronto, Ontario on March 3, 2020 at 10:00 a.m..

All objecting letters or emails, including any Objection Forms, must be sent on or before February 18, 2020 to:

Blyth Academy Class Action  
c/o Cavalluzzo LLP, 474 Bathurst Street, Suite 300  
Toronto, Ontario, M5T 2S6  
Email: [BlythClassAction@cavalluzzo.com](mailto:BlythClassAction@cavalluzzo.com)

<b>G. THE APPROVAL HEARING</b>
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***19. When/where will the Court decide whether to approve the proposed settlement and/or the legal fees?***

The Ontario Superior Court will hold an Approval Hearing in Toronto, Ontario on **March 3, 2020 at 10:00 a.m.**

This is a public hearing, and you may attend if you wish. As a Class Member, you may also ask to speak, but you do not have to.

The hearing date could be moved to a different date or time without additional notice. If you plan to attend the hearing, we recommend you check Class Counsel website at [cavalluzzo.com/blythacademyclassaction](http://cavalluzzo.com/blythacademyclassaction) or call 844-253-7730.

At the hearing, the Court will consider whether the proposed settlement is fair, reasonable, and in the best interests of the Class. If there are objections, the Court will listen to the people who submitted an Objection Form and asked to speak at the hearing.

After the hearing, the Court will decide whether to approve the proposed settlement. We cannot guarantee when the Judge will release his decision.

The Court will, at the same, consider whether the proposed legal fees are fair and reasonable.

***20. What if I do nothing?***

If you do nothing, you are deemed to have accepted the proposed settlement. The approval hearing will proceed and the Court will consider whether the proposed settlement is fair, reasonable, and in the best interests of the Class. You will have no further opportunity to make objections to the Court with respect to the proposed settlement.

<b>H. GETTING MORE INFORMATION</b>
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***21. How do I get more information?***

This notice summarizes the proposed settlement. For full details, a copy of the proposed Settlement Agreement is available at: [www.cavalluzzo.com/blythacademyclassaction](http://www.cavalluzzo.com/blythacademyclassaction).

If you have any questions, you may send them to:

Blyth Academy Class Action  
Cavalluzzo LLP  
474 Bathurst Street, Suite 300  
Toronto, Ontario M5T 2S6

or email:

[BlythClassAction@cavalluzzo.com](mailto:BlythClassAction@cavalluzzo.com)

or call:

844-253-7730.

**First Notice OCT E-Newsletter**

<p>Have you ever taught at <b>Blyth Academy?</b></p>
<p><b>NOTICE OF CLASS ACTION SETTLEMENT</b></p>
<p>If you are or were a teacher at Blyth Academy in Ontario, you might be entitled to money as part of a legal settlement.</p> <p>Please <b>CLICK</b> for more information or visit <a href="http://cavalluzzo.com/blythacademyclassaction">cavalluzzo.com/blythacadem yclassaction</a>.</p>

## Second Notice Email

Dear Current and Former Blyth Academy Teachers,

### **RE: Blyth Academy Class Action**

You have been identified as a potential Class Member in the Blyth Academy Class Action. This Class Action, brought on behalf of a group of Blyth Academy teachers, alleges that Blyth Academy systemically misclassified teachers at its Ontario campuses as independent contractors, and illegally denied them vacation pay, public holiday pay, and overtime pay. The Class Action claims damages on account of these unpaid wages. The Class Action also claims unpaid overtime on behalf of Blyth employee teachers. Blyth Academy has denied those allegations.

The Ontario Superior Court has approved a settlement entered into with Blyth Academy to resolve the Class Action. As a potential Class Member, you might be entitled to a payment under the terms of this agreement. **In order to apply for a payment, you must complete a Claims Form and return it to Blyth Academy by [insert date].**

For a copy of the Claims Form and information on how to complete and submit it, or for more general information, please visit the following web page:

[cavalluzzo.com/blythacademyclassaction](http://cavalluzzo.com/blythacademyclassaction)

As a potential Class Member, you also have the right to opt out of the Class Action. By opting out, you reserve the right to make your own claim against Blyth Academy for overtime pay, vacation pay, and/or public holiday pay. The decision to opt out should not be taken lightly, as it means that you would have to start your own claim at your own expense if you wanted to recover these wages from Blyth Academy. You may want to seek independent legal advice before choosing to take this step.

For more information on opting out, please visit the same webpage.

You may also contact the lawyers representing the Class Members and the representative plaintiff by calling 844-253-7730 or by emailing [BlythClassAction@cavalluzzo.com](mailto:BlythClassAction@cavalluzzo.com).

Sincerely,

[Blyth Academy OR Stephen Moreau and Kaley Duff, Cavalluzzo LLP]

[Insert Logo and/or Signatures as Needed]

**Second Notice Text Message**

Were you a teacher at Blyth Academy between 2002 and August 31, 2019? If so, you might be entitled to a payment under a Class Action settlement. For more information, and to find out how you can make a claim, please visit [cavalluzzo.com/blythacademyclassaction](http://cavalluzzo.com/blythacademyclassaction) or call 844-253-7730.



