

Court File No.

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

HIGHER-EDGE FZ-LLC and BAZAAR 2000 INC. c.o.b. as Higher-Edge and
Canadian University Application Centre

Plaintiffs

- and -

UNIVERSITY OF WINDSOR, ALAN WILDEMAN, LEO GROARKE,
CLAYTON SMITH, MAJID AHMADI, and RAMASWAMI BALACHANDAR

Defendants

STATEMENT OF CLAIM

TO THE DEFENDANTS:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the
Plaintiffs. 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.

Date _____ Issued by _____
Local Registrar

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

TO: University of Windsor

AND TO: Alan Wildeman

AND TO: Leo Groarke

AND TO: Clayton Smith

AND TO: Majid Ahmadi

AND TO: Ramaswami Balachandar

CLAIM

1. The Plaintiffs claim:

- (a) a declaration that the University of Windsor and Clayton Smith have engaged in negligent misrepresentation;
- (b) a declaration that the defendants have induced breach of contract;
- (c) a declaration that the defendants have induced breach of fiduciary duties;
- (d) a declaration that the defendants have intentionally interfered with the plaintiffs' economic relations;
- (e) a declaration that the defendants have engaged in a conspiracy to injure the plaintiffs;
- (f) a declaration that the defendants have passed off the names "Canadian University Application Centre", "CUAC" and "caneducation123";
- (g) an order restraining the defendants from using the names "Canadian University Application Centre", "CUAC" and "caneducation123";
- (h) an order requiring the defendants to deliver up to Higher-Edge all goods, wares or other materials in the defendants' possession, power or control that contain or are based on or derived from "Canadian University Application Centre", "CUAC" and "caneducation123";
- (i) a declaration that the University of Windsor has breached the exclusivity terms of its contract with the plaintiffs;
- (j) an accounting of the revenues earned by the University of Windsor in respect of breach of contract;
- (k) damages for breach of contract in an amount to be determined at trial;
- (l) an accounting and disgorgement of any profits earned by the individual defendants as a result of their unlawful conduct;

- (m) the sum of \$23,100,000 in restitution from the University of Windsor;
- (n) in the alternative to (l) and (m), damages in an amount to be determined at trial;
- (o) punitive and exemplary damages in the amount of \$1,000,000;
- (p) pre-judgment and post-judgment interest in accordance with the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
- (q) the costs of this action on a substantial indemnity basis, plus all applicable taxes; and
- (r) such further and other relief as this Honourable Court may deem just.

Overview

2. The plaintiffs claim against the University of Windsor and the named senior members of the University's faculty and administration with respect to their unlawful acts related to international student recruitment, particularly in India.

3. The plaintiffs provided international student recruitment services to the University for over fifteen years under the terms of an exclusive contract. As the contract term was coming to an end, the University and some of its most senior faculty and administrators improperly solicited and conspired with the plaintiffs' key personnel to divert business from the plaintiffs, including by deceptively representing and marketing services as being synonymous with or associated with Higher-Edge's business. The defendants' conduct was aimed at appropriating the plaintiffs' goodwill, reputation, employees, processes, trademarks, resources and marketing strategies such that the University could reap the benefits of the plaintiffs' investment in the foregoing for little or no cost. These actions were not only in breach of the contract between the plaintiffs and the University, but were also contrary to the express representations made, on which the plaintiffs relied to their detriment, that the University would not solicit the plaintiffs' personnel in the period leading up to the expiry of the contract and in the year following the expiry date.

4. The defendants acted in concert and attempted to keep their unlawful conduct secret from the plaintiffs.

5. Despite bringing these facts to the attention of the University's president, Alan Wildeman, the University has persisted in its unlawful conduct.
6. The unlawful conduct described in more detail below includes breach of contract, misrepresentation, passing off, inducement of breach of contract, inducement of breach of fiduciary duties, intentional interference with economic relations and conspiracy to injure.
7. The University has been unjustly enriched by its unlawful conduct. The University has benefited by recruiting international students and obtaining lucrative international student fees by way of its unconscionable dealings. As a result, the plaintiffs' ability to conduct their international student recruitment business has been severely compromised, as has its ability to rely on the loyalty and integrity of its own employees. It would be unjust for the University to retain any benefits in these circumstances.
8. To the extent the individual defendants have earned any profit arising from the unlawful conduct, such profit would also constitute an unjust enrichment and should be disgorged.
9. The defendants' unlawful conduct has caused the plaintiffs significant damages, impeded the plaintiffs' ability to conduct its business, damaged its goodwill and relationships, caused confusion in the marketplace and eroded the plaintiffs' reputation in the industry. As India has been the cornerstone of the plaintiffs' business, the defendants' appropriation of that business has significantly undermined the plaintiffs' ability to conduct business in other jurisdictions.
10. The defendants' conduct as set out below has been high-handed, unwarranted, improper, in bad faith, malicious, wrongful and calculated to harm the plaintiffs. The plaintiffs are accordingly entitled to a substantial award of punitive damages.

