



Court File No. 279/19

**ONTARIO
SUPERIOR COURT OF JUSTICE
DIVISIONAL COURT**

BETWEEN:

**THE CANADIAN FEDERATION OF STUDENTS and
THE YORK FEDERATION OF STUDENTS**

Applicants

- and -

ONTARIO (MINISTER OF TRAINING, COLLEGES AND UNIVERSITIES)

Respondent

APPLICATION UNDER Rule 14.05(2) of the *Rules of Civil Procedure*, RRO 1990, Reg 194
and Sections 2(1) and 6(2) of the *Judicial Review Procedure Act*, RSO 1990, c J.1

NOTICE OF APPLICATION FOR JUDICIAL REVIEW

TO THE RESPONDENT

A LEGAL PROCEEDING HAS BEEN COMMENCED by the applicants. The claim made by the applicants appears on the following page.

THIS APPLICATION for judicial review will come on for a hearing before the Divisional Court on a date to be fixed by the registrar at the place of hearing requested by the applicants. The applicants request that this application be heard at Toronto.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the *Rules of Civil Procedure*, serve it on the applicants' lawyer or, where the applicants do not have a lawyer, serve it on the applicants, and file it, with proof of service, in the office of the Divisional Court, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of

appearance, serve a copy of the evidence on the applicants' lawyer or, where the applicants do not have a lawyer, serve it on the applicants, and file it, with proof of service, in the office of the Divisional Court within thirty days after service on you of the applicants' application record, or at least four days before the hearing, whichever is earlier.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN TO 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.

TAKE NOTICE: THIS APPLICATION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for hearing or terminated by any means within five years after the notice of application was filed with the court, unless otherwise ordered by the court.

Date: May 24, 2019

Issue by Jasmine Samlall
Local Registrar

Address of 130 Queen Street West
Court office: Toronto, ON M5H 2N6

TO: **MINISTRY OF TRAINING, COLLEGES AND UNIVERSITIES**
438 University Ave, 5th Floor
Toronto, ON M7A 2A5

AND TO: **ATTORNEY GENERAL OF ONTARIO**
Crown Law Office – Civil Law
720 Bay Street, 8th Floor
Toronto, ON M7A 2S9

APPLICATION

1. The Applicants make an application for:
 - (a) an order in the nature of *certiorari* quashing and setting aside the following policy directives issued by the Minister of Training, Colleges and Universities (the “Minister”) on April 3, 2019, which restrict the ability of universities and colleges in Ontario to charge, collect and remit student fees on behalf of student associations (“democratically-determined fees”) which the Minister has improperly and arbitrarily designated as “non-essential,” namely:
 - (i) the Ancillary Fee Classification Framework in the “Tuition and Ancillary Fees Minister’s Binding Policy Directive” concerning Colleges of Applied Arts and Technology;
 - (ii) the Ancillary Fee Classification Framework in the “Tuition Fee Framework and Ancillary Fee Guidelines” concerning Publicly-Assisted Universities;(collectively, the “Directives”)
 - (b) a declaration that in promulgating the Directives, the Minister acted unlawfully, unreasonably, improperly, disproportionately, arbitrarily, and without and in excess of her statutory discretion and authority, including under the *Ministry of Training, Colleges and Universities Act*, RSO 1990, c M.19 and the *Ontario Colleges of Applied Arts and Technology Act*, 2002 SO 2002, c 8, Sch F, or otherwise;
 - (c) a declaration that the Minister breached procedural fairness and natural justice in failing to notify and meaningfully consult the Applicants, or any other interested parties including universities, colleges and other student associations, prior to announcing and implementing the Directives;
 - (d) an order granting leave pursuant to section 6(2) of the *Judicial Review Procedure Act*, RSO 1990, c J.1 to have this application heard by a Judge of the Superior Court of Justice;

- (e) an order, if required, abridging the time for service of any materials required for the hearing of this application;
- (f) an order, if required, imposing a schedule allowing for this application to be heard and decided on an expedited basis prior to the start of the new academic year in September 2019;
- (g) if the application cannot be heard on its merits prior to September 2019, an interim or interlocutory injunction requiring the Minister to direct universities and colleges to continue to apply the framework in place prior to the Directives;
- (h) costs of this application; and,
- (i) such further and other relief as counsel may advise and this Honourable Court may deem just.