## **Second Notice, Direct Mailing (Class Members)**

### **LEGAL NOTICE**

**Were you a teacher at one of Blyth Academy's Ontario campuses from 2002 to August 31, 2019?**

**The Court has approved a settlement reached on behalf of a group of Blyth Academy teachers. Please read this notice carefully.**

Dear Current and Former Blyth Academy Teachers,

#### ***Notice of Blyth Academy Class Action Settlement***

The Ontario Superior Court recently approved a settlement in a class action against Blyth Academy.

You are receiving this notice because we believe you might be entitled to a payment under the settlement. Please read this notice carefully for details. This notice also describes how to opt out of the settlement, should you wish to do so.

The Ontario Superior Court authorized this notice. This is not a solicitation from a lawyer.

#### ***What Is the Class Action about?***

A former Blyth Academy teacher, Karen Walmsley (the "**Representative Plaintiff**"), sued Blyth Academy on behalf of Blyth Academy teachers. Cavalluzzo LLP represents Walmsley and the Class in this lawsuit. This class action lawsuit claimed:

- Blyth Academy misclassified its Ontario teachers as "independent contractors" when they were in fact "employees";
- As a result, Blyth did not compensate these teachers for overtime, public holiday pay, and vacation pay; and,
- Additionally, Blyth Academy did not compensate its "employee" teachers for the overtime hours they also worked.

Blyth Academy has denied all of these allegations.

After extensive litigation and settlement discussions, Walmsley and Blyth Academy have reached a proposed settlement that provides compensation to eligible teachers. The Ontario Superior Court has approved this agreement.

### ***Am I Eligible?***

All Class Members are eligible for a payment.

A person is a Class Member if they worked at one of Blyth Academy's Ontario campuses and taught at least one course from 2002 to August 31, 2019. The class action only covers teachers during this period. The class action does not include teachers who exclusively taught Blyth Academy online courses.

Estates of Class Members may be eligible. A claim must be filed by the Estate Executor, or, if the Estate has been wound up, an immediate family member of a deceased class member.

All Class Members (except those who validly "opt out" of the Settlement) will be bound by the terms of the Settlement, and will be covered by the releases in the Settlement. As a result, they will not have the right to sue Blyth Academy for misclassifying them as independent contractors and/or for failing to pay them overtime and any other related claims, from 2002 to August 31, 2019.

### ***What Does the Settlement Provide?***

The settlement provides that:

- a) Class Members who submit a claim form and indicate they were a teacher at Blyth Academy from 2002 to August 31, 2019, are eligible for compensation;
- b) Blyth Academy will review its records to substantiate each teacher's claim and determine, in consultation with Cavalluzzo LLP, the amount of your payment. The amount of each payment will depend on the number of teachers that apply for compensation.

Full details of the settlement are available in the formal settlement agreement found at: [cavalluzzo.com/blythacademyclassaction](http://cavalluzzo.com/blythacademyclassaction).

### ***How Much Money Will I Get?***

The Court approved a total payment of \$2,525,000 or \$2,625,000 if a large number of Class Members apply for payment. From these amounts, \$??? will be paid to Cavalluzzo LLP in legal fees, HST and disbursements. You do not need to pay Cavalluzzo LLP any money, nor will any counsel fees be deducted from the amount that you receive.

The amount each Class Member will receive will depend on a number of factors. These factors include:

- (1) The number of Class Members that apply for payment;
- (2) The number of contracts you signed / courses you taught while working for Blyth Academy; and,
- (3) The number of courses you taught each term.

For instance, the proposed settlement provides as a starting point that a Class Member who taught at Blyth as an employee teacher from the 2015-2016 school year to the 2018-2019 school year will receive \$5,300 per year. However, the \$5,300 figure will increase or decrease depending on the number of Class Members who apply for payment. The \$5,300 figure cannot increase beyond \$10,600.

The monies are being distributed as follows in relation to the 2015-2016 school year through to the 2018-2019 school year:

- (1) Every employment agreement will be assigned a value of \$5,300;
- (2) Every contract to teach a Summer course will be assigned a value of \$200;
- (3) Every contract to teach any other kind of course will be assigned a value of \$125, unless the contracts were taught as part of a group of three or more contracts, at which point this cluster of contracts will be assigned a value of \$2,100; and,
- (4) Every contract a teacher at the Downsview campus signed for the 2015-2016 school year will be assigned a value of \$2,500.

All of these figures are starting points: the amounts you will actually be paid will be more or less than these numbers depending on the number of Class Members who apply and what their teaching histories are like. You will not however be paid more than \$10,600 for each employment agreement, \$400 for each summer course, \$250 for each other kind of course, \$4,200 for each cluster of contracts, and \$5,000 for the 2015-2016 Downsview contracts.

No monies will be paid for any Blyth Academy Online course taught.

Anyone who taught at Blyth Academy before the 2015-2016 school year will receive a payment targeted at \$100 per person. This number may go down depending on how many people apply for payment.

Importantly, the majority of the settlement is for a fixed amount, meaning that Blyth Academy does not "save" money by denying claims.

If you want to see the formulae being applied in detail, you will have to read the formal settlement agreement found at [cavalluzzo.com/blythacademyclassaction](http://cavalluzzo.com/blythacademyclassaction).

