



**Second Report of  
KSV Kofman Inc.  
As Trustee in Bankruptcy of  
Everest Colleges Canada, Inc.**

**December 1, 2016**

Contents	Page
----------	------

1.0	Introduction.....	1
1.1	Purposes of this Report.....	1
1.2	Restrictions.....	2
1.3	Currency.....	2
2.0	Background.....	2
2.1	Assets Under Administration.....	3
2.2	The Bank.....	3
3.0	The LCs.....	4
3.1	Relief Sought re LCs.....	5
4.0	Conclusion.....	6

Appendices

Appendix	Tab
Interim Statement of Receipts and Disbursements.....	A

ESTATE NO.: 31-1963343  
COURT FILE NO.: 31-1963343

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

IN THE MATTER OF THE BANKRUPTCY OF  
EVEREST COLLEGES CANADA, INC.  
OF THE CITY OF TORONTO, IN THE PROVINCE OF ONTARIO

SECOND REPORT OF KSV KOFMAN INC.  
AS TRUSTEE IN BANKRUPTCY OF  
EVEREST COLLEGES CANADA, INC.

DECEMBER 1, 2016

## 1.0 Introduction

1. On February 20, 2015, Everest Colleges Canada, Inc. ("ECC") and its wholly-owned subsidiary, Career Canada C.F.P. Limited ("Career Canada") (jointly, the "Companies"), made assignments in bankruptcy and Duff & Phelps Canada Restructuring Inc. ("D&P") was appointed as trustee in bankruptcy ("Trustee") of both bankrupt estates. The Trustee's appointment was affirmed at the First Meeting of Creditors on March 11, 2015.
2. Effective July 1, 2015, KSV Kofman Inc. ("KSV") acquired the shares of D&P. Pursuant to an Order of the Ontario Superior Court of Justice (Commercial List) made on July 10, 2015, KSV is performing D&P's mandates that were in progress on July 1, 2015, including acting as Trustee of the Companies' bankrupt estates.
3. This report ("Report") is filed by KSV in its capacity as Trustee of ECC.

## 1.1 Purposes of this Report

1. The purposes of this report ("Report") are to:
  - a) provide background information about the Companies and these bankruptcy proceedings;
  - b) summarize the proposed mechanism by which Excess Amounts (as defined below) previously drawn under ECC's irrevocable standby letters of credit ("LCs") issued in favour of the Ministry of Advanced Education and Skills Development (herein referred to collectively and interchangeably with the Minister of Finance, Province of Ontario, as applicable, as the "MAESD") are to be reimbursed by the MAESD to ECC's sole secured creditor, Bank of America, National Association, Canada Branch, as Canadian Administrative Agent and as issuer of the LCs 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) (the "Bank"); and

- c) recommend that this Honourable Court issue an order substantially similar to the proposed order attached to the Trustee's motion record (the "Order"), among other things:
  - i. authorizing and directing the MAESD to pay Excess Amounts, if any, directly to the Bank;
  - ii. authorizing and directing the MAESD to complete its verification process regarding the incidence of Ontario student loan defaults for the students at ECC as soon as reasonably practicable;
  - iii. relieving the MAESD from any liability for, and granting a release from, any obligation to repay any portion of the Excess Amounts to any party other than the Bank; and
  - iv. relieving the Trustee from any liability for, and granting a release from, any obligation to receive, distribute, pay any levy, 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 be authorized to pay the Excess Amounts received directly to the Bank.

## **1.2 Restrictions**

- 1. In preparing this Report, the Trustee has relied upon unaudited financial information prepared by the Companies' representatives, the Companies' books and records and discussions with the Companies' former employees and advisors. The Trustee has not performed an audit or other verification of such information and, accordingly, it expresses no opinion thereon.

## **1.3 Currency**

- 1. All currency references in this Report are in Canadian dollars.

## **2.0 Background**

- 1. The Companies are indirect subsidiaries of Corinthian Colleges Inc. ("CCI"), a US publicly traded company which filed for US bankruptcy proceedings on May 4, 2015. Career Canada, ECC's wholly-owned subsidiary, was an inactive entity, void of any assets.
- 2. Until February 19, 2015, ECC operated as a private career college, offering various college diploma programs. ECC operated from fourteen leased campuses across Ontario, at which approximately 2,600 students were enrolled.

