

NO.
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

<>

PLAINTIFFS

AND:

THE BOARD OF EDUCATION OF SCHOOL DISTRICT NO. 39 (VANCOUVER)

DEFENDANT

Brought Under the *Class Proceedings Act*

STATEMENT OF CLAIM

1. The Plaintiffs reside at <>, in the Province of British Columbia.
2. The Defendant is a board of education (a “board”) comprised of elected or appointed school trustees for School District No. 39 and is a corporation incorporated and continued under the provisions of s. 65 of the School Act, R.S.B.C. 1996, c. 412 and amendments thereto (the “Act”).
3. Pursuant to the provisions of the Act, the Defendant is responsible for the management of the schools within its school district, and must make available an educational program to all persons of school age who enroll in a school in its district.
4. Further, the provisions of the Act require all boards in British Columbia, including the Defendant, to provide free of charge to every student of school age resident in British Columbia and enrolled in an educational program in a school operated by school boards including the Defendant, instruction in the said educational program sufficient to meet the general requirements for secondary school graduation.

5. The Plaintiffs are the parents of a student (“<>”) who attended <> Secondary School situate in the City of Vancouver, in the Province of British Columbia (the “School”) as a Grade 9 student during the <> school year.
6. The School is a school located within the Defendant’s school district.
7. At the conclusion of the <> school year, the Plaintiffs were advised by the School that <> was required to attend and successfully complete summer school for remedial instruction in Science and English as a condition of advancing to the next grade level in each course. Accordingly, the Plaintiffs enrolled <> in summer school courses offered by the Defendant in Science 9 and English 9.
8. The Plaintiffs were required by the Defendant to pay fees of \$274.00 for each of the two summer school courses in which <> was enrolled and they did pay those fees.
9. In or about July 2007, the Defendant refunded fees paid for instruction in 2007 summer school courses offered by the Defendant on the grounds that those fees had been unlawfully charged and collected in contravention of the provisions of the Act.
10. The Plaintiffs say that fees billed to and paid by them as aforesaid have similarly been unlawfully charged and collected by the Defendant in contravention of the provisions of the Act.
11. Further, or in the alternative, the Plaintiffs say that the Defendant’s levy of tuition fees for the instruction of <> in summer school courses as aforesaid was contrary to or alternatively beyond its powers and objects under the Act, and accordingly is *ultra vires* the Defendant.

12. In the further alternative, the Plaintiffs say that all monies paid by them to the Defendant as aforesaid were paid under a mistake of law.
13. Further, or in the alternative, the Plaintiffs say that as a result of the Defendant's conduct in charging and collecting summer school tuition fees in contravention of the Act, the Defendant has received a benefit, and that the Plaintiffs and putative class members have suffered a corresponding deprivation for which there is no juristic reason. The Defendant has accordingly been unjustly enriched.
14. In light of the facts and matters alleged herein, the Plaintiffs and putative class members are entitled to restitution and reimbursement of all amounts paid to the Defendant as aforesaid.
15. The Plaintiffs seek an accounting from the Defendant of all monies paid to the Defendant as aforesaid, and further, seeks a declaration that the Defendant holds all such monies as a constructive trustee for the benefit of the Plaintiffs and the putative class members and the Plaintiffs claim restitution in the full amount of the said trust.
16. In the further alternative, the Plaintiffs say that it would be unjust and inequitable for the Defendant to retain the monies charged to and collected from the Plaintiffs and the putative class members in contravention of the *Act* and accordingly seek to recover the monies paid by them to the Defendant as monies had and received to the use of the Plaintiffs and the putative class members.

CLASS PROCEEDINGS ACT

17. This action is brought on behalf of the Plaintiffs and on behalf of a proposed class of persons with similar claims pursuant to the provisions of the *Class Proceedings Act*, R.S.B.C. 1996, c.50.

WHEREFORE, THE PLAINTIFFS CLAIMS ON THEIR OWN BEHALF AND ON BEHALF OF MEMBERS OF THE PUTATIVE CLASS AS FOLLOWS:

- (a) damages in the total amount of all fees and other payments unlawfully billed and collected by the Defendant from the Plaintiffs;
- (b) an accounting of all fees paid by the Plaintiff s to the Defendant as aforesaid;
- (c) a declaration of trust in favour of the Plaintiffs in the full amount of payments made to the Defendant as aforesaid;
- (d) an Order for restitution;
- (e) repayment of all monies paid as aforesaid under a mistake of law;
- (f) interest pursuant to the *Court Order Interest Act*;
- (g) costs; and
- (h) such further and other relief as to this Honourable Court may seem just.

PLACE OF TRIAL: VANCOUVER, BRITISH COLUMBIA.

DATED at the City of North Vancouver, in the Province of British Columbia, this 29th day of July, 2009.

James M. Poyner
Solicitor for the Plaintiff

THIS STATEMENT OF CLAIM is filed by **JAMES M. POYNER**, of the law firm of **POYNER BAXTER LLP**, Barristers & Solicitors, whose place of business and address for delivery is: Lonsdale Quay Plaza, #408 – 145 Chadwick Court, North Vancouver, B.C. V7M 3K1 – Telephone: 604-988-6321 – Fax: 604-988-3632