The plaintiffs

11. Bazaar 2000 Inc. is a company incorporated in Ontario, with headquarters in Toronto.
12. Higher-Edge FZ-LLC is a company incorporated in the United Arab Emirates.
13. Bazaar 2000 Inc. and Higher-Edge FZ-LLC (collectively, "Higher-Edge" or the "Company") provide international student recruitment services to Canadian universities and

colleges. Higher-Edge also carries on business as the Canadian University Application Centre (“CUAC”).

14. Higher-Edge has provided international student recruitment services to the University of Windsor for over fifteen years, since February 1998.

The defendants

15. University of Windsor (the “University” or “Windsor”) is a Canadian university located in Windsor, Ontario and incorporated under the *University of Windsor Act, 1962-63*.

16. Alan Wildeman is President and Vice-Chancellor of the University.

17. Leo Groarke is the Provost and Vice-President, Academic of the University.

18. Clayton Smith is Vice-Provost, Students (Dean of Students) and International of the University. Dr. Smith oversees the University’s internationalization efforts.

19. Majid Ahmadi is a University Professor in the Electrical Engineering Department of the University and Director of the Master of Engineering Program. Dr. Ahmadi is the most senior University official charged with recruiting international students to the University’s engineering programs, and in particular, its Master of Engineering program.

20. Ramaswami Balachandar is the Associate Vice Provost and Executive Director of the Center for Executive and Professional Education (CEPE) and Executive Director of the Center for English Language Development (CELD). The CEPE offers degree programs and professional development workshops. The CELD offers English language training, including the English Language Improvement Program (ELIP). Dr. Balachandar oversees the recruitment of international students to the CEPE and CELD programs at Windsor.

The University’s international student recruitment strategy

21. The University’s strategic plan identifies international student recruitment as a priority.

22. This strategy is supported by the business case for maintaining and increasing international student enrolment. Tuition fees for international students are substantially higher

than the tuition fees charged to Canadian students. International tuition fees can be as much as three times higher for an undergraduate program to almost six times higher for certain graduate programs.

23. International student recruitment is critical to the overall financial position of the University. In 2012/13, the University reported that it received \$25.4 million in international student tuition from undergraduate and graduate students. This represented 24.6% of all tuition fees paid to the University.

24. During the term of its contract with the University, Higher-Edge recruited over 90% of the University's international students who enroll in undergraduate and course-based graduate degree programs.

25. The University enrolled 2,834 full and part-time international students in the fall 2013 semester. International students represented approximately 17% of the University's student population in 2013.

26. One of the largest groupings of international students is from South Asia, which represents approximately 21% of the University's international student population.

Higher-Edge's work in international student recruitment

27. Higher-Edge has been in the international student recruitment business for over 16 years. It has provided international student recruitment services for several major Canadian universities including the University of Toronto, McGill University, the University of Victoria, the University of Guelph, the University of Winnipeg, Bishop's University, Algoma University, Saint Mary's University and St. Thomas University.

28. Higher-Edge has prided itself on and has been recognized for conducting international student recruiting in a manner which upholds the highest ethical standards. A joint report of the Association of Universities and Colleges of Canada and Citizenship and Immigration Canada noted Higher-Edge's work including for the University of Windsor as the model for responsible recruiting in India.

29. There are two key facets of Higher-Edge's business model that are integral to the maintenance of its reputation as a responsible international student recruiting agency: its insistence on exclusivity; and the integrity of its employees.

Exclusivity model

30. Higher-Edge insists on conducting its business using an exclusivity model. It requires that its clients commit to using Higher-Edge as its exclusive agent, and forwarding every direct inquiry and application from students to Higher-Edge. This allows Higher-Edge to carefully vet for fabrication, deceit, fraud, self-dealing and even human trafficking abuses that have otherwise been reported about and are associated with the international student recruitment industry.