2. The grounds for the application are:

Overview

- (a) Since the advent of universities and colleges in Ontario, students have banded together to elect governing bodies (also known as “student associations”) to advocate on behalf of students vis-à-vis university and college administrations and the provincial and federal governments, and to provide student-oriented services on campus. Through self-governing democratic processes, including referendums, students have determined the level of fees they will contribute to their governing bodies as well as to other groups, including the Applicant Canadian Federation of Students (“CFS”), which is a national student association comprised of local student associations across the country. The Applicant York Federation of Students (“YFS”) is a member of the CFS, meaning undergraduate students at York University have voted by referendum for the YFS to join the CFS and pay CFS membership fees. For decades, universities and colleges have collected and remitted democratically-determined student fees on behalf of student associations pursuant to agreements with those student associations.

- (b) This application concerns an attempt by the Minister of Training, Colleges and Universities (the “Minister”) to target the CFS, its member student associations, including the YFS, and other student groups opposed by Ontario, and to undermine the ability of these groups to carry out their normal activities. Under the pretext of fostering “student choice”, the Minister has issued policy directives prohibiting universities and colleges from collecting and remitting democratically-determined fees on behalf of student bodies, unless individual students expressly opt in to contribute their share of those democratically-determined fees at the time of individual billing.
- (c) Without any legislative authority or mandate, the Minister’s Directives purport to supersede long-standing agreements between student associations and university and college administrations for the collection and remittance of democratically-determined fees.
- (d) The Minister’s assertion that the basis for her policy directives is to advance “student choice” is belied by the fact that the Minister has not applied the “opt-out” requirement uniformly to all student fees, or even to the majority of fees each student must bear. Instead, the Minister has targeted only those fees the Minister arbitrarily designates as “non-essential” – including student associations, student newspapers and legal clinics – while allowing universities and colleges to continue to collect fees designated as “essential” on a mandatory basis – including athletics. In so doing, the Minister has acted unlawfully, unreasonably, improperly, disproportionately, arbitrarily, and without and in excess of the statutory discretion and authority granted to her.
- (e) In addition, by failing to notify or meaningfully consult the CFS, the YFS, or any other student association, university or college prior to this unprecedented intrusion into their private contractual affairs, the Minister also breached her duty of procedural fairness and natural justice.

The Parties

The Applicants

- (f) The CFS is a bilingual national student association formed in 1981 with over 500,000 student members from more than 60 university and college student associations across Canada. In Ontario, 35 elected student associations are members of the CFS, representing over 350,000 full and part-time students in Ontario universities and colleges. The CFS is incorporated pursuant to the *Canada Not-for-Profit Corporations Act*, SC 2009, c 23.
- (g) The CFS is student-funded, politically independent, and non-partisan. It provides student-oriented services and programs, and provides the principal means for representing and advocating for the interests of students in relation to the administrations of colleges and universities and in respect of federal and provincial policies and laws affecting students. Much of the CFS' advocacy has focused on decreasing tuition fees and ensuring the accessibility of post-secondary education. The CFS has also advocated to protect the rights and interests of disadvantaged and marginalized students, including women, Muslim and Indigenous students. Through advocacy, public campaigns, lobbying and other means, the CFS has helped achieve numerous successes on behalf of students.
- (h) The YFS is the recognized student association for undergraduate students at York University in Toronto. Initially called the York Student Council, the YFS was established in 1968 and now represents over 45,000 students at both the Glendon and Keele campuses of York University. The YFS is Local 68 of the CFS. The YFS is a non-profit organization incorporated under the Ontario *Business Corporations Act*, RSO 1990, c. B.16.
- (i) The YFS, and other CFS student association members, serve many functions including representing students' interests in respect of matters concerning the cost, quality and character of post-secondary education in the university and college setting. They do so directly on behalf of the student body, but also by

providing support to student representatives on various university bodies, and by funding student groups, clubs, and organizations that represent and advocate for the interests of their members. Student associations also play a role organizing or supporting social, cultural and academic activities, and in providing services to students, including health and dental insurance, transit passes, and even some commercial services such as bookstores and restaurants.