3. As at the date of bankruptcy, the Companies employed approximately 700 individuals, of which approximately 600 were active and approximately 100 were on leave. The Companies' workforce was non-unionized and the Companies did not maintain any pension plans.
4. On February 19, 2015, the MAESD, which provides regulatory oversight for Ontario colleges pursuant to the *Private Career Colleges Act, 2005*, S.O. 2005, C. 28, issued a Notice of Immediate Suspension and Notice of Proposal to Revoke Registration (the "MAESD Notice") due to, *inter alia*, ECC's financial position. The effect of the MAESD Notice was the immediate suspension of ECC's operations.
5. On February 20, 2015, the day following the issuance of the MAESD Notice, the Companies filed assignments in bankruptcy.
6. Further information concerning the Companies' background, including information on its corporate structure and historical financial results, is available on the Trustee's website at [www.ksvadvisory.com](http://www.ksvadvisory.com).

## **2.1 Assets Under Administration**

1. Attached as Appendix "A" is the Trustee's interim statement of receipts and disbursements for the period ended November 29, 2016. The statement reflects that, as at November 29, 2016, there was approximately \$49,000 in the estate bank account.
2. Other than cash, the only other assets of ECC are accounts receivable with a book value of approximately \$3.4 million according to ECC's books and records as at the date of bankruptcy. The accounts receivable balance is uncollectible as it is substantially all comprised of tuition owing by more than 4,000 of ECC's former students who were not able to complete their programs.

## **2.2 The Bank**

1. All of ECC's assets are encumbered by the Bank. As of the date of this Report, ECC's secured indebtedness to the Bank under the LCs totals approximately \$4.8 million (plus interest and costs).
2. The Trustee's legal counsel has provided an opinion on the validity and enforceability of the Bank's security. The opinion provides, subject to the standard assumptions and qualifications contained therein, that the Bank holds valid and perfected security interests in ECC's business and assets.
3. Since the commencement of the proceedings, the Trustee has distributed \$95,000 to the Bank, which amount is net of a \$5,000 levy paid to the Superintendent of Bankruptcy.
4. The Bank will incur a substantial shortfall on its exposure under the LCs.

### 3.0 The LCs

1. A summary of the LCs is provided below.

LC No.	Description	Date Exposure Under the LC Crystallizes	Face Amount (\$)	Amount Drawn (\$)
SB103490/06	Irrevocable standby letter of credit as security for student tuition fees, pursuant to the Private Career Colleges Act, 2005, S.O. 2005, C. 28, Schedule "L" and regulations made thereunder.	n/a	3,000,000	3,000,000
SB105332/10	Covers Ontario student loan default rate of greater than 25% for the student cohort having obtained Ontario student loans during the 2010-2011 academic year while attending ECC. The amount drawn from the LC is proportionate to the assessed default amount above the 25% default threshold when the actual incidence of default is verified in 2013.	2013	364,830	107,949
SB105848/11	Covers Ontario student loan default rate of greater than 25% for the student cohort having obtained Ontario student loans during the 2011-2012 academic year while attending ECC. The amount drawn from the LC is proportionate to the assessed default amount above the 25% default threshold when the actual incidence of default is verified in 2014.	2014	337,329	72,262
SB106644/12	Covers Ontario student loan default rate of greater than 25% for the student cohort having obtained Ontario student loans during the 2012-2013 academic year while attending ECC. The amount drawn from the LC is proportionate to the assessed default amount above the 25% default threshold when the actual incidence of default is verified in 2015.	2015	389,586	-
SB107099/14	Covers Ontario student integrated loan default rate of greater than 25% for the student cohort having obtained Ontario student loans during the 2013-2014 academic year while attending ECC. The amount drawn from the LC is proportionate to the assessed default amount above the 25% default threshold when the actual incidence of default is verified in 2016.	2016	1,085,176	1,085,176
SB104794/09	Covers Ontario student loan default rate of greater than 22.5% for the student cohort having obtained Ontario student loans during the 2014-2015 academic year while attending ECC. The amount drawn from the LC is proportionate to the assessed default amount above the 22.5% default threshold when the actual incidence of default is verified in 2017.	2017	525,157	525,157
			5,702,078	4,790,544