You should know that the standard tax withholdings will be deducted for monies paid pursuant to any employment agreement. Class Members who receive any monies paid pursuant to contracts for services continue to be responsible for making any necessary remittances to the Canada Revenue Agency.

### ***How Do I Get This Money?***

You must complete a Claim Form and send it to Blyth Academy at: **ADDRESS**.

A copy of the Claim Form is available at [cavalluzzo.com/blythacademyclassaction](http://cavalluzzo.com/blythacademyclassaction) and is included with this notice too.

If you choose to opt out of the class action, you are not eligible for any compensation under this settlement.

### ***What If I Do Not Want to Be Bound by the Settlement?***

If you do not want to be bound by the settlement, you must opt out of the class action by **[DATE]**. If you opt out, you will not be entitled to any compensation under the class action settlement.

If you want to commence your own lawsuit, you must opt out.

If you opt out, you must abide by any applicable limitation periods. We strongly recommend you consult a lawyer before making the decision to opt out.

To opt out of the settlement, you must submit an Opt-Out Form to the Class Counsel. A copy of the Opt-Out Form is available at [cavalluzzo.com/blythacademyclassaction](http://cavalluzzo.com/blythacademyclassaction).

***Want More Information?***

Visit, call, or email Class Counsel at:

Website: [www.cavalluzzo.com](http://www.cavalluzzo.com)

Email: [BlythClassAction@cavalluzzo.com](mailto:BlythClassAction@cavalluzzo.com)

Telephone: 844-253-7730

***Do You Know Anyone Who May Be Part of the Blyth Academy Class Action?***

Please share this information with them.

**Second Notice, Direct Mailing (BAO Exclusive teachers)**

**LEGAL NOTICE**

**NOTICE OF CLASS ACTION DISCONTINUANCE**

**Were you a teacher at Blyth Academy Online? A class action brought on your behalf has been discontinued. Please read this notice carefully.**

Dear Blyth Academy Online Teachers,

***Notice of Discontinuance***

The Ontario Superior Court recently approved a settlement in a class action against Blyth Academy. Teachers who exclusively taught Blyth Academy Online courses are *not* included in the settlement, and will not receive any monies as part of the settlement.

As a result, the class action brought on behalf of those who only taught Blyth Academy Online courses **has been discontinued**.

You are receiving this notice because we think you are a teacher who exclusively taught online courses for Blyth Academy. Although the action on behalf of online teachers has been discontinued, you may wish to start your own legal claim against Blyth Academy. Please read this notice carefully for more information.

The Ontario Superior Court authorized this notice. This is not a solicitation from a lawyer.

***What is the class action about?***

A former Blyth Academy teacher, Karen Walmsley (the "**Representative Plaintiff**"), sued Blyth Academy on behalf of Blyth Academy teachers, including Blyth Academy Online teachers. This class action lawsuit claimed:

- Blyth Academy misclassified its teachers as "independent contractors" when they were in fact "employees";
- As a result, Blyth did not compensate these teachers for overtime, public holiday pay, and vacation pay; and,
- Additionally, Blyth Academy did not compensate its "employee" teachers for the overtime hours they also worked.

Blyth Academy has denied all of these allegations.

After extensive litigation and settlement discussions, Walmsley and Blyth Academy reached a settlement. The Ontario Superior Court has approved this agreement.

***I exclusively taught Blyth Academy Online courses. What does the settlement mean for me?***

Part of the Settlement is that the class action on behalf of teachers who exclusively taught online courses has been discontinued. If you only taught Blyth Academy Online courses, you are no longer part of the class action. The settlement does not apply to you, and does not affect your ability to pursue any cause of action that had been advanced on your behalf in this class action.

If you would like to start your own legal claim against Blyth Academy in respect of any causes of action raised in this class action, you should be aware that your claim must be commenced within a specified time period or it might be legally barred. If you would like to pursue legal action against Blyth, we recommend you take all necessary legal steps—including seeking legal advice—to protect any claim you may have. You are responsible for your own legal fees.

***I taught online courses, but I also taught at a Blyth Ontario campus. What does the settlement mean for me?***

If you taught some online courses, but you also taught at one of Blyth Academy's Ontario campuses from 2002 to August 31, 2019, you remain part of the class. However, the proposed settlement does not compensate you for the online courses you taught.

For more information on how the settlement might apply to you, please visit [www.cavalluzzo.com/blythacademyclassaction](http://www.cavalluzzo.com/blythacademyclassaction). You may also contact Class Counsel at:

Cavalluzzo LLP  
Barristers & Solicitors  
474 Bathurst Street, Suite 300  
Toronto, Ontario  
M5T 2S6  
Tel: 844-253-7730  
Fax: 416.964.5895  
Email: [BlythClassAction@cavalluzzo.com](mailto:BlythClassAction@cavalluzzo.com)

**Second Notice OCT E-Newsletter**

<p>Have you ever taught at <b>Blyth Academy?</b></p>
<p><b>NOTICE OF CLASS ACTION SETTLEMENT</b></p>
<p>If you are or were a teacher at Blyth Academy in Ontario, you might be entitled to money as part of a legal settlement.</p> <p>Please <b>CLICK</b> for more information or visit <a href="http://cavalluzzo.com/blythacademyclassaction">cavalluzzo.com/blythacademyclassaction</a>.</p>



