

AMENDED THIS FEB 22 2018 PURSUANT TO  
MODIFIÉ CE "B" CONFORMÉMENT À  
 RULE/LA RÈGLE 26.02 ( "B" )

THE ORDER OF \_\_\_\_\_  
L'ORDONNANCE DU \_\_\_\_\_  
DATED / FAIT LE \_\_\_\_\_

  
REGISTRAR  
SUPERIOR COURT OF JUSTICE

GREFFIER  
COUR SUPÉRIEURE DE JUSTICE

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

Court File No.: CV-17-00584523-00CP

B E T W E E N:

**KAREN WALMSLEY**

Plaintiff

and

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

Defendants

### **AMENDED STATEMENT OF CLAIM**

PROCEEDING UNDER the *Class Proceedings Act, 1992*

#### **TO THE DEFENDANTS**

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

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

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

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

**IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL**

**FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.**

**IF YOU PAY THE PLAINTIFF'S CLAIM**, and \$750 for costs, within the time for serving and filing your Statement of Defence you may move to have this proceeding dismissed by the Court. If you believe the amount claimed for costs is excessive, you may pay the Plaintiff's claim and \$400 for costs and have the costs assessed by the Court.

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

Date \_\_\_\_\_ Issued by \_\_\_\_\_  
Local Registrar

Address of Superior Court of Justice  
court office: 393 University Avenue, 10th Floor  
Toronto, ON M5G 1E6

TO: 2016169 Ontario Inc.  
160 Avenue Road  
Toronto, ON M5R 2H8

AND TO: 2170616 Ontario Inc.  
146 Yorkville Avenue  
Toronto, ON M5R 2H8

AND TO: 2429131 Ontario Inc.  
146 Yorkville Road  
Toronto, ON M5R 1C2

## CLAIM

1. The Plaintiff claims:

- (a) an order certifying this proceeding as a class proceeding and appointing the Plaintiff as representative plaintiff for the Class Members, as defined below;
- (b) \$20 million in general damages for the Class, or such other sum as this Honourable Court deems just;
- (c) a declaration that the provisions of the *Employment Standards Act, 2000*, , S.O. 2000, c. 41 ("*ESA*"), as applicable, are express or implied terms of the contracts of employment of the Class Members;
- (d) a declaration that the Class Members are employees of the Defendants who are operating as a common employer, for the purposes of the *ESA*;
- (e) a declaration that the Defendants violated the terms of the *ESA*, breached the Class Members' contracts of employment and duty of good faith owed to the Class Members, and/or breached the duty of care owed to the Class Members by:
  - (i) failing to ensure that Class Members were properly classified as employees;
  - (ii) failing to advise class members of their entitlement to compensation equal to or above the minimum wage as stipulated by the *ESA* (the "*Minimum Wage*");

- (iii) failing to compensate Class Members at a rate equal to or above the Minimum Wage;
- (iv) failing to advise Class Members of their entitlement to overtime pay for hours worked in excess of
  - (1) 40 or 41 hours per week in accordance with the hours of work set by the Defendants, or,
  - (2) further, or in the alternative, 44 hours per week in accordance with the *ESA* (the "Overtime Threshold");
- (v) requiring and/or permitting the Class Members to work overtime hours but failing to compensate the Class Members as required for hours worked in excess of the Overtime Threshold ("Overtime Pay");
- (vi) failing to ensure that the Class Members' hours of work were monitored and accurately recorded;
- (vii) failing to advise Class Members of their entitlement to vacation pay at a rate of 4 percent of wages in accordance with the *ESA* ("Vacation Pay");
- (viii) failing to compensate Class Members for Vacation Pay;
- (ix) failing to advise Class Members of their entitlement to public holiday pay and premium pay in accordance with the *ESA* (the "Public Holiday and Premium Pay");

- (x) failing to compensate Class Members for Public Holiday and Premium Pay;
  - (xi) failing to monitor and record or otherwise track the Class Members hours of work; and,
  - (xii) failing to compensate the Class Members for all hours worked.
- (f) an interlocutory and a final mandatory order for specific performance directing that the Defendants comply with the *ESA* and/or the contracts of employment with the Class Members, in particular, to:
- (i) ensure that Class Members are properly classified as employees;
  - (ii) advise Class Members of their entitlement to the Minimum Wage, Overtime Pay for hours worked in excess of the Overtime Threshold, Vacation Pay and Public Holiday and Premium Pay;
  - (iii) ensure that the Class Members' hours of work are monitored and accurately recorded; and,
  - (iv) ensure that Class Members are appropriately compensated at a rate equal to or above the Minimum Wage, for Overtime Pay, for Vacation Pay and for Public Holiday and Premium Pay.
- (g) a declaration that the provisions of any applicable independent contractor agreement which may purport to exclude certain Class Members from the provisions of the *ESA* including from eligibility for the Minimum Wage,