2. The LCs were provided to the MAESD to reduce the risk associated with loan defaults on advances made by the MAESD to ECC's students under the Ontario Student Assistance Program. With the exception of the first of the above-listed LCs, the Bank's exposure under the LCs depends on the student loan default rates in a given year. Although the default rate is unknown for 2016, the MAESD has fully drawn on the relevant LC in order to mitigate its exposure to student loan defaults. Pursuant to the terms of the LCs, once the MAESD calculates its exposure rates, to the extent the amounts drawn by the MAESD on the LCs exceed the amounts required to be retained by the MAESD under the terms of the LCs and/or applicable law (the "Excess Amounts"), those amounts would need to be remitted to the Applicants (as defined below). Specifically, the Excess Amounts consist of the following: (i) with respect to LC No. 7114SB103490/06, any amounts not required to be retained by the MAESD pursuant to the Private Career Colleges Act, 2005, S.O. 2005, C.28, Schedule "L" and 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 MAESD on account of Ontario student loan defaults for the specified student cohort at ECC and any other applicant parties listed on Schedule "I" to such LC (collectively, ECC and such other applicant parties are the "Applicants") as being above the applicable percentage default threshold under such LC.

### **3.1 Relief Sought re LCs**

1. The Bank has requested that the Trustee seek entry of the Order, *inter alia*, authorizing MAESD to reimburse the Excess Amounts to the Bank and relieving MAESD from any liability for, and granting a release from, any obligation to pay any portion of the Excess Amounts to any party other than the Bank, including the Trustee. The relief would also apply to LCs where the Bank's exposure crystallized prior to 2016 to protect the Bank in the event that the MAESD determined that Excess Amounts were available in respect of those LCs.
2. For greater certainty, the Excess Amounts shall be determined when the actual incidence of default is verified by the MAESD, and shall be paid to the Bank promptly after such determination. The MAESD 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.
3. In addition to the release granted to MAESD in connection with the foregoing, the parties seek a determination that the Trustee shall have no liability for, and shall be released from any obligation to receive, distribute, pay any levy, exercise discretion over or otherwise account for the Excess Amounts, except to the extent that the Trustee receives any portion of the Excess Amounts, in which case the Trustee shall have the obligation to pay the Excess Amounts received directly to the Bank.

4. The Trustee recommends that this Honourable Court issue the Order sought for the following reasons:
- the Bank is the sole secured creditor of the Companies and will incur a substantial shortfall in the repayment of the amount owing to it by ECC;
  - the Bank issued the LCs and, accordingly, the monies drawn by MAESD under the LCs came from the Bank and the Bank, as the sole secured creditor and the issuer of the LCs, is the party with the economic interest in and right to any monies that the MAESD is liable to reimburse as Excess Amounts;
  - a direct reimbursement to the Bank is appropriate and will minimize the professional fees that would otherwise be incurred by the Trustee in order to monitor and track the Excess Amounts and distribute those funds to the Bank;
  - this direct reimbursement will allow the Trustee to proceed to its discharge when its administration is complete, rather than keeping the estate open (and incurring additional fees) for the sole purpose of waiting, for potentially years, before the exposure under the LCs is crystallized and quantified; and
  - the two inspectors of ECC's estate support the relief sought.

## 4.0 Conclusion

1. Based on the foregoing, the Trustee respectfully recommends that this Honourable Court grant the relief detailed in Section 1.1(c) of this Report and issue an Order substantially in the form attached to the Trustee's motion record.

\* \* \*

All of which is respectfully submitted,



**KSV KOFMAN INC.  
IN ITS CAPACITY AS TRUSTEE IN BANKRUPTCY OF  
EVEREST COLLEGES CANADA, INC.  
AND NOT IN ITS PERSONAL CAPACITY**



## **Appendix “A”**

The Bankruptcy of Everest Colleges Canada, Inc.

**Interim Statement of Receipts and Disbursements for the period ending November 29, 2016**

(C\$; unaudited)

<b>Description</b>	<b>Amount</b>
<i>Receipts</i>	
Transfer from Company's bank account	383,687
Accounts receivable collections	127,916
HST collected	40,396
Hydro refund	25,398
Insurance refund	20,664
Sale of intellectual property	10,000
Sundry collections	9,785
	<u>617,845</u>
<i>Disbursements</i>	
Professional fees	
Trustee	290,126
Trustee's counsel	47,725
Tax accountants	4,000
Distribution to Bank of America	95,000
HST paid	50,550
Payroll costs	27,181
Storage costs	26,816
Sundry disbursements	17,039
Server backup	5,064
Levy paid to Superintendent of Bankruptcy	5,000
	<u>568,500</u>
Estate Bank Balance	<u><u>49,345</u></u>

**General Note**

1. The above has been prepared on a cash basis and excludes all accrued liabilities.