- (j) In these various ways student associations play a critical role in the administration and governance of the college and university and in representing and advancing the interests of students. In providing services, which range from food banks to childcare and student clubs, student associations play an integral role in the post-secondary experience of students in Ontario, and make a key contribution to enhancing the quality of student education and experience.
- (k) Local student associations rely on membership fees, which are authorized by democratic processes, including votes at membership meetings and campus-wide student referendums (“democratically-determined fees”), to fund their operations. If approved by the student body, student association fees are charged and collected by universities and colleges as a condition of a student’s enrolment, and remitted to student associations based on contractual agreements between universities or colleges and student associations.
- (l) Democratic campus-wide student referendums are also the means by which the CFS is funded. If the majority of students at an individual college or university who participate in the referendum approve joining the CFS, the local student association becomes a member of the CFS, remits membership fees to the CFS, and participates in the CFS’ decision-making processes. In this manner, local student associations such as the YFS are able to pool resources together with other CFS members and work collectively to advance students’ rights and interests. Students may similarly vote to de-federate from the CFS, and cease paying membership fees, through a democratic referendum process.

- (m) In addition to providing a means to fund elected student associations and the CFS, democratically-determined fees have also allowed students, through their respective student associations, to fund other organizations and activities on campus, including (to name a few): student newspapers, student radio, legal aid clinics, food banks, the Ontario Public Interest Research Group (“OPIRG”), sponsorship of refugee students, sexual diversity offices or pride centres, and other campus organizations dedicated to protecting vulnerable or disadvantaged students and advancing human rights.

The Minister and the Ministry

- (n) The Minister presides over the Ministry of Training, Colleges and Universities (“MTCU”) and is responsible for the administration of several acts and regulations made thereunder, including the *Ministry of Training, Colleges and Universities Act*, RSO 1990, c M.19 (“*MTCU Act*”) and the *Ontario Colleges of Applied Arts and Technology Act*, 2002, SO 2002, c 8, Sch F (“*OCAAT Act*”).
- (o) The Minister authorizes universities to grant degrees, distributes provincial funds to colleges and universities, provides financial assistance to post-secondary students, registers private career colleges, and develops policy directives for colleges of applied arts and technology (“colleges”).
- (p) With respect to universities, the Minister’s authority is limited by the powers in the *MTCU Act* and related statutes. The limited scope of the Minister’s authority in respect of university policy and governance reflects the historical independence and autonomy of universities, which has been codified in Ontario law through the constituting statutes of each university. With the exception of narrowly defined powers in the *MTCU Act*, policy-making and governance authority over a university is vested in its Boards of Governors and Senates.
- (q) With respect to colleges, the Minister’s powers and authority are set out in the *OCAAT Act*. Unlike universities, colleges are created by regulation under the *Act*. While the *Act* gives the Minister the authority to issue binding policy directives to the colleges, the Minister’s authority is prescribed by the purposes and provisions

in the *Act*, including section 7, which prohibits the Minister from restricting a student governing body of a college, elected by the students of the college, from carrying on its normal activities.

Post-Secondary Education Funding in Ontario

- (r) The provincial government, through the Ministry, provides funding to colleges and universities, which supplements tuition fees and other sources of funding, and represents approximately one third of the budget for universities across Ontario. Since the 1960s, as a condition of providing funding to universities (and later colleges), the provincial government has capped the tuition fees that each college and university may charge to Canadian students under funding formula frameworks that determine the operating grant provided to a university or college.
- (s) Although they receive public funding, universities are essentially autonomous, self-regulating and independent. Unlike colleges, which are more directly controlled by the Minister under the authority granted to her in the *OCAAT Act*, universities are constituted independently of Ministerial control and are autonomously regulated by Boards of Governors and Senates pursuant to the authority vested in them by each university's constituting statute.
- (t) Indeed the courts have consistently recognized that universities enjoy a high degree of autonomy in determining standards of admission, curriculum, the qualifications of instructors, the hiring and termination of personnel, and the requirements for graduation.
- (u) Universities also routinely freely contract with third parties, including student associations, without having to account to the Minister regarding the terms of those contractual relationships.
- (v) The funding framework adopted by Ontario governments over the years has respected the autonomy of universities, and courts have found the framework's funding formulas to be consistent with university autonomy in the internal management of university affairs. The Ontario Operating Funds Distribution

Manual specifically states that the distribution mechanism “is not intended to limit or control the expenditure of funds granted to the institutions.”