Overtime Pay, Vacation Pay and Public Holiday and Premium Pay are void and unenforceable;

- (h) a declaration that the Defendants are liable for any consequential damages resulting from the determination that the Class Members are/were employees of the Defendants and not independent contractors;
- (i) a declaration that the Defendants are liable for any adverse tax liability sustained by the Class Members resulting from a determination that the Class Members are/were employees of the Defendants and not independent contractors;
- (j) a declaration that the Defendants are liable, and must reimburse the Class Members, for any *Canada Pension Plan* ("CPP") or *Employment Insurance Act* ("EI") contributions which may have been paid or are owed resulting from a determination that the Class Members are/were employees of the Defendants and not independent contractors;
- (k) a declaration that the Defendants were unjustly enriched, to the deprivation of the Class Members, in that they received the value of compensating class members at rates below the Minimum Wage, without paying Overtime Pay, without paying Vacation Pay and without paying Public Holiday and Premium Pay, and an order requiring the Defendants to disgorge to the Class Members all amounts withheld by them in respect of such unpaid hours and entitlements;

- (l) an order, pursuant to s. 24 of the *Class Proceedings Act, 1992*, S.O. 1992, c. 6 ("*Class Proceedings Act*") directing an aggregate assessment of damages;
- (m) an order directing the Defendant to preserve and disclose to the Plaintiff all records (in any form) relating to the identification of Class Members and the hours of work performed by the Class Members;
- (n) pre-judgment and post judgment interest pursuant to the Courts of Justice Act;
- (o) punitive, aggravated and exemplary damages in the amount of \$10 million;
- (p) costs of this action on a substantial indemnity basis, together with applicable HST, or other applicable taxes, thereon;
- (q) the costs of administering the plan of distribution of the recovery in this action; and,
- (r) such further and other relief as this Honourable Court may deem just.

## **THE PARTIES**

2. The Plaintiff, Karen Walmsley ("Walmsley"), resides in Toronto. She was a teacher retained by the Defendants ("Blyth Academy") from September 2015 to June 9, 2017. Walmsley worked as a teacher at the Yorkville campus of Blyth Academy.

3. Blyth Academy is an international private school operating campuses around the world, including campuses in Ontario.

4. Blyth Academy, at present, operates approximately 11 to 14 campuses in Ontario. Since its inception, Blyth Academy has operated at least one and up to around 14 campuses in Ontario.

5. The Defendants carry on business in common in respect of the hiring, training, supervision and control of the Class Members. The Defendants hold themselves out to the public and to their staff as a single entity known as "Blyth Academy". The Defendant 2242913 Ontario Inc. likewise holds itself out as "Blyth Academy Downsview", a reference to the Downsview campus of Blyth Academy.

6. The educational activities of Blyth Academy and of its teachers are provincially regulated and are therefore governed by the *ESA*.

## THE CLASS

7. The Plaintiff brings this Action pursuant to the *Class Proceedings Act, 1992* on her own behalf and on behalf of the following class of persons (together, the "Class" or "Class Members"):

Any person, excluding those who worked exclusively as Principals or Vice-Principals, who, since 2002, who worked or continues to work for Blyth Academy in Ontario and who taught or teaches at least one course, including those whose work consisted or consists exclusively of teaching private or semi-private courses, save and except:



~~(a) those whose work for Blyth Academy consisted or consists exclusively of providing private or semi-private teaching services for Blyth Academy students or others where said services were arranged by or through Blyth Academy; and,~~

~~(b) those who worked exclusively as Principals or Vice-Principals.~~

## **EMPLOYMENT RELATIONSHIP**

8. The duties performed by the Class Members and the supervision and control imposed on the Class Members by Blyth Academy creates an employment relationship with Blyth Academy. Particulars of such relationship include, *inter alia*:

- (a) Blyth Academy provides orientation to all the Class Members in their duties;
- (b) Class members are required to adhere to a Code of Conduct and a Policy Addressing Abuse and Neglect of Students;
- (c) Blyth Academy requires that Class Members be available to students before and after class;
- (d) All materials for courses taught by Class Members are provided and paid for by Blyth Academy;
- (e) Class Members were told where and when they can teach students and hold classes;
- (f) Class Members are assigned classrooms and students;

- (g) Class Members must all represent themselves as working for Blyth Academy;
- (h) Class Members must use the tools of Blyth Academy, including Rediker, Moodle and Schoology;
- (i) All tuition prices and teacher fees are set by Blyth Academy;
- (j) Blyth Academy maintains sole discretion to set the course list, course calendar, course schedule, class tuition and course curriculum;
- (k) Only Blyth Academy handles complaints about the Class Members;
- (l) Class Members are paid directly by one or both of the Defendants; and,
- (m) Class Members are required to obey directions from a Principal or other Blyth Academy manager regarding the conduct of the classroom, interactions with students and parents, and grading protocol including explicit controls over:
  - (i) Quality of instruction and evaluation of student achievement;
  - (ii) Content of the program or courses of study;
  - (iii) A school-wide assessment and evaluation policy;
  - (iv) A procedure for reporting to parents;
  - (v) A school-wide attendance policy; and,

- (vi) A policy for the maintenance of student records and reporting to the school's central office.

9. The Defendants had no overtime policy in place to monitor, record, or compensate overtime hours.

### **ESA AND CLASS MEMBERS' CONTRACTS OF EMPLOYMENT**

10. The provisions of the *ESA* are implied terms, in fact or by law, as minimum terms of the contracts of employment of the Class Members.

11. At all material times, the Class Members were not and are not exempt from the *ESA* and, further or in the alternative, are not and were not exempt from Part VII to Part XII of the *ESA*. The Plaintiff pleads and relies on the following:

- (a) Section 2(1)(d) of O. Reg. 285/01 [*Exemptions, Special Rules and Establishment of Minimum Wage*] provides that "Parts VII, VIII, IX, X and XI of the [*ESA*] do not apply to a person employed [...] as a teacher as defined in the *Teaching Profession Act*";
- (b) The *Teaching Profession Act*, R.S.O. 1990, c. T.2 defines teachers as persons "employed by a board as a teacher";
- (c) Neither of the Defendants, alone or together, nor Blyth Academy, have not ever been nor are presently a "board" for the purposes of the *Teaching Profession Act*, R.S.O. 1990, c. T.2; and,

- (d) As a result, the Class Members are not teachers for *ESA* purposes and/or are not teachers in accordance with O. Reg. 285/01.

12. The Plaintiff further pleads and relies on the *Education Act*, R.S.O. 1990, c. E.2, and in particular s. 1(1) thereof, the *Ryan's Law (Ensuring Asthma Friendly Schools)*, S.O. 2015, c. 3, and in particular s. 1(1) thereof, *Sabrina's Law, 2005*, S.O. 2005, c. 7, and in particular s. 1(1) thereof, the *Broader Public Sector Accountability Act, 2010*, S.O. 2010, c. 25, and in particular s. 1(1) thereof, the *Capital Investment Plan Act, 1993*, S.O. 1993, c. 23, and in particular s. 29(1) thereof, and the *Health Protection and Promotion Act*, R.S.O. 1990, c. H.7.

13. As a result, the contracts of employment of the Class Members expressly or impliedly provide that Class Members shall be compensated

- (a) At a rate equal to, or greater than, the Minimum Wage;
- (b) With overtime Pay for hours worked in excess of the Overtime Threshold;
- (c) With Vacation Pay on all amounts paid, and unpaid; and,
- (d) With Public Holiday and Premium Pay.

#### **CONTRACTUAL DUTIES OWED TO CLASS MEMBERS**

14. As vulnerable employees under the direct control and supervision of the Defendants, the Class Members relied on the Defendants to advise them properly regarding their employee status and eligibility for Minimum Wage, Overtime Pay,

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Vacation Pay, Public Holiday and Premium Pay and to fulfill their contractual and statutory employment responsibilities to keep track of and pay the Class Members at, or above, the Minimum Wage, Overtime Pay, Vacation Pay and Public Holiday and Premium Pay. Blyth Academy is/was in a position of power and direct control over the Class Members and the Class members were in a vulnerable position vis-à-vis the Defendants.