### Blyth Academy Class Action Claims Form

<b>FOR BLYTH ACADEMY'S USE ONLY</b>	
Date application received (dd-mm-yyyy):	
<b>PLEASE COMPLETE ALL OF THE FOLLOWING FIELDS:</b>	
<b>PART 1 – APPLICANT INFORMATION</b>	
<b>1. First Name</b>	<b>2. Last Name</b>
<b>3. Social Insurance Number</b>	
<b>4. Permanent Home Address</b> (include street address, city/town, and province/territory)	
<b>5. Mailing Address</b> (if different from above)	
<b>6. Telephone Number</b>	<b>7. Alternate Telephone Number</b>
<b>PART 2 – INFORMATION REGARDING CLAIM</b>  <p>Please indicate below, to the best of your knowledge, the number of contracts you had with Blyth Academy on its Ontario campuses from September 1, 2015 to August 31, 2019, as well as the type of contracts you worked under. Blyth Academy will compare your Claim Form with its own records to come to a full conclusion about your work history.</p> <p>Please try and set out how many of the following you had when you worked at Blyth Academy:</p> <ul style="list-style-type: none"> <li>• The number of employment agreements;</li> <li>• The number of independent contractor agreements, save and except (1) any contracts that form a "cluster of contracts" (defined below); and (2) any contracts that took place over a summer term;</li> </ul>	

- The number of clusters of contracts, meaning a group of three or more independent contractor agreements that were commenced within the same term;
- The number of summer-term contracts; and,
- The number of contracts to teach at Blyth Academy Downsview from March – July 2016

Please also indicate, to the best of your knowledge, the approximate dates you worked these contracts. For greater clarity, contracts to teach online courses should not be included in your calculations.

If you would like, you may attach any supporting documentation that you may have (for example, copies of your contracts or emails with Blyth Academy). **This is not required.**

If the space provided on this form is not sufficient, please feel free to enclose a separate sheet with your information.

**8. While teaching at Blyth Academy from the 2015-2016 school year to the 2018-2019 school year, and to the best of my recollection, I worked the following number of contracts and employment agreements:**

Number	Type	Approximate Dates of Contracts
	Full-year employment agreements	
	Independent contractor agreements	
	Clusters of contracts	
	Summer term contracts	

	Contract for Blyth Academy Downsview from March – July 2016	
	Other (please explain)	

**9.** Please also let us know if you worked at Blyth Academy before the 2015-2016 school year. We do not need details, just a simple "yes" or "no" answer.

Please check the box that applies:

☐ YES I taught at Blyth Academy before the 2015-2016 school year

☐ NO I did not teach at Blyth Academy before the 2015-2016 school year

**10. Indemnity**

By signing this form, you acknowledge that, if you receive a payment in respect of any independent contractor agreement or agreements, you are responsible for any taxes, EI premiums, or CPP premiums that might apply to that payment. Blyth Academy will not be withholding any portion of funds paid in respect of independent contractor agreements on your behalf for the Canada Revenue Agency ["CRA"]. You agree to indemnify and save harmless Blyth Academy and you waive any claims against Blyth Academy for any claims, taxes, charges, penalties, or obligations, if any, applied by the CRA to the payment.

### **11. Privacy Statement and Consent**

Blyth Academy and Cavalluzzo LLP will collect, use and/or disclose this form and any enclosures, data, information, reports, material or other documents of any nature which are disclosed, revealed or transmitted to them with this form solely for the purpose of executing the terms of the Class Action settlement agreement. The use and disclosure of any personal information received by Blyth Academy is subject to all applicable laws that may require the retention or disclosure of the personal information disclosed, including the *Personal Information Protection and Electronic Documents Act*.

In submitting this form, you consent to the use of the information contained herein for the purposes of administering the Blyth Academy Class Action claims process.

### **PART 3 – DECLARATION AND SIGNATURE**

#### **12. I DECLARE THAT:**

- The information provided in this form is true, based on my personal records, experience and recollection.
- If the information described above is inaccurate, false or misleading, I may be required to repay the compensation that I receive.
- I have read and agree to the Indemnity provision set out in paragraph 10 above.

\_\_\_\_\_  
Applicant's signature

\_\_\_\_\_  
Date

### **PART 4 – WHERE TO SEND YOUR CLAIM FORM**

Please mail or email your completed claim form and any attached documents (if applicable) to the following address:

**[ADDRESS AND EMAIL]**

### Notification Letter

Dear [\_\_\_\_],

As part of the Class Action process, Blyth Academy has reviewed your Claim Form, any information you provided, and its own records to determine your teaching history. The amounts you will receive depends on your teaching history.

Blyth has determined that you worked for Blyth pursuant to the following number and types of contracts from September 1, 2015 to August 31, 2019:

____	Full-year employment agreements
____	Independent contractor agreements, save and except (1) any contracts that form a "cluster of contracts", and (2) any contracts that took place over a summer term
____	Clusters of contracts*
____	Summer-term contracts
____	Contracts for Blyth Academy Downsview from March – July 2016

\*A "cluster of contracts" is defined as a group of three or more independent contractor agreements that were commenced within the same term.