Democratically-determined Fees vs. Institution Ancillary Fees

- (w) In addition to tuition fees, universities and colleges also charge ancillary fees to students. Ancillary fees fund a wide range of activities on campus, from athletics to career services to health and counselling. Ancillary fees imposed by the college or university are fundamentally distinct from fees established, collected and remitted in consequence of a democratic choice of the student body.
- (x) Since the 1990s, the Province restricted, as a condition of funding, universities and colleges from charging “tuition-related” ancillary fees, in order to prevent institutions from circumventing the cap on tuition fees.
- (y) In contrast, fees determined democratically by student bodies have never been the subject of Ministerial regulation or otherwise controlled through funding conditions. Indeed, in previous protocols that imposed conditions on institution ancillary fees, the Minister expressly excluded “existing and future fees established by student governments, including those resulting from referenda sponsored by them.”
- (z) Until the Directives, the Province has at all times respected the democratic autonomy of student associations in respect of democratically-determined fees, and the contracts student associations have negotiated with universities and colleges for the collection and remittance of these fees.
- (aa) Democratically-determined fees, including student association and CFS fees, have never been considered or treated as ancillary fees for the purpose of funding conditions applied to colleges or universities.

The Directives

- (bb) On January 17, 2019, the Minister announced the Directives without prior notice to, or meaningful consultation with the CFS, the YFS, or any of the other student association members of the CFS, or any of the universities or colleges in Ontario. Under the Directives and for the first time, the Province purports to limit the ability of student associations and the CFS to fund their operations through self-governing democratic processes. Instead, the Province has directed universities and colleges to refuse to collect and remit certain fees on behalf of student associations, in breach of their agreements with student associations, unless students individually ‘opt in’ to each democratically authorized fee at the time of billing.
- (cc) On April 3, 2019, the Minister formally issued the Directives by:
 - (i) amending the “Tuition Fee Framework and Ancillary Fee Guidelines,” which applies to universities, to include the Ancillary Fee Classification Framework; and
 - (ii) amending the Minister’s Binding Policy Directive entitled “Tuition and Ancillary Fees,” which applies to colleges, to include the Ancillary Fee Classification Framework.
- (dd) Universities and colleges that fail to comply with the Directives face deductions from their operating grants from the Ministry.
- (ee) In a fundamental departure from long established practice, pursuant to the Directives, democratically-determined student fees – which were historically excluded from Ministerial protocols concerning ancillary fees – are now classified as “ancillary fees” together with traditional ancillary fees imposed by universities and colleges. The Directives then divide fees into two categories: “essential” services and “non-essential” services.
- (ff) Student association and CFS fees now deemed non-essential can only be charged to a student if that student expressly elects to pay them notwithstanding the prior approval by the student body in a democratic process. Although the Minister

describes the requirement as an “opt-out” requirement, it is in effect an “opt-in” requirement because the student must opt in before any tuition or other fees can be paid.

- (gg) The following services have been deemed “essential” by the Minister: athletics and recreation; career services; student buildings; health and counselling; academic support; student ID cards; student achievement and records; financial aid offices; campus safety programs; health and dental plans; and pre-existing student transit passes. All other fees are deemed “non-essential,” including the majority of student association fees and the entirety of the referendum-based fees required for membership in the CFS.
- (hh) These “non-essential” student association and CFS fees are in fact necessary and required for local student associations and the CFS to carry on their respective advocacy work and services on behalf of students.
- (ii) To establish the opt-in regime, universities and colleges are required to itemize the individual functions for which fees are charged, and may not bundle and classify fees together for multiple services. For example, a university may not charge a student for a ‘student association fee’ since some portions of that fee may be dedicated to services now classified as ‘non-essential’.
- (jj) The Minister has not offered any rationale explaining why some fees have been characterized as essential and others as non-essential. Moreover, the Minister did not consult with the Applicants or student associations that administer democratically-determined fees, or the university and college administrations that administer ancillary fees, before establishing this unprecedented regime.
- (kk) University and college administrations have provided differing estimates of the proportion of democratically-determined fees that they would consider to fall within the “essential” service category. However across all universities and colleges, 0% of CFS fees will fall within the “essential” service category.