15. The Defendants owe and owed contractual duties to the Class Members, including a contractual duty of good faith, all of which required, and continue to require, the Defendants to:

- (a) ensure that Class Members are properly classified as employees;
- (b) advise Class Members of their entitlement to the Minimum Wage, Overtime Pay and Vacation Pay;
- (c) ensure that the Class Members' hours of work are monitored and accurately recorded; and,
- (d) ensure that Class Members are appropriately compensated at, or above, the Minimum Wage, for Overtime Pay , for Vacation Pay and for Public Holiday and Premium Pay.

## DUTY OF CARE

16. Blyth Academy owed and owes the Class Members a duty of care based upon the special relationship that developed between them as a consequence of Blyth Academy's retaining the Class Members to perform teaching services on Blyth Academy's behalf.

17. Blyth Academy owed and owes the Class Members a duty to take reasonable steps to properly characterize the employment relationship when retaining the Class Members to teach Blyth Academy courses.

18. The Defendants' duty of care requires and required the Defendants to:

- (a) ensure that Class Members are properly classified as employees;
- (b) advise Class Members of their entitlement to the Minimum Wage, Overtime Pay, Vacation Pay and Public Holiday and Premium Pay;
- (c) ensure that the Class Members hours of work are monitored and accurately recorded; and,
- (d) ensure that Class Members are appropriately compensated at, or above, the Minimum Wage, for Overtime Pay , for Vacation Pay and for Public Holiday and Premium Pay.

## RESPONSIBILITIES OF CLASS MEMBERS AND TREATMENT BY BLYTH ACADEMY

19. From September 2015 until June 9, 2017, Walmsley worked for Blyth Academy as a teacher at the Yorkville campus of Blyth Academy in Toronto, Ontario. She predominantly taught courses to groups of students but had contracts at various points with the Defendant to teach private or semi-private courses, which are courses taught to one or to two students. The contracts she executed to teach those private and semi-private courses were in all material respects the same as other contracts used by Blyth Academy for the teaching of courses to larger groups of students.

20. Walmsley's duties and responsibilities as a Teacher included:

- (a) Attending the campus to prepare for teaching courses, and spending time outside of school hours to prepare for teaching courses. Such preparation included:
  - (i) Writing tests, assignments, examinations, and homework;
  - (ii) Preparing the classroom area; and,
  - (iii) Preparing lesson materials;
- (b) Regularly and promptly communicating with parents and students outside of classroom hours;
- (c) Attending regular staff meetings outside of classroom hours;
- (d) Attending parent teacher nights;

- (e) Providing out of class one on one academic support to students;
- (f) Responding to correspondence and telephone calls from parents of students;
- (g) Promptly notifying parents and the school principal of academic difficulties and behavioral problems with her students;
- (h) Grading assignments, tests, and examinations;
- (i) Drafting report cards;
- (j) Administrative duties such as preparing Unit Plans; Lesson Plans, Course Profiles and compiling evidence of student achievement and teacher feedback.
- (k) Participating in professional development sessions;
- (l) Participating in and preparing for school and classroom inspections by the Ministry of Education;
- (m) Attending school one half hour before and one half hour after class;
- (n) Attending and teaching courses from during the school day each day; and,
- (o) Becoming familiar with and utilizing teaching software.

21. The Defendants required or permitted Walmsley to work between approximately 60 and 80 hours per week.



22. As a result of working said hours Walmsley routinely earned income that was below or well below the Minimum Wage. For instance, during her first term of work for Blyth Academy Walmsley earned approximately \$7,000.00 over the 10 week period encompassed by said term. During this period, Walmsley worked in excess of 80 hours per week. As a result thereof, Walmsley earned no more than \$8.75 per hour, or well below the extant Minimum Wage.

23. Walmsley pleads, and the fact is, that at various points during her work for Blyth Academy, she would be billed and would thereafter remit HST and CPP premiums such that her effective earnings were in fact somewhat lower than amounts pleaded above.

24. Walmsley relied on the Defendants in good faith and was unaware while working for the Defendants or afterwards that she was an employee and entitled to the Minimum Wage, Overtime Pay, Vacation Pay and Public Holiday and Premium Pay. At the time, Walmsley relied on the Defendants to properly classify her regarding her status as an employee and her entitlement to Minimum Wage, Overtime Pay, Vacation Pay, and Public Holiday and Premium Pay and was misled by the Defendants that she was not an employee of the Defendants.