Integrity of its employees

31. Higher-Edge provides its services through a number of local offices around the world, run by Higher-Edge employees and contractors. Each office has a manager, who is the face of and is synonymous with Higher-Edge's business in the region in which the office operates. Higher-Edge's managers are entrusted with a great deal of discretion and power so as to affect Higher-Edge's business interests.

32. The reputation and success of Higher-Edge's business is tied directly to the loyalty and integrity of its employees and contractors in the local offices. Because of this, Higher-Edge's employees have strict non-competition terms in their own contracts with the Company. These non-competition terms include that:

- (a) the employee may not engage in any other employment, business or calling while employed with the Company and shall at all times faithfully service the Company and promote the Company's interests;
- (b) the employee may not conduct other business on her own behalf or on behalf of any other party while employed with the Company;
- (c) the employee may not set up any competing business in the country in which she is employed by Higher-Edge or in any other country in which Higher-Edge operates for a period of two years following the conclusion of her employment; and

- (d) the employee may not assist any other party in any way to set up any competing business in the country in which she is employed by Higher-Edge or in any other country in which Higher-Edge operates for a period of two years following the conclusion of her employment.

The business relationship between Higher-Edge and the University

33. Higher-Edge provided international student recruitment services to the University for over fifteen years, from February 1998 to September 2013. Over this period, Higher-Edge recruited approximately 6,300 degree students to the University, representing an estimated \$400 million in revenues for the University.

34. Over the course of their business relationship, the University had access to Higher-Edge's personnel, processes, strategies and resources.

The exclusive contract

35. Higher-Edge provided services to the University under a series of contracts and renewal agreements with the University. The most recent contract was entered into on May 31, 2008, for a term ending September 30, 2013 (the "Contract").

36. The Contract provided that Higher-Edge would be paid a recruitment fee for every international student admitted to Windsor by application processed by Higher-Edge or attending Windsor as a result of Higher-Edge's efforts.

37. A key term of the Contract was that Higher-Edge would be the University's exclusive recruiter of international students, for the reasons set out in paragraph 30, above.

38. The Contract provided:

Higher Edge is engaged exclusively by Windsor as an independent contractor to recruit international students and will be responsible for marketing and recruitment including all *infra* structural requirements necessary to attract and wherever possible process applications from potential candidates for Windsor in any country's markets.

[emphasis added]

39. The Contract also provided that all enquiries or applications pertaining to undergraduate degree programs (excluding Education and Law) and all full-cost recovery course-based graduate programs originating from outside of Canada, the USA or the Caribbean shall be forwarded as soon as practicable to Higher-Edge for follow-up.

40. Under the Contract, the University is required to pay a termination fee for each student received by Windsor as a result of the work of Higher-Edge in the year preceding September 30, 2013.

The University's decision not to renew the Contract

41. In or around March 2012, the University advised Higher-Edge over email that it had decided to proceed with a new strategic direction for international student recruitment, and that after the expiry of its agreement with Higher-Edge, it would use multiple recruiting agents around the world.

42. The University expected that Higher-Edge would agree to be one of its many agents under the new multiple-agent model. The University expected that it would continue to benefit from Higher-Edge's expertise, goodwill, reputation and personnel.

43. The University invited Higher-Edge to be one of several agents for Windsor, but Higher-Edge declined to work on this basis. Higher-Edge would not have been able to vet for abuse of Windsor's admission procedures if other agents were also recruiting students in the same jurisdiction. Any abuse could reflect poorly on Higher-Edge and damage the reputation that it had built over the years.

Representation that Windsor would not solicit Higher-Edge's personnel

44. The University represented to Higher-Edge that it would not solicit any Higher-Edge personnel in the year leading up to the expiry of the contract and in the year after the conclusion of the contract without Higher-Edge's advance written permission.

45. On June 28 2012, one of Higher-Edge's principals, Dani Zaretsky met with the University's Vice-Provost International, Clayton Smith, and the Associate Vice-Provost

International, Diana Kao at the Pearson International Airport Holiday Inn to discuss the final year of performance under the Contract.

46. During the meeting, the University representatives canvassed again whether Higher-Edge would be prepared to work with Windsor under its proposed multiple-agent recruiting model. Mr. Zaretsky reiterated that Higher-Edge would not. In response, Dr. Smith asked whether the University might solicit Higher-Edge's staff to "bring them into the Windsor fold".

47. Mr. Zaretsky objected to this during the meeting and in subsequent email correspondence with Dr. Smith, and advised Dr. Smith that the University should get legal advice if it intended to solicit Higher-Edge's personnel.