- (ll) It is clear that the principal casualty of the new regime will be the advocacy activities of student associations and the CFS that would otherwise serve as a means for advocating on behalf of students, including in respect of tuition fees, student financial assistance, and government policy and practices.
- (mm) While presented as an initiative to foster “student choice”, in fact students will be obliged to fund all but a small percentage of the ancillary fees they were previously obliged to pay.
- (nn) The Minister’s purported purpose of advancing “student choice” is flatly contradicted by the following facts and particulars, among others:
 - (i) the majority of ancillary fees imposed by universities and colleges will continue to be charged to students on a compulsory basis;
 - (ii) the majority of fees that are being targeted as “non-essential” were in fact the result of a self-governing democratic process, in contrast to ancillary fees imposed by administrations, most of which will remain compulsory under this policy;
 - (iii) the Minister has provided no rationale for the arbitrary designation of certain fees as “essential” or “non-essential”;
 - (iv) there is in fact no plausible rationale for the bifurcation of “essential” and “non-essential” fees, that is connected to the purposes and objectives of university and college governance;
 - (v) the Minister and her government did not notify or meaningfully consult any universities, colleges, student associations or the CFS before arbitrarily designating certain fees as “essential” or “non-essential”.
- (oo) The Minister’s animus towards student associations was confirmed in a fundraising letter from Premier Doug Ford to Progressive Conservative party supporters, in which the Premier wrote, “I think we all know what kind of crazy Marxist nonsense student unions get up to. So, we fixed that. Student union fees are now opt-in.” The Premier’s letter is evidence that the impetus behind the Directives was not to protect “student choice”, but to marginalize and silence student groups which are perceived as critics of the governing party and its political objectives in respect of post-secondary education.

The Consequences of the Directives

- (pp) Given the financial pressures facing most post-secondary students in Ontario, evidence from other jurisdictions, the free rider problem, and other factors, very few students are likely to opt-in and voluntarily pay for democratically-determined fees deemed 'non-essential' and from which they might nevertheless hope to benefit should they withhold their support.
- (qq) In addition, because the Directives require students to opt in at the time of initial billing before their classes begin, incoming first-year and other new students with no experience of the contributions student associations make to campus life and student advocacy will have little information on which to make informed decisions about whether the utility and importance of student-funded services warrants adding to the cost of their education.
- (rr) The Directives will effectively cut or eliminate funding for:
 - (i) student associations;
 - (ii) CFS membership fees from student associations;
 - (iii) student association fees which fund student scholarships, childcare, emergency loan programs, orientation week programs, food banks;
 - (iv) student journalism including campus newspapers, radio and television stations;
 - (v) student legal aid clinics;
 - (vi) sexual diversity offices and Pride centres;
 - (vii) centres for women, trans, and gender diverse students, students with disabilities, and international students;
 - (viii) peer-support programs;
 - (ix) non-profit commercial services operated by student associations, such as book stores, and restaurants;
 - (x) levies for World University Service of Canada which sponsors refugee students, amongst others.

- (ss) As a result of cuts to democratically-determined fees, student associations will also struggle to provide services deemed 'essential' such as walk-safe programs and student centres, without the base funding, staffing, and resources derived from student association fees, which have been deemed 'non-essential'.
- (tt) Not only will the Directives cut funding from student services and groups, student associations will now entirely lack the forward visibility necessary to plan budgets, develop programs or hire staff.
- (uu) Moreover, student associations like the YFS, student groups and the CFS will have to rely on increasingly scarce resources to persuade students of the value of opting-in on a semester by semester basis.
- (vv) In short, the results of the Directives will seriously reduce the flow of funding to student associations and in consequence the ability of student associations to provide services formerly and democratically approved, if, in fact, the student associations and the CFS are able to carry on at all.

