

COURT FILE NUMBER 1803 06090

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE EDMONTON

PLAINTIFFS JONAH LOUISE CABELA FALGUI
and EDELINE ROYO AGONCILLO

DEFENDANTS SOLOMON COLLEGE LTD.,
SOLOMON COLLEGE
INTERNATIONAL LTD., APEX
PROFESSIONAL GROUP LTD.,
AMARJOT SINGH, PING PING LEE,
BUN WAH LAU, and SHAWN
GABRIEL

DOCUMENT **APPLICATION BY THE
PLAINTIFFS**

ADDRESS FOR SERVICE AND CONTACT
INFORMATION OF PARTY FILING THIS
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**NOTICE TO RESPONDENTS: SOLOMON COLLEGE LTD., SOLOMON COLLEGE
INTERNATIONAL LTD., APEX PROFESSIONAL
GROUP LTD., AMARJOT SINGH, PING PING LEE,
BUN WAH LAU, and SHAWN GABRIEL**

This application is made against you. You are a respondent. You have the right to state your side of this matter before the master/judge.

To do so, you must be in Court when the application is heard as shown below:

Date: **September 11, 2018**
Time: ~~10:00 AM~~ **8:30 am**
Where: **Edmonton Law Courts**
Before Whom: **The Honourable Justice J.T. Henderson**

Go to the end of this document to see what else you can do and when you must do it.

Remedy claimed or sought:

1. An Order certifying this action as a class proceeding.
2. An Order appointing the Plaintiff Jonah Louise Cabela Falgui (“**Falgui**”) as the Class Representative Plaintiff in the class proceeding.
3. An Order appointing the Plaintiff Edeline Royo Agoncillo (“**Agoncillo**”) as the Sub-Class Representative Plaintiff in the class proceeding.
4. An Order defining the class in the class proceeding as:
 - (a) all foreign nationals who enrolled in Solomon College’s Hotel & Hospitality Management diploma program for the purposes of obtaining the Post Graduate Work Permit upon graduation and received knowledge of their ineligibility for the permit within 2 years of the filing of this action.
5. An Order defining the sub-class in the class proceeding as:
 - (a) all foreign nationals who retained or were advised by Apex and Singh to enroll in Solomon College’s Hotel & Hospitality Management diploma program for the purposes of obtaining the Post Graduate Work Permit upon graduation and received knowledge of their ineligibility for the permit within 2 years of the filing of this action.
6. An Order certifying the following issues as common issues:
 - A. General/Systemic Factual Issues**
 - i. Whether Solomon College is an accredited post-secondary institution under the federal government’s Post-Graduate Work Permit Program;
 - ii. Whether Solomon College has ever been an accredited post-secondary institution under the federal government’s Post-Graduate Work Permit Program;

- iii. Whether graduates of Solomon College's Hotel & Hospitality Management Program are eligible for the Post-Graduate Work Permit Program;
- iv. Whether graduates of Solomon College's Hotel & Hospitality Management Program have ever been eligible for the Post-Graduate Work Permit Program;
- v. What representations did Solomon College make to students in the Hotel & Hospitality Management Program regarding their eligibility for the Post-Graduate Work Permit Program;
- vi. Whether the representations made by Solomon College regarding the eligibility of graduates of the Hotel & Hospitality Management Program for the Post-Graduate Work Permit Program were accurate and truthful;
- vii. What relationship existed between Solomon College and Apex Professional Group Ltd. ("**Apex**") and Amarjot Singh ("**Singh**") regarding students Apex and Singh referred to Solomon College to enrol in the Hotel & Hospitality Management Program;
- viii. Whether Solomon College compensated or provided Apex and Singh a fee for any individuals that they referred to Solomon College and who enrolled in its Hotel & Hospitality Management Program;
- ix. What knowledge did Solomon College have of whether its graduates of the Hotel & Hospitality Management Program were eligible for the Post-Graduate Work Permit Program;
- x. What knowledge did Apex and Singh have of whether graduates of Solomon College's Hotel & Hospitality Management Program were eligible for the Post-Graduate Work Permit Program;
- xi. When did Solomon College, Apex, and Singh discover that graduates of the Hotel & Hospitality Management Program were ineligible for the Post-Graduate Work Permit Program;
- xii. What fees did Solomon College charge to students enrolled in its Hotel & Hospitality Management Program;
- xiii. What were the oral and written terms of the retainer agreements Apex and Singh entered into with the Sub-Class Members;
- xiv. What fees did Apex and Singh charge the Sub-Class Members for directing and facilitating their enrolment in Solomon College;

B. Fraudulent Misrepresentation

- i. Whether Solomon College, Apex, Singh, or all of them, knowingly, recklessly, or in both capacities made materially false statements regarding the eligibility of graduates of the Hotel & Hospitality Management Program for the PGWP to the Class Members;
- ii. Whether Solomon College, Apex, Singh, or all of them, knew or were reckless to the fact that graduates of the Hotel & Hospitality Management Program of Solomon College were not eligible for the Post-Graduate Work Permit Program;
- iii. Whether Solomon College, Apex, Singh, or all of them, are liable for the fraudulent misrepresentations they made to the Class Members;