48. In an exchange of email correspondence that followed, another one of Higher-Edge's principals, Mel Broitman, asked Dr. Smith whether "you are going to try to poach our staff after September 30, 2013". Dr. Smith represented and confirmed that the University would not contact or solicit any Higher-Edge personnel (including current employees or subcontracted agents/firms) in the year leading up to the expiry of the contract and in the year after the conclusion of the contract, without Higher-Edge's advance written permission. Dr. Smith specifically represented that:

- (a) Windsor "will not contact ANY of Higher-Edge's current employees or subcontracted agents/firms prior to September 30, 2013 without your written permission";
- (b) Windsor "will not be initiating any contact with your folks period"; and
- (c) "If they contact us, I will ask that we not discuss any matter of this type without your written permission...in the year leading up to the end of our contract or the year after the conclusion of our contract. No poaching."

49. Higher-Edge relied on Dr. Smith's representations and assurances. It proceeded on the basis that the University would not solicit its personnel and would not unfairly interfere in its business operations.

50. Higher-Edge continued to provide services to the University in good faith, granting the University's representatives full access to the Company's key personnel actively involved with recruitment for the University and other institutions.

51. Higher-Edge continued to place full trust and faith in the loyalty of its personnel and in their exercise of power and discretion.

52. Higher-Edge also made a major investment in a 12-day delegation for its other clients between October 17-29, 2013, to be run by its personnel in India following the expiry of the Contract with the University.

The unlawful conduct

Solicitation of personnel in India

53. Unbeknownst to Higher-Edge, during the term of the Contract and despite the representations made to the contrary, the defendants improperly solicited and conspired with Higher-Edge's personnel to divert business away from Higher-Edge and to set up a competing business; induced them to breach their employment contracts; knowingly participated and provided substantial assistance in their breach of fiduciary duties; and improperly interfered in Higher-Edge's economic relations. Full particulars of the defendants' misconduct are within their knowledge.

54. Higher-Edge has learned that the University directed Higher-Edge's own personnel to create their own student recruitment company to recruit for the University; approved the newly incorporated company as an agent of the University for student recruitment in India; and engaged with the incorporated company to recruit students for the University, all prior to the expiry of the Contract.

- (a) In or around March 2013, Dr. Majid Ahmadi improperly solicited Amrita Mangat (Higher-Edge's Punjab Manager) and Shraddha Aswal (Higher-Edge's Ahmedabad Manager) on behalf of the University.
- (b) Dr. Ahmadi also conspired with Ms. Mangat and Ms. Aswal to incorporate an Ontario corporation called Education Canada Services through which Ms.

Mangat, Ms. Aswal and their family members would conduct international student recruiting directly for the University.

55. Higher-Edge has also learned that the defendants also conspired with another of Higher-Edge's India Managers, Asha Shankar, to conduct international student recruiting directly for the University.

56. The defendants acted in concert and attempted to keep their unlawful conduct secret, intentionally deceiving Higher-Edge. Dr. Ahmadi confirmed the following in an email to Ms. Mangat dated March 23, 2013:

Dear Amrita

...I met we [sic] Vice president [Leo Groarke] yesterday. Clayton [Smith] and Ram [Balachandar] both were present. VP instructed Clayton that if you apply as an agent you will have the job. Also he mentioned to him if this leaks out he will get tough on whoever leaks it. We have all sworn [sic] to secrecy of the case. After the meeting he assured me that he never contacted Dani and he will never let HE [Higher-Edge] know [sic] of this arrangement.

Best regards.

Majid Ahmadi

57. When Higher-Edge discovered this scheme, it advised the University's President, Alan Wildeman and requested that the University cease and desist soliciting and working with Higher-Edge's employees and that the University honour its representations that it would not solicit Higher-Edge's personnel following the expiry of the Contract.

58. However, the University persisted in its unlawful conduct. Higher-Edge is aware that the University has continued to recruit using Education Canada Services and Higher-Edge's personnel, offices, email addresses and goodwill.

Passing off of Higher-Edge's goodwill in India

59. Higher-Edge has used the names "Canadian University Application Centre" and "CUAC" and the domain name "canada123" in association with its international recruiting services. Higher-Edge has developed extensive reputation and goodwill in these names by extending

significant resources to advertise and promote its business. By virtue of Higher-Edge's marketing and use of the names, they have become well known to clients, visa processing offices, other institutions, and current and potential students, as emanating from Higher-Edge. Accordingly, the names represent great value and goodwill to Higher-Edge.