The Directives are Unlawful and Should be Set Aside

- (ww) In promulgating the Directives, the Minister acted unlawfully, unreasonably, improperly, disproportionately, arbitrarily, and without and in excess of the statutory discretion and authority conferred to her.
- (xx) With respect to universities, which are independent and autonomous entities governed by Boards of Directors and Senates under their constituting statutes, the Minister's limited statutory authority is set out in the *MTCU Act* and related statutes. There is nothing in the *MTCU Act* or related statutes that authorized the Minister's Directive concerning universities. That Directive was unlawful, unreasonable, disproportionate, arbitrary and without and in excess of the Minister's statutory discretion and authority under the *MTCU Act* or otherwise, for the following reasons:

- (i) The Minister issued the Directive for improper purposes and based on irrelevant considerations not authorized by the *MTCU Act* or any other legislation;
 - (ii) By targeting student associations and the CFS and acting to cut off their core funding, the Minister acted in bad faith and relied upon personal animus and partisan considerations including those of the Premier, none of which was authorized by *MTCU Act* or otherwise;
 - (iii) The Directive interfered with the autonomy and independence of universities in the governance of their affairs, and unilaterally imposed terms on universities' relationships with third party student associations, absent any statutory authority to do so;
 - (iv) The Directive interfered with the freedom to contract of universities and student associations, who had entered into binding agreements for the collection and remittance of student association fees which are independent of any government funding, absent any statutory authority to do so;
 - (v) The Directive unilaterally required universities to alter the terms and conditions of enrolment in universities in Ontario, absent any statutory authority to do so. The collection and remittance of democratically-determined fees, pursuant to agreements between universities and student associations, form part of the terms and conditions of enrolment in universities in Ontario. The Minister lacked the authority to unilaterally alter those terms and conditions;
 - (vi) The Directive interfered with the autonomous affairs of university student associations, entities over which the Minister has no direct statutory authority or control. Among other things, the Directive interfered with the ability of the CFS and student associations to determine and collect funds from their members through self-governing, democratic processes independent of any government funding, and to enter into contracts with third parties for the collection and remittance of those funds, without any statutory authority to do so.
- (yy) With respect to colleges, which are created by regulation under the *OCAAT Act*, the Minister's authority under section 4 of the Act to issue binding policy directives is constrained by the purposes and provisions of the *OCAAT Act*, including section 7 of the *Act*, which prohibits the Minister from exercising that authority in such a way that would "restrict a student governing body of a college elected by the students of the college from carrying on its normal activities."

- (zz) For each of the reasons set out in subparagraphs (xx)(i) to (vi) above (with respect to universities), the Minister's Directive concerning colleges similarly exceeded the authority granted to her in section 4 of the *OCAAT Act*. Moreover, for those same reasons, the Minister's Directive concerning colleges specifically contravened section 7 of the *OCAAT Act* by restricting the ability of student governing bodies to carry on their normal activities. The "normal activities" of student governing bodies being interfered with include, among other things:
- (i) the ability of student governing bodies to determine and collect from their members through self-governing, democratic processes independent of any government funding, and
 - (ii) the freedom to contract with colleges, and enter into binding agreements for the collection and remittance of democratically-determined student association fees.

Breach of Procedural Fairness and Natural Justice

- (aaa) In announcing the Directives, the Minister claimed that she was acting in students' best interests, but was unable to name a single student association, university or college that was consulted.
- (bbb) The Minister breached procedural fairness and natural justice by failing to provide the Applicants, and other democratically elected student associations specifically recognized in the Ministry's policies and guidelines as the legitimate voice of students, with notice or meaningful consultation, and by denying these groups basic participatory rights, before unilaterally announcing and implementing the Directives.
- (ccc) For decades, student associations have enjoyed contractual freedom, autonomy and self-governance from Ministerial control, including the freedom to democratically determine their own membership fees pursuant to their internal by-laws and constitutions, and to enter into binding contracts with colleges and universities for the collection and remittance of democratically-determined fees. These self-governance activities have formed a core aspect of student association activities since their inception.