*[Blyth has also determined that you were a teacher who taught at least one course at Blyth Academy's Ontario campuses between 2002 and August 31, 2015.]*

For greater clarity, contracts to teach online courses are *not* included in the above calculation.

If you disagree with the above assessment, you may appeal Blyth's determination. Details on the appeal process are included below.

#### ***How will my payment amount be calculated?***

Your entitlement is based on a number of factors, including:

- The number of contracts and/or employment agreements you worked;
- The number of contracts you worked within a single term;
- The number of teachers that applied for a payment; and,
- Whether you worked prior to the 2015-16 school year.

Payments will come from two funds: The "Pre-Limitations Fund" and the "Main Settlement Fund".

### *Pre-Limitations Fund*

Each class member who taught at least one course at one of Blyth Academy's Ontario campuses **before** the 2015-2016 school year is entitled to a maximum payment of \$100 from the "Pre-Limitations Fund". This Fund is worth a total of \$25,000.

To determine how much each teacher is entitled to, Blyth Academy will first count the number of people who have applied for a payment from the Fund. Blyth will then distribute the Fund equally amongst these eligible teachers, to a maximum of \$100 per teacher.

For example, if 125 eligible teachers apply, then each teacher will receive the maximum amount of \$100. The remaining \$12,500 in the Fund will revert back to Blyth Academy.

If 500 eligible teachers apply, then each teacher will receive \$50, and there will be no remaining amounts in the Fund.

### *Main Settlement Fund*

The "Main Settlement Fund" is the main fund from which Class Members will be paid. As of **DATE**, there was \$\_\_\_ in the Main Settlement Fund. This amount will grow modestly in the next few months until the day funds are distributed.

This Fund will be distributed on a pro-rata basis to teachers according to the number of "points" they have accumulated through teaching at Blyth from September 1, 2015 to August 31, 2019. You should think of these points as an approximation of the dollar value you will receive from the settlement, however the value of your entitlement will go up or down depending on the number of teachers that apply for a payment.

Points are accumulated as follows:

- A full-year employment agreement is worth 5,300 points;
- A single independent contractor agreement where the teacher works 1 contract in a term is worth 125 points;

- Two independent contractor agreements where the teacher works 2 contracts in a term are worth a total of 250 points;
- Three or more independent contractor agreements that started in the same term are worth a total of 2,100 points;
- A summer contract is worth 200 points; and,
- A contract at Blyth Academy Downsview for the period of March – July 2016 is worth 2,500 points.

Blyth Academy will count the total number of "points" based on the Claims Forms teachers have submitted. Blyth Academy will then divide the monies remaining in the Main Settlement Fund by the total number of points to derive a value per point.

For example, if there is \$1.8 million in the Main Settlement Fund, and the "points" submitted by teachers add up to exactly 1.8 million, then each point is worth \$1. Thus, a teacher who has accumulated 5,300 points will receive \$5,300.

If there is \$1.8 million remaining in the Main Settlement Fund, and the number of "points" submitted by teachers add up to exactly 3.6 million, then each point is worth \$0.50. Thus, a teacher who has accumulated 5,300 points will receive \$2,650.

By way of final example, if there is \$1.8 million remaining in the Main Settlement Fund, and the number of "points" submitted by teachers add up to 1.2 million, then each point is worth \$1.50. Thus, a teacher who has accumulated 5,300 points will receive \$7,950.

Note that the maximum payment for a single point is \$2.

***I disagree with Blyth's assessment. How do I appeal?***

If you disagree with Blyth's determination of the number of contracts and employee agreements you worked, you must submit the attached Appeal Form within 21 days of the date you received this Notification Letter. There is a \$100 fee to appeal. Please enclose the appeal fee of \$100 payable to "**TO INSERT**" with your Appeal Form.

Please mail or email your completed Appeal Form to:

**[ADDRESS AND EMAIL ADDRESS]**

All appeals will be decided by a neutral referee.

If you appeal Blyth's assessment, within 4 weeks of the filing of your appeal, Blyth Academy will provide you and the neutral referee with a copy of any documentation it used to make its determination. You will then have 2 weeks to make any additional submissions. Blyth will then have an additional 2 weeks to respond to your submissions.

The Referee will make a final determination within two weeks of receiving all relevant submissions and documents. You will receive a revised Notification Letter by email.

If your appeal is successful, your \$100 appeal fee will be paid back to you. If your appeal is rejected, you will lose the \$100 appeal fee.

If you do not submit an Appeal Form, Blyth Academy will issue a payment based on the data set out on the first page.



## Appeal Form

### BLYTH ACADEMY CLASS ACTION

### APPEAL FORM

PART 1 - APPLICANT INFORMATION	
1. First Name of Applicant	2. Last Name of Applicant
3. Social Insurance Number of Applicant	
4. Permanent Home Address of Applicant (include street address, city/town, province/territory, and postal code)	
5. Mailing Address of Applicant (if different from Permanent Home Address)	
6. Telephone Number of Applicant (    )	7. Alternate Telephone Number of Applicant (    )
8. Email Address of Applicant	
PART 1 – ESTATE INFORMATION	
<i>For persons administering the estate of a client, please complete this form on behalf of the estate.</i> <i>Check the box below and complete Part 2 with the information of the Deceased Person</i> <input type="checkbox"/> I am seeking a review on behalf of a deceased client and am an administrator or executor duly authorized to file this claim.  Name of Legal Representative: _____ Telephone number: (    ) _____	
PART 3 – REQUEST FOR REVIEW OF DECISION REGARDING NUMBER OF CONTRACTS	
9. Date of Decision Please attach a copy of the Decision Letter	
10. Please set out the reasons you are seeking an appeal of the Decision. Please enclose any documents you think are relevant to the appeal. Please feel free to enclose additional pages to explain the basis on which you believe the decision is	

wrong. You are trying to explain to the Referee that Blyth Academy has not properly counted all the contracts and agreements you entered into with Blyth Academy from 2002 to August 31, 2019.