C. Negligent Misrepresentation

- i. Whether Solomon College, Apex, Singh, or all of them, owed a duty of care to the Class Members;
- ii. Whether Solomon College, Apex, Singh, or all of them, held Solomon College out to the Class Members as a post-secondary institution whose graduates were eligible for the Post-Graduate Work Permit Program;
- iii. Whether Solomon College, Apex, Singh, or all of them, made false representations to the Class Members regarding their eligibility for the Post-Graduate Work Permit Program after graduating from the Hotel & Hospitality Management Program;
- iv. Whether Solomon College, Apex, Singh, or all of them, failed to exercise reasonable care to ensure that these representations were accurate;
- v. Whether the representations made regarding the eligibility of Solomon College graduates for the Post-Graduate Work Permit Program were intended by Solomon College, Apex, or Singh to induce the Class Members to enrol in Solomon College;
- vi. Whether Solomon College, Apex, Singh, or all of them, are liable for the negligent misrepresentations they made to the Class Members;

D. Unjust Enrichment and Waiver of Tort

- i. Whether Solomon College, Apex, Singh, or all of them, were unjustly enriched at the expense of the Class Members, by receiving funds from the Class Members on the false representation that by graduating from Solomon College's Hotel & Hospitality Management Program they would be eligible for the Post-Graduate Work Permit;
- ii. What restitution, if any, is payable by Solomon College, Apex, Singh, or all of them, to the Class Members based on the doctrine of waiver of tort;

- iii. Whether Solomon College, Apex, Singh, or all of them, are liable to account to the Class Members for the fees, if any, that they obtained from the Class Members based on the doctrine of waiver;

E. Fiduciary Duty

- i. Whether Solomon College, Apex, Singh, or all of them, owed a fiduciary duty to the Class Members;
- ii. Whether this duty included Solomon College, Apex, Singh, or all of them, proactively determining and informing the Class Members whether they would be eligible for the Post-Graduate Work Permit Program after graduating from the Hotel & Hospitality Management Program;
- iii. Whether this duty included Solomon College, Apex, Singh, or all of them, investigating and accurately confirming to the Class Members whether they were eligible for the Post-Graduate Work Permit Program after graduating from the Hotel & Hospitality Management Program after the Class Members requested confirmation;
- iv. Whether Solomon College, Apex, Singh, or all of them, breached the fiduciary duty owed to the Class Members by informing the Class Members that they were eligible for the Post-Graduate Work Permit Program after they graduated from Solomon College;
- v. Whether Solomon College, Apex, Singh, or all of them, breached the fiduciary duty owed to the Class Members by failing to provide direct answers to the Class Members regarding their eligibility for the Post-Graduate Work Permit Program after graduating from Solomon College;
- vi. Whether Solomon College, Apex, Singh, or all of them, breached the fiduciary duty owed to the Class Members by advising that the Class Members were eligible for the Post-Graduate Work Permit Program upon graduation from Solomon College if they presented themselves in a particular manner, and that the permit was granted on an individual basis and that Solomon College graduates had been issued it in the past;
- vii. Whether Solomon College, Apex, Singh, or all of them, breached the fiduciary duty owed to the Class Members by failing to investigate the eligibility of Solomon College graduates for the Post-Graduate Work Permit Program immediately and in a thorough manner after the Class Members asked if they were eligible to receive the permit after graduation;
- viii. Whether Solomon College, Apex, Singh, or all of them, breached the fiduciary duty owed to the Class Members by advising the Class Members that they were ineligible

for the Post-Graduate Work Permit Program years or months into their program and after fees were paid;

- ix. Whether Solomon College, Apex, Singh, or all of them, breached the fiduciary duty owed to the Class Members in some other respect;

F. Breach of Contract

- i. Whether the retainer agreement entered into by Apex and Singh with the Sub-Class Members required Apex and Singh to be knowledgeable and up-to-date on the law regarding the Post-Graduate Work Permit Program;
- ii. Whether the retainer agreement entered into by the Apex and Singh with the Sub-Class Members required Apex and Singh to investigate and confirm whether Solomon College was eligible for the Post-Graduate Work Permit Program before advising the Sub-Class Members to enrol in Solomon College in order to be eligible for the permit after graduation;
- iii. Whether Apex and Singh breached the terms of the retainer agreement by making false representations regarding Solomon College's eligibility for the Post-Graduate Work Permit Program, and advising and assisting the Sub-Class Members to enrol in Solomon College in order to be eligible for the permit after graduation;
- iv. Whether Apex and Singh breached the terms of the retainer agreements with the Sub-Class Members in some other respect;