25. Walmsley did not become aware that she was eligible as an employee for Minimum Wage, Overtime Pay, Vacation Pay and Public Holiday and Premium Pay because the Defendants had continually misrepresented her actual eligibility and entitlement to such pay.

26. Walmsley's duties are consistent with the duties of all Class Members and the operations of Blyth Academy and the controls imposed by Blyth Academy on the Class Members.

27. At all material times, Walmsley and the other Class Members were explicitly directed how, where and when they could perform teaching duties for Blyth Academy.

28. At all material times, Walmsley and the majority of other Class Members were explicitly and incorrectly informed they were not employees of Blyth Academy.

29. The Defendants required Walmsley and the other Class Members to work hours in excess of the Overtime Threshold without Overtime Pay, contrary to their contractual terms.

30. The Defendants failed to compensate Walmsley and the other Class Members for Vacation Pay, contrary to their contractual terms.

31. The Defendants failed to compensate Walmsley and the other Class Members for Public Holiday and Premium Pay, contrary to their contractual terms.

#### **SYSTEMIC CLASSIFICATION AS "INDEPENDENT CONTRACTORS"**

32. The Defendants systemically classified many Class Members as "independent contractors" and required and/or permitted the Class Members to regularly work hours without receiving the Minimum Wage, Overtime Pay, Vacation Pay or Public Holiday and

Premium Pay, under the misrepresentation from Blyth Academy that Class Members were independent contractors.

33. While there were a small number of Class Members which Blyth Academy would, from time to time, recognize as employees, such Class Members were not compensated pursuant to the *ESA*.

34. The Defendants were aware that the Class Members relied on the Defendants to advise them properly of their employment status and eligibility for Minimum Wage, Overtime Pay, Vacation Pay and Public Holiday and Premium Pay, and to fulfill their contractual and statutory employment responsibilities to keep track of and pay the Class Members for their hours worked.

35. The Defendants exerted pervasive pressure on Class Members to work hours in excess of the Overtime Threshold. Particulars of such pressure included the fact that a portion of Class Members' pay was withheld by Blyth Academy and only paid to Class Members at the end of their contracts if they completed certain tasks required by Blyth Academy including, for instance, submitting Lesson Plans, Unit Plans, Course Profiles, samples of student work, evidence of in class observations of and conversations with students, and grades and related comments.

#### **SYSTEMIC BREACH OF THE *ESA***

36. The Defendants have systemically breached the provisions of the *ESA* with respect to all Class Members by:

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- (a) failing to ensure that all Class Members were properly classified as employees;
- (b) failing to advise Class Members of their entitlement to Minimum Wage, Overtime Pay, Vacation Pay and Public Holiday and Premium Pay;
- (c) failing to ensure that the Class Members' hours of work were monitored and accurately recorded;
- (d) requiring and/or permitting the Class Members to work hours for which it failed to compensate at a rate equal to, or above, the Minimum Wage;
- (e) requiring and/or permitting the Class Members to work hours in excess of the Overtime Threshold but failing to ensure that Class Members were compensated for Overtime Pay;
- (f) failing to compensate Class Members for Vacation Pay; and,
- (g) failing to compensate Class Member for Public Holiday and Premium Pay.

37. Blyth Academy's misclassification of Class Members as purported independent contractors and denial of Minimum Wage, Overtime Pay, Vacation Pay and Public Holiday and Premium Pay to Class Members is in violation of the *ESA* and is unlawful.

38. To the extent that any contracts purport to designate the Class Members as independent contractors and exclude the Class Members from eligibility for the Minimum Wage, Overtime Pay, Vacation Pay, Public Holiday and Premium Pay or any other

minimum requirement of the *ESA*, such contracts and or provisions are void and unenforceable.

### **SYSTEMIC BREACH OF CONTRACT AND BREACH OF DUTY OF GOOD FAITH**

39. The Defendants have systemically breached and continue to systemically breach the contracts with the Class Members and the contractual duty of good faith owed to the Class Members by:

- (a) improperly and arbitrarily misclassifying many Class Members as independent contractors;
- (b) misrepresenting to the Class Members that the Class Members were independent contractors;
- (c) failing to monitor and keep track of the hours worked by the Class Members; and,
- (d) requiring and/or permitting the Class Members to work regular hours and hours in excess of the Overtime Threshold but failing to compensate the Class Members as required for the Minimum Wage, Overtime Pay, Vacation Pay or Public Holiday and Premium Pay.