#### 11. Privacy Statement and Consent

The information you provide is collected in accordance with the *Personal Information Protection and Electronic Documents Act*. Your personal information will be administered in accordance with the requirements of the *Personal Information Protection and Electronic Documents Act*.

I consent to the use and disclosure of the information contained in this form for purposes of administering the Blyth Academy Class Action, namely, to determine the amount of any payment, and for purposes as may be required by the Court.

\_\_\_\_\_  
Applicant's or Legal Representative's Signature

\_\_\_\_/\_\_\_\_/\_\_\_\_\_  
Date (dd/mm/yyyy)

#### PART 4 – DECLARATION AND SIGNATURE

##### 12. I DECLARE THAT:

- This application form was completed by me, the applicant, or the legal representative of a deceased person.
- The information provided in this form is true, based on my personal records, experience and knowledge
- If the information described above is false or misleading, I may be required to repay any compensation that I receive.

\_\_\_\_\_  
Applicant's or Legal Representative's Signature

\_\_\_\_/\_\_\_\_/\_\_\_\_\_  
Date (dd/mm/yyyy)

#### INSTRUCTIONS AND FEE

This form should be submitted to:

Blyth Academy Class Action Referee  
ADDRESS TO INSERT  
Attention: [Insert Name]

Please also mail a cheque of \$100 payable to INSERT as the fee to appeal.

A file containing the documents relevant to Blyth Academy's decision will be emailed to the Referee. If you have any questions about the appeal process, please contact Class Counsel at Blyth Academy Class Action, c/o Cavalluzzo LLP, 474 Bathurst Street, Suite 300, Toronto, Ontario, M5T 2S6, or to: [BlythClassAction@cavalluzzo.com](mailto:BlythClassAction@cavalluzzo.com)

## Payment Notification Letter

[Date]

Dear [Insert Name],

Blyth Academy has completed its calculation of the amounts owed to you using the formulas set out in the Class Action Settlement Agreement. Those formulas were previously explained in notices you should have received or had access to.

The total amount available for distribution to all Class Members was [insert Net Proceeds amount plus the Pre-Limitations Fund amount available].

The amount allocated for payment to you is [insert amount].

The amount being paid to you is based on the number of employment agreements, contracts, summer contracts, or clusters of contracts you had with Blyth Academy, as previously outlined to you. If you worked for Blyth Academy before the 2015-2016 school year, [insert amount] has been allocated to you on account of your work during that period.

[Please find enclosed a cheque in this amount in your name. You should deposit or cash it without delay, as the cheque will go stale in approximately six months.

OR

This amount has been deposited into your bank account at your request.]

Please note that, if some or all of the amount allocated to you is being paid because you had an employment agreement with Blyth Academy, some of that amount was withheld to the Canada Revenue Agency for tax purposes. A pay stub outlining these withholdings is included.

You will also be sent a T4, T4A, or both, as the case may be, early next year.

If you require any further details as to how we calculated your individual amount owing to you, please contact [to insert].

For more information on the Class Action and the settlement, including the Court-approved formulas and claims process, please visit Class Counsel's website: [cavalluzzo.com/blythacademyclassaction](http://cavalluzzo.com/blythacademyclassaction)

[Signature]

**SCHEDULE B – FINAL APPROVAL ORDER (DRAFT)**

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Court File No. CV-17-584523

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE ) DAY, THE  
MR. JUSTICE GLUSTEIN ) DAY OF , 2020

B E T W E E N:

*(Court Seal)*

**KAREN WALMSLEY**

Plaintiff

and

**2016169 ONTARIO INC., 2170616 ONTARIO INC. and 2429131  
ONTARIO INC., alone or together o/a Blyth Academy**

Defendants

**ORDER**

**(Settlement Approval)**

WHEREAS the Plaintiff and the Defendants have entered into a final settlement agreement dated November 27, 2019, which agreement is attached to this Order as a Schedule [the "Settlement Agreement"];

AND WHEREAS this Honourable Court approved the form of notice and plan for distribution of the notice of this motion by Order dated [insert date] [the "Notice Order"];

AND UPON READING the Plaintiff's motion record and written submissions;

UPON BEING ADVISED of the Defendants' consent to the form of this Order;

AND UPON HEARING the motion made by oral submissions of counsel for the Plaintiff, and all interested parties, including any objections, written and oral;

THIS COURT ORDERS THAT:

1. For the purposes of this Order, the definitions set out in the Settlement Agreement apply to and are incorporated into this Order.