G. Conspiracy

- i. Whether Solomon College, Apex, Singh, or all of them, conspired with one another to convince the Sub-Class Members to enrol in Solomon College;
- ii. Whether Solomon College, Apex, Singh, or all of them, knowingly and willingly agreed to defraud and deceive the Sub-Class Members by convincing them to enrol in Solomon College on the pretence that they would be eligible for the Post-Graduate Work Permit Program after graduation, and then split the fees paid by the Sub-Class Members;
- iii. Whether Solomon College, Apex, Singh, or all of them, intended to injure the Sub-Class Members by convincing them to enrol in Solomon College on the promise that upon graduation they would be eligible for the Post-Graduate Work Permit, even though Solomon College, Apex, Singh, or all of them, knew that this would not occur as graduates of Solomon College are not eligible for the Post-Graduate Work Permit Program;
- iv. Whether Solomon College, Apex, Singh, or all of them, acted unlawfully in circumstances where they knew, or should have known, that their actions would

likely cause injury to the Sub-Class Members, including by inducing the Sub-Class Members to enrol in Solomon College fraudulently, recklessly, negligently, and in breach of the fiduciary duty owed to the Sub-Class Members and the terms of any agreement;

- v. Whether the Class Members suffered loss as a result of Solomon College, Apex, Singh, or all of them, conspiring to against them;

H. Breach of Duty of Good Faith in Contractual Performance

- i. Whether Solomon College, Apex, Singh, or all of them, owed the Class Members a duty of good faith in contractual performance;
- ii. Whether Solomon College breached its duty of good faith in contractual performance by fraudulently, recklessly, or negligently misleading the Class Members regarding their eligibility for the Post-Graduate Work Permit Program;
- iii. Whether Apex and Singh breached their duty of good faith in contractual performance by fraudulently, recklessly, or negligently misleading the Sub-Class Members regarding their eligibility for the Post-Graduate Work Permit Program;

I. Directors Liability

- i. Whether the directors of Solomon College, the Defendants Lee Lee Ping (“**Ping**”) and Bun Wah Lau (“**Lau**”), exerted significant control and dominated Solomon College;
- ii. Whether the Defendant Shawn Gabriel (“**Gabriel**”) exerted significant control and dominated Apex;
- iii. Whether the Ping, Lau, or Gabriel personally benefited from the tortious acts committed by Solomon College and Apex against the Class Members, including the torts of fraudulent misrepresentation and conspiracy;
- iv. Whether the circumstances exist to pierce the corporate veil of Solomon College and Apex, holding Ping, Lau, and Gabriel personally liable for directing Solomon College and Apex to commit tortious acts against the Class Members, including committing the torts of fraudulent misrepresentation and conspiracy;

J. Remedy & Damages

- i. Whether the Class Members are entitled to remedies if any of the common issues are proven;
- ii. Whether the Defendants are liable on a class-wide basis if any of the common issues are proven;

- iii. What is the appropriate method of procedure for distributing the damage award to the Class Members;
 - iv. Are the Class Members entitled to an award of aggravated or punitive damages based upon the Defendants' conduct, including on a class-wide basis, and, if so, in what amount;
 - v. If the Class Members are entitled to an award of aggravated or punitive damages based upon the Defendants' conduct, including on a class-wide basis, what is the appropriate method of procedure for distributing any aggravated or punitive damages to the Class Members;
7. An Order approving the form and method of notice to be given to the Class Members and ordering that the Defendants pay the cost of any notice;
 8. An Order directing the Defendants to provide the Plaintiffs with a list of all Class Members and all of their contact information in the possession of or available to the Defendants, including residential addresses in Canada and around the world, email addresses, Facebook names, Skype usernames, or any other information that may be used to contact Class Members by any medium;
 9. Such further and other relief deemed appropriate by this Court; and
 10. Costs, including costs on a solicitor-client basis.

Grounds for making this application:

11. The circumstances and nature of this action meet the requirements set out in the *Class Proceeding Act*, SA 2003, c C-16.5, allowing for this action to be certified as a class proceeding.
12. Certifying this action as a class action will:
 - a. promote judicial economy;
 - b. where possible, avoid irreconcilable judgments;
 - c. ensure the ends of justice are served;
 - d. enhancing access to justice; and
 - e. promote behaviour modification away from tortious or otherwise unlawful conduct.
13. The grounds and evidence that support the certification of this action as a class proceeding are set out in the Amended Amended Amended Statement of Claim, Affidavit

of Jonah Louise Cabela Falgui, Affidavit of Edeline Royo Agoncillo, and other materials filed in this action.

Material or evidence to be relied on:

14. Affidavit of Jonah Louise Cabela Falgui, to be sworn.
15. Affidavit of Edeline Royo Agoncillo, to be sworn.
16. Written argument of the Applicants, to be filed.

Applicable rules:

17. None.

Applicable Acts and regulations:

18. *Class Proceeding Act*, SA 2003, c C-16.5.

Any irregularity complained of or objection relied on:

19. None.

How the application is proposed to be heard or considered:

20. Oral and written arguments before Justice J.T. Henderson, with all parties present.

WARNING

If you do not come to Court either in person or by your lawyer, the Court may give the applicant what they want in your absence. You will be bound by any order that the Court makes. If you want to take part in this application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of the form. If you intend to give evidence in response to the application, you must reply by filing an affidavit or other evidence with the Court and serving a copy of that affidavit or other evidence on the applicant a reasonable time before the application is to be heard or considered.