40. There was no legitimate basis for the Defendants' arbitrary designation of many Class Members as independent contractors and ineligibility for Minimum Wage, Overtime Pay, Vacation Pay and Public Holiday and Premium Pay, which was contrary to the

employees' express or implied terms of contract with the Defendants. Such classification and exclusion is contrary to the terms of the *ESA*, which are incorporated as express or implied terms of the contracts.

41. Such breaches have been and are ongoing and continuous in respect of the Class Members since at least approximately 2002.

### **SYSTEMIC NEGLIGENCE**

42. Blyth Academy owed Walmsley and the Class Members a duty to take reasonable steps to properly characterize the employment relationship when retaining the Class Members to teach Blyth Academy Courses. Blyth Academy systemically breached that duty by:

- (a) improperly and arbitrarily misclassifying certain Class Members as independent contractors;
- (b) misrepresenting to the Class Members that the Class Members were independent contractors;
- (c) failing to monitor and keep track of the hours worked by the Class Members; and,
- (d) requiring and/or permitting the Class Members to work regular hours and hours in excess of the Overtime Threshold but failing to compensate the Class

Members as required for the Minimum Wage, Overtime Pay, Vacation Pay or Public Holiday and Premium Pay.

43. As a result of Blyth Academy's negligence in mischaracterizing the relationship between Blyth Academy and the Class Members, the Class Members have suffered damages and losses, including lost Minimum Wages, Overtime Pay, Vacation Pay, Public Holiday and Premium Pay, and any consequential damages resulting from the determination that the Class Members are/were employees of the Defendants and not independent contractors, all of which were reasonably foreseeable to Blyth Academy.

#### **UNJUST ENRICHMENT**

44. The Defendant has been unjustly enriched as a result of receiving the benefit of the unpaid hours worked by the Class Members.

45. The Class Members have suffered a corresponding deprivation, in the form of the Minimum Wages, Overtime Pay, Vacation Pay and Public Holiday and Premium Pay that is owed to them.

46. There is no juristic reason for the Defendants' unjust enrichment and the Class Members' corresponding deprivation. The systemic exclusion of the Class Members from their contractual and statutory entitlements is unlawful.

47. The Defendants' unjust enrichment has been continuous and ongoing since at least approximately 2002.

## DAMAGES

48. As a result of the Defendants' breaches of the *ESA*, breaches of contract, negligence, and/or unjust enrichment, the Class Members have suffered damages and losses, including lost Minimum Wages, Overtime Pay, Vacation Pay, Public Holiday and Premium Pay, and any consequential damages resulting from the determination that the Class Members are/were employees of the Defendants and not independent contractors.

49. Furthermore, the Defendants' arbitrary and incorrect misclassification of certain Class Members as independent contractors and exclusion from Minimum Wage, Overtime Pay, Vacation Pay and Public Holiday and Premium Pay, coupled with the Defendants' requirement that the Class Members work hours in excess the Overtime Threshold, was high handed and callous. The Defendants were in a position of power over vulnerable employees and owed them a duty of good faith, which the Defendants flagrantly breached to increase its profits at the expense of the Class Members. Such conduct warrants an award of punitive damages.

50. Moreover, the Defendants' arbitrary and incorrect misclassification of the Class members as independent contractors caused the Class Members to erroneously pay the employer component of CPP and/or EI contributions on their income. Such employer contributions ought to have been made by Blyth Academy on their behalves, instead the Class Members paid those contributions directly. The Defendants' misclassification thereby caused compensable damages to the Class Members for which sufficient reimbursement should be awarded.

51. The Plaintiff pleads and relies on upon the following statutes and regulations:

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- (a) the *Employment Standards Act, 2000*, S.O. 2000, c. 41;
- (b) the *Class Proceedings Act, 1992*, S.O. 1992, c. 6.

52. The Plaintiff proposes that this action be tried in Toronto.

*(Date of issue)*

**CAVALLUZZO SHILTON-McINTYRE**

**~~CORNISH~~ LLP**

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Lawyers for the Plaintiff

**KAREN WALMSLEY**  
Plaintiff

-and- **2016169 ONTARIO INC., et al.**  
Defendants

Court File No.: CV-17-00584523-00CP

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
PROCEEDING COMMENCED AT  
TORONTO

**AMENDED STATEMENT OF CLAIM  
(PROPOSED CLASS PROCEEDINGS)**

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