2. In the event of a conflict between this Order and the Settlement Agreement, this Order shall prevail.

3. The Class Members shall be defined as follows:

Any person who, from 2002 until August 31, 2019 [the "Class Period"], worked for Blyth Academy in Ontario and taught at least one course, but excluding those who worked exclusively as Principals or Vice-Principals or who exclusively taught Blyth Academy online courses.

4. The Class Action is certified on the basis of the following common issue:

Whether any Class Member worked hours of work, including overtime hours, during the Class Period, for which they were not properly paid or otherwise compensated, as alleged

5. The Settlement Agreement is fair, reasonable and in the best interests of the Class.

6. The Settlement Agreement is hereby approved pursuant to section 29 of the *Class Proceedings Act, 1992* and shall be implemented and enforced in accordance with its terms.

7. Upon the Final Approval Date, each Settlement Class Member has released and shall be conclusively deemed to have forever and absolutely released the Defendants from the matters set out in paragraphs 27-28 of the Settlement Agreement.
8. Notice of the Final Approval Order shall be provided in the manner provided for in Schedule "A" to the Settlement Agreement.
9. The legal fees, disbursements and applicable taxes owing to Class Counsel shall be determined by further order of this Court.
10. The Plaintiff, Karen Walmsley, shall receive the sum of \$6,000 as an honorarium to be paid in accordance with paragraph 9 of the Settlement Agreement.
11. This Order and the Settlement Agreement are binding upon all Class Members, including those persons who are under a disability.
12. For the purposes of administration and enforcement of the Settlement Agreement and this Order, this Court will retain an ongoing supervisory role.
13. This Action be and is hereby dismissed against the Defendants, without costs and with prejudice.

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Justice Benjamin Glustein

## SCHEDULE C – OPT-OUT FORM

### OPT-OUT FORM – EXCLUSION FROM RECEIVING MONEY

To: **Blyth Academy Class Action**  
Cavalluzzo LLP  
474 Bathurst Street, Suite 300  
Toronto, Ontario  
M5T 2S6

[BlythClassAction@cavalluzzo.com](mailto:BlythClassAction@cavalluzzo.com)

This is **NOT** a claim form. If you submit this form, you will not receive any money or benefits from the Blyth Academy Class Action settlement. You may wish to consult Cavalluzzo LLP or obtain independent legal advice at your own cost prior to opting out.

To opt out, this form must be properly completed and received at the above-noted address or post-marked **no later than [insert date of Opt-Out Deadline]**.

#### 1. PERSONAL IDENTIFICATION

Name (Last, First):	Other Names Used:	
Email Address:	Home Phone:	Work Phone:
Date of Birth (YY/MM/DD):	Social Insurance Number:	
Street Address:	City, Province:	Postal Code:
Mailing Address (if different from above):	City, Province:	Postal Code:



## 2. REPRESENTATIVE IDENTIFICATION (IF APPLICABLE)

Please also complete this portion if you are completing this form on behalf of a Class Member as their representative.

Representative Name (Last, First):	Relationship to Class Member:	
Email Address:	Home Phone:	Work Phone:
Street Address:	City, Province:	Postal Code:
Mailing Address (if different from above):	City, Province:	Postal Code:

## 3. I WISH TO OPT OUT

I have read and understood the Court-Approved Notice of Approval of Settlement and I believe that I am a member of the class in this lawsuit.

I want to opt out (be excluded) of this class proceeding. I understand that by opting out, I cannot receive any possible benefits, financial or otherwise, that members of the class may receive through this class action.

I understand that any lawsuit I have against Blyth Academy with respect to employee misclassification, uncompensated overtime pay, uncompensated public holiday pay, and/or uncompensated vacation pay must be commenced within a specified time period or it might be legally barred. I understand that the time period will resume running against me if I opt out of this class proceeding. I understand that by opting out, I take full responsibility for the resumption of the running of any relevant time periods and for taking all necessary legal steps to protect any claim I may have.

I confirm that by signing this form, and by answering "yes" in the below box, I am forever waiving my right to any money or benefits received through this settlement for any harm caused to me by Blyth Academy in relation to the class action's claims for employee misclassification, uncompensated overtime pay, uncompensated public holiday pay, and/or uncompensated vacation pay.

I decline payment and benefits from the settlement (please indicate with an "X", or by writing the word "Yes": \_\_\_\_\_

#### 4. SIGNATURE

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name of Class Member

\_\_\_\_\_  
Signature of Class Member

\_\_\_\_\_  
Name of Witness

\_\_\_\_\_  
Signature of Witness

If Class Member is Deceased or Disabled:

\_\_\_\_\_  
Name of Estate Administrator or Guardian of Property

\_\_\_\_\_  
Signature of Estate Administrator or Guardian of Property

**If the class member is deceased or disabled, you must enclose a copy of the document appointing you as guardian of property or estate administrator.**

Cavalluzzo LLP will collect, use and/or disclose this form and any enclosures, data, information, reports, material or other documents of any nature which are disclosed, revealed or transmitted to them with this form solely for the purpose of disclosing the objection or submission to the Ontario Superior Court and to Blyth Academy pursuant to the terms of the Parties' Settlement Agreement. The use and disclosure of any personal information received by Blyth Academy is subject to all applicable laws that may require the retention or disclosure of the personal information disclosed, including the *Personal Information Protection and Electronic Documents Act*.