60. The University, including through its agents, has been using the names "Canadian University Application Centre" and "CUAC" and "caneducation123" in association with its own international recruiting services. The University has also been using Higher-Edge's business space and resources in its recruiting efforts in India.

61. Through its use of "Canadian University Application Centre", "CUAC" and "caneducation123", and through its appropriation of Higher-Edge's business space and personnel, the University has misrepresented the source of its recruiting services. The use of the names "Canadian University Application Centre", "CUAC" and "caneducation123", the use of Higher-Edge's business premises and the use of Higher-Edge's personnel conveys to the marketplace that the services being provided emanate from Higher-Edge. These actions have caused and/or will cause confusion in the marketplace between Higher-Edge's business and the business and services offered by other agents in India used by the University.

62. The names "Canadian University Application Centre", "CUAC" and "caneducation123" have a reputation for quality and reliability. An association by the public of the names which are confusingly similar is likely to have the effect of depreciating the goodwill in Higher-Edge's names.

63. The defendants' conduct, as described above, is aimed at appropriating Higher-Edge's business, including its goodwill, reputation, employees, processes, trademarks, resources and marketing strategies such that the University of Windsor may reap the benefits of Higher-Edge's investment in the foregoing for little or no cost.

Breach of Contract

64. The University breached the exclusivity term of the Contract by engaging in its own recruiting activities prior to the expiration of the Contract, without the involvement of Higher-Edge and/or with the assistance of Higher-Edge's competitors and/or with the assistance of

Higher-Edge's own personnel acting in their own business interests, including as described above, but failed to direct all leads and applications to Higher-Edge and to pay Higher-Edge the corresponding fees as required under the Contract.

Negligent misrepresentation

65. Dr. Smith, on behalf of the University which is vicariously liable, misrepresented that the defendants would not solicit Higher-Edge's personnel in the year leading up to and in the year following the expiry of the contract.

66. Through the course of dealings between the University and Higher-Edge, including as a result of the fact that Higher-Edge specifically sought information or advice from Dr. Smith regarding the defendants' intention to poach, the defendants owed Higher-Edge a duty of care to ensure that representations made were complete, truthful and accurate.

67. Dr. Smith was aware that the representations were false, inaccurate or misleading when he made them and/or failed to meet the required standard of care in making them. This is evidenced by the defendants' subsequent conduct in soliciting Higher-Edge personnel.

68. Higher-Edge reasonably relied on the representation, continuing to carry on its business with individuals who were clearly compromised, and suffered and is continuing to suffer damages as a result.

Inducing breach of contract

69. The defendants induced Higher-Edge's personnel to breach their employment/agency contracts.

70. The defendants were aware of the existence and the specific terms of Higher-Edge's personnel contracts with Higher-Edge, including the strict non-competition terms. The defendants intended to and did procure breach of these terms when they induced Higher-Edge personnel to provide services to the University. Alternatively, the defendants were reckless, willfully blind or indifferent to the fact that Higher-Edge personnel would almost certainly breach their contract terms when they hired Higher-Edge personnel to provide services to the University.

71. As Higher-Edge's entire business model is predicated on the personnel in whom the Company has invested, the University's actions caused and continue to cause Higher-Edge's business significant damage.

Inducing breach of fiduciary duties

72. The Higher-Edge managers have been the face of Higher-Edge – and the embodiment of Higher-Edge's reputation and goodwill – in their respective jurisdictions. The defendants were aware that Higher-Edge's personnel was entrusted with a great deal of discretion and power so as to affect Higher-Edge's business interests.

73. The defendants intended to and did procure breaches of fiduciary duty between Higher-Edge's personnel and Higher-Edge by offering incentives to Higher-Edge personnel, including the promise of employment or business contracts. Alternatively, the defendants were reckless, willfully blind or indifferent to the fact that Higher-Edge personnel would almost certainly breach their fiduciary duties when they engaged Higher-Edge personnel to provide services to the University.

74. Higher-Edge has suffered damages as a result, including loss of profit, loss of revenue, loss of market share, loss of market position, loss of goodwill and loss of reputation.

Conspiracy to injure

75. The defendants participated in a conspiracy to intentionally harm Higher-Edge. Alternatively, the defendants participated in a conspiracy to intentionally engage in unlawful conduct to cause Higher-Edge personnel to breach their contractual and fiduciary obligations to Higher-Edge, when they knew or ought to have known that such conduct would likely cause harm to Higher-Edge.