- (ddd) Without any legislative authority or mandate, the Minister has unilaterally deprived student associations of these freedoms and benefits and denied their ability to conduct their affairs. The Directives may jeopardize the very existence and continued viability of some student associations and the CFS.
- (eee) The longstanding practice and representations by the Minister created a legitimate expectation that student associations would be notified and meaningfully consulted by the Minister before making decisions that would affect their interests as set out above. At minimum, the legitimate expectations gave rise to a right of prior notice and a right to be meaningfully consulted. This would ensure, among other things, that the Minister can be fully informed about the consequences and implications of her decision.
- (fff) Despite Ministerial policies and representations that unequivocally recognize student associations as the legitimate representatives of students at universities and colleges in Ontario, including the Minister's own Guidelines and Policy Directives and the Operating Funds Distribution Manual, the Minister failed to notify or meaningfully consult a single recognized student association. These representations in the Guidelines and Policy Directives including the Operating Funds Distribution Manual include the unequivocal statement that "existing and future fees established by student governments, including those resulting from referenda sponsored by them" would not be subject to Ministerial directives or controls in its funding protocols for universities. In the case of colleges, the legitimate expectation of notice and meaningful consultation is further reinforced by section 7 of the *OCAAT Act*, which protects the normal activities of student governing bodies.
- (ggg) Instead of notifying or meaningfully consulting with any of the recognized governing bodies for students, the Minister instead met with the University of Ottawa Students for Free Speech Club, an unelected club that does not purport to represent students' interests, and is politically allied with the Premier, the Minister, and their party.

Interim and/or Interlocutory Injunction

- (hhh) In the event that this application cannot be determined on its merits prior to the start of the new academic year, it is appropriate for the Court to grant an interim and/or interlocutory injunction preserving the *status quo* and permitting the framework prior to the Directives to continue to be used pending the final determination of this application.
- (iii) The Applicants have satisfied the test for an interim and/or interlocutory injunction:
- (i) The Applicants have shown a serious issue to be tried;
 - (ii) Not granting an interim and/or interlocutory injunction would result in irreparable harm; and
 - (iii) The balance of convenience strongly favours granting an interim and/or interlocutory injunction and permitting universities and colleges to continue to charge, collect and remit democratically-determined fees does not require any change to the *status quo*.
- (jjj) The *Ministry of Training, Colleges and Universities Act*, RSO 1990, c M.19;
- (kkk) The *Ontario Colleges of Applied Arts and Technology Act*, 2002, SO 2002, c 8, Sch F;
- (lll) The *Financial Administration Act*, RSO 1990, c F.12;
- (mmm) The *Judicial Review Procedure Act*, R.S.O. 1990, c.J.1;
- (nnn) The *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, rr. 2.03, 14.05, 38, 39 and 68;
- (ooo) The *Tuition Fee Framework and Ancillary Fee Guidelines for Publicly-Assisted Universities 2019-20 and 2020-21*;
- (ppp) *Tuition and Ancillary Fees: Minister's Binding Policy Directive, Colleges of Applied Arts and Technology Policy Framework*;

(qqq) The Ontario Operating Funds Distribution Manual: A Manual Governing the Distribution of Ontario Government Operating Grants to Ontario Universities and University-Related Institutions (Formula Manual); and

(rrr) Such further and other grounds as counsel may advise and this Honourable Court may permit.

3. The following documentary evidence will be used at the hearing of the application:

(a) The Affidavit of Justine de Jaegher, to be sworn;

(b) The Affidavit of Fatima Babiker, to be sworn;

(c) The Affidavit of Professor Glen Jones, to be sworn;

(d) Further affidavits, including from expert witnesses, to be determined; and,

(e) Such further and other documentary evidence as counsel may advise and this Honourable Court may permit.

Date: May 24, 2019

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THE CANADIAN FEDERATION
OF STUDENTS *et al*
Applicants - and -
ONTARIO (MINISTER OF TRAINING,
COLLEGES AND UNIVERSITIES)
Respondent

Court File No. _____

279/19

ONTARIO
SUPERIOR COURT OF JUSTICE
DIVISIONAL COURT

Proceedings commenced at TORONTO

NOTICE OF APPLICATION
FOR JUDICIAL REVIEW

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