**SCHEDULE D – DISCONTINUANCE ORDER (DRAFT)**

Court File No. CV-17-584523

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE ) DAY, THE  
MR. JUSTICE GLUSTEIN ) DAY OF , 2020

B E T W E E N:

*(Court Seal)*

**KAREN WALMSLEY**

Plaintiff

and

**2016169 ONTARIO INC., 2170616 ONTARIO INC. and 2429131  
ONTARIO INC., alone or together o/a Blyth Academy**

Defendants

**ORDER**

**(Discontinuance)**

THIS MOTION made by the Plaintiff was read this day at the City of Toronto.

ON READING the Notice of Motion, the Plaintiff's Motion Record, and on the consent of the parties, filed

1. THIS COURT ORDERS that the Action on behalf of those teachers who exclusively taught Blyth Academy online courses, and who were previously proposed Class Members, be hereby discontinued as a class proceeding;

2. THIS COURT ORDERS that any and all limitation periods of those teachers who exclusively taught Blyth Academy online courses that have been suspended on the commencement of this action will resume running again on July 1, 2020;
3. THIS COURT ORDERS that the notice to the teachers who exclusively taught Blyth Academy online courses is to be given in the form attached to this Order as Schedule "A", and that such notice shall be given within 30 days of the date of this Order, as follows:
  - (a) a copy of the Notice will be posted on the Blyth Academy class action website at [cavalluzzo.com/blythacademyclassaction](http://cavalluzzo.com/blythacademyclassaction);
  - (b) a copy of the Notice will be mailed to all individuals that Blyth Academy has identified as teachers who exclusively taught Blyth Academy online courses; and,
  - (c) a copy of the Notice will be emailed to all individuals that Blyth Academy has identified as teachers who exclusively taught Blyth Academy online courses.
4. THIS COURT ORDERS that there be no costs payable to either party for this motion.

Justice Benjamin Glustein

## SCHEDULE A – NOTICE OF DISCONTINUANCE

### LEGAL NOTICE

#### NOTICE OF CLASS ACTION DISCONTINUANCE

**Were you a teacher at Blyth Academy Online? A class action brought on your behalf has been discontinued. Please read this notice carefully.**

Dear Blyth Academy Online Teachers,

#### ***Notice of Discontinuance***

The Ontario Superior Court recently approved a settlement in a class action against Blyth Academy. Teachers who exclusively taught Blyth Academy Online courses are *not* included in the settlement, and will not receive any monies as part of the settlement.

As a result, the class action brought on behalf of those who only taught Blyth Academy Online courses **has been discontinued**.

You are receiving this notice because we think you are a teacher who exclusively taught online courses for Blyth Academy. Although the action on behalf of online teachers has been discontinued, you may wish to start your own legal claim against Blyth Academy. Please read this notice carefully for more information.

The Ontario Superior Court authorized this notice. This is not a solicitation from a lawyer.

#### ***What is the class action about?***

A former Blyth Academy teacher, Karen Walmsley (the "**Representative Plaintiff**"), sued Blyth Academy on behalf of Blyth Academy teachers, including Blyth Academy Online teachers. This class action lawsuit claimed:

- Blyth Academy misclassified its teachers as "independent contractors" when they were in fact "employees";
- As a result, Blyth did not compensate these teachers for overtime, public holiday pay, and vacation pay; and,
- Additionally, Blyth Academy did not compensate its "employee" teachers for the overtime hours they also worked.

Blyth Academy has denied all of these allegations.

After extensive litigation and settlement discussions, Walmsley and Blyth Academy reached a settlement. The Ontario Superior Court has approved this agreement.

***I exclusively taught Blyth Academy Online courses. What does the settlement mean for me?***

Part of the Settlement is that the class action on behalf of teachers who exclusively taught online courses has been discontinued. If you only taught Blyth Academy Online courses, you are no longer part of the class action. The settlement does not apply to you, and does not affect your ability to pursue any cause of action that had been advanced on your behalf in this class action.

If you would like to start your own legal claim against Blyth Academy in respect of any causes of action raised in this class action, you should be aware that your claim must be commenced within a specified time period or it might be legally barred. If you would like to pursue legal action against Blyth, we recommend you take all necessary legal steps—including seeking legal advice—to protect any claim you may have. You are responsible for your own legal fees.

***I taught online courses, but I also taught at a Blyth Ontario campus. What does the settlement mean for me?***

If you taught some online courses, but you also taught at one of Blyth Academy's Ontario campuses from 2002 to August 31, 2019, you remain part of the class. However, the proposed settlement does not compensate you for the online courses you taught.

For more information on how the settlement might apply to you, please visit [www.cavalluzzo.com/blythacademyclassaction](http://www.cavalluzzo.com/blythacademyclassaction). You may also contact Class Counsel at:

Cavalluzzo LLP  
Barristers & Solicitors  
474 Bathurst Street, Suite 300  
Toronto, Ontario  
M5T 2S6  
Tel: 844-253-7730  
Fax: 416.964.5895  
Email: [BlythClassAction@cavalluzzo.com](mailto:BlythClassAction@cavalluzzo.com)