76. The defendants have, in combination or agreement, formed a plan to intentionally and unlawfully solicit and induce Higher-Edge personnel to breach their contractual and other obligations to Higher-Edge.

77. The University successfully engaged Higher-Edge personnel to conduct international student recruiting for the University, to the benefit of the University and to the detriment of

Higher-Edge. The defendants used unlawful means to do so, as described above, including by misrepresentation, passing off, inducing breach of contract, inducing breach of fiduciary duty and intentional interference with economic relations.

78. Each of the defendants actively participated in and/or supported and/or facilitated the planning and execution of the conspiracy.

79. The defendants knew or ought to have known that the conspiracy would likely cause harm to Higher-Edge.

80. As a result of this unlawful conspiracy, Higher-Edge has suffered and is continuing to suffer significant damages.

Intentional interference with economic relations

81. The defendants have wrongfully interfered with Higher-Edge's business operations.

82. Higher-Edge's business model depends on Higher-Edge's exclusivity model and on the loyalty and integrity of Higher-Edge's personnel.

83. The University and the individual defendants were aware of this business model, and interfered with Higher-Edge's business model by soliciting Higher-Edge's personnel and passing off Higher-Edge's goodwill. The University and the individual defendants used unlawful means to do so, as described in this statement of claim.

84. This interference was intended to harm Higher-Edge and benefit the University by depriving Higher-Edge of its exclusivity and its employees.

85. As a result, Higher-Edge has suffered and is continuing to suffer damages.

Unjust enrichment

86. As a direct, proximate and foreseeable result of the University's acts and wrongful conduct, Higher-Edge was economically harmed. The University profited and benefited economically by way of unconscionable dealings as described in this statement of claim.

87. The University accepted and retained these profits with knowledge and awareness that, as a result of their wrongdoing, Higher-Edge was harmed. It would be unreasonable/unjust for the University to retain the profits received.

88. Higher-Edge is entitled to restitution for unjust enrichment. The University is not entitled to retain any benefits secured through the commission of a legal wrong, including the tortious conduct and misrepresentations described above.

Vicarious liability

89. The individual defendants are personally liable for the torts as pleaded.

90. The University is vicariously liable for the acts and/or omissions of its agents and/or employees, including without limitation, the individuals named as defendants in this action.

Damages to Higher-Edge

Damages for tortious conduct

91. In the alternative to restitution for unjust enrichment for the torts committed by the defendants, Higher-Edge claims damages for the defendants' tortious conduct, in an amount to be determined at trial.

92. The defendants' improper dealings have caused and are continuing to cause Higher-Edge significant damages, including the virtual destruction of its business and reputation in the India student recruitment market. Due to the strategic importance of India to Higher-Edge's business model, the actions taken by the University in India also threaten our client's entire enterprise.

Damages for breach of contract

93. The acts and omissions described above that took place before the expiration of the Contract constitute breaches of the Contract's exclusivity clause.

94. Higher-Edge is entitled to the commissions for the number of students recruited during the term of the contract through recruitment other than through Higher-Edge, plus the incremental termination fees for those students in accordance with the termination provisions of

the contract. Higher-Edge pleads reimbursement, in an amount to be determined at trial, to make it whole for any amounts due and owing to it under the Contract.

95. The parties have a “tracking system” outlined in the agreements for documenting students recruited to Windsor by Higher-Edge. Higher-Edge has no confidence that any list provided by the University purporting to list the students recruited in breach of the exclusivity provisions in the agreement were indeed passed on to Higher-Edge.

96. Higher-Edge proposes that this action be tried in Toronto.

(Date of issue)

Torys LLP

79 Wellington St. W., Suite 3000
Box 270, TD Centre
Toronto, ON M5K 1N2
Fax: 416.865.7380

Lisa Talbot (LSUC #: 44672I)
Tel: 416.865.8222

Laura Redekop (LSUC #: 62349U)
Tel: 416.865.7679

Lawyers for the Plaintiffs

HIGHER-EDGE FZ-LLC et al. v. UNIVERSITY OF WINDSOR et al.
Plaintiffs Defendants

Court File No.

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at TORONTO

STATEMENT OF CLAIM

Torys LLP

79 Wellington St. W., Suite 3000
Box 270, TD Centre
Toronto, ON M5K 1N2
Fax: 416.865.7380

Lisa Talbot (LSUC #: 44672I)
Tel: 416.865.8222

Laura Redekop (LSUC #: 62349U)
Tel: 416.865.7679

Lawyers for the Plaintiffs