

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(IN BANKRUPTCY)  
COMMERCIAL LIST**

THE HONOURABLE *Mr.*  
JUSTICE PENNY

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THURSDAY, THE 8TH  
DAY OF DECEMBER, 2016



IN THE MATTER OF THE BANKRUPTCY OF  
EVEREST COLLEGES CANADA, INC.

**ORDER  
(Letter of Credit Repayment)  
(Returnable December 8, 2016)**

**THIS MOTION**, made by KSV Kofman Inc. (the "**Trustee**") in its capacity as Trustee in Bankruptcy of Everest Colleges Canada, Inc. ("**Everest**"), for an order authorizing and directing the Ministry of Advanced Education and Skills Development of Ontario (the "**Ministry**") to pay any Excess Amounts (defined below) directly to Bank of America, National Association, Canada Branch ("**Bank of America**"), as Canadian Administrative Agent and as issuer of the LCs (as defined below) under that certain Fourth Amended and Restated Credit Agreement, dated as of May 17, 2012, as amended, restated, supplemented or otherwise modified from time to time, and relieving the Ministry from any obligation to pay such amounts to the Trustee was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the motion record of the Trustee and on hearing submissions of counsel for the Trustee, and Bank of America, no one else appearing though duly served as appears from the affidavit of service, filed:

1. **THIS COURT ORDERS** that, with respect to the letters of credit issued by Bank of America listed in Schedule "I" hereto (as amended, restated, supplemented or otherwise modified from time to time, including any exhibits thereto, "**LCs**" and each an "**LC**"), the Ministry pay directly to Bank of America the following amounts (the "**Excess Amounts**"): (i) with respect to LC No. 7114SB103490/06, any amounts not required to be retained by the

Ministry pursuant to the *Private Career Colleges Act*, 2005, S.O. 2005, C.28, Schedule "L" and the regulations made thereunder (as amended from time to time); and (ii) with respect to any and all other LCs, any amounts drawn under any LC that exceed the amount assessed by the Ministry on account of Ontario student loan defaults for the specified student cohort at Everest and any other applicant parties listed on Schedule "I" to such LC (collectively, Everest and such other applicant parties are the "**Applicants**") as being above the applicable percentage default threshold under such LC. For greater certainty, the Excess Amounts shall be determined when the actual incidence of default is verified by the Ministry, and shall be paid to Bank of America promptly after such determination. The Ministry shall endeavor in good faith to complete the verification process as soon as reasonably practicable and consistent with any applicable laws, regulations, rules and guidelines.

2. **THIS COURT ORDERS** that the repayment of the Excess Amounts, as provided herein, shall constitute full and final satisfaction of any and all obligations the Ministry may have with respect to repayment of any Excess Amounts and, in particular, the Ministry shall not have any liability for, and is hereby released from, any obligation to repay any portion of the Excess Amounts directly to the Trustee, Everest Colleges Canada, Inc., the Applicants, and any of their respective affiliates, successors or assigns, or any subsequent trustee, receiver, liquidator, receiver-manager, agent of creditors, administrator or similar entity.

3. **THIS COURT ORDERS** that in connection with the repayment of the Excess Amounts, the Trustee shall not have any liability for, and is hereby released from, any obligation to receive, distribute, exercise discretion over or otherwise account for the Excess Amounts, except to the extent that the Trustee receives any portion of Excess Amounts, in which case the Trustee shall have the obligation to pay the Excess Amounts received directly to Bank of America.

A handwritten signature in blue ink is written over a horizontal line. The signature is stylized and appears to consist of a large loop followed by a series of connected strokes, ending with a small 'S' or similar character.

## **SCHEDULE "I"**

1. Irrevocable Standby Letter of Credit Number: 7114SB103490/06
2. Irrevocable Standby Letter of Credit Number: 7114SB104794/09
3. Irrevocable Standby Letter of Credit Number: 7114SB105332/10
4. Irrevocable Standby Letter of Credit Number: 7114SB105848/11
5. Irrevocable Standby Letter of Credit Number: 7114SB106644/12
6. Irrevocable Standby Letter of Credit Number: 7114SB107099/14

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Proceeding commenced at Toronto

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(Returnable December 8, 2016)**

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Lawyers for KSV Kofman Inc., Trustee of the Estate  
of Everest Colleges Canada, Inc., a bankrupt