

AMENDED UCC COUNSELLING AND CLAIMS RESOLUTION PLAN
(as approved by the Court on December 30, 2003)

Definitions

1. The following definitions apply in this Plan:
 - (a) “Claim Form” means a form substantially in accordance with Schedule A to this Plan;
 - (b) “Class Counsel” means a lawyer practising with the law firm of McPhadden Samac Merner Darling;
 - (c) “Class Member” means a Direct Claimant or a Family Claimant;
 - (d) “Counselling Administrator” means Vicki Kelman of the City of Toronto, or a replacement administrator appointed by the Court;
 - (e) “Court” means the Honourable Mr. Justice Winkler of the Ontario Superior Court of Justice, or another judge of the Ontario Superior Court of Justice designated under rule 37.15 of the *Rules of Civil Procedure* to hear motions for orders and directions concerning the implementation of this Plan;
 - (f) “Direct Claimant” means a former student of UCC who alleges that he was sexually assaulted by Douglas Brown;
 - (g) “Family Claimant” means a spouse, same-sex partner, child, grandchild, parent, grandparent, brother or sister of a Direct Claimant;
 - (h) “Mediator-Arbitrator” means Reva Devins of the City of Toronto, or a replacement mediator-arbitrator appointed by the Court;
 - (i) “UCC” means Upper Canada College.

Privacy and Confidentiality

2. The provision of counselling and the resolution of claims under this Plan shall take place in strict privacy and confidence.

3. Subject to paragraph 4, no information disclosed in any counselling provided under this Plan, including the name of any Direct Claimant obtaining counselling, shall be disclosed to any other person without the prior consent of the Class Member.

4. The Counselling Administrator shall provide Class Counsel with a list of the names of the Direct Claimants who obtain counselling under this Plan. Class Counsel shall maintain the confidentiality of the identity of the Direct Claimants listed, and shall not contact a Direct Claimant whose name is provided to Class Counsel under this paragraph unless the Direct Claimant has retained Class Counsel or contacts Class Counsel in relation to this Plan.

5. No participant in the process provided for by this Plan shall disclose to any non-participant any information or document disclosed in connection with the resolution of a claim under this Plan without the prior consent of the person who disclosed the information or document, except as required by law.

6. No participant in the process provided for by this Plan shall disclose the terms of resolution of a claim of a Class Member under this Plan without the prior consent of UCC and the Class Member except (1) as required by law or (2) as ordered by the Mediator-Arbitrator or the Court in order to protect the interests of a participant under this Plan.

6A Despite paragraph 6, where a claim of a Class Member is decided by arbitration under the Plan, the decision of the Mediator-Arbitrator shall be disclosed to counsel for other Class Members with pending claims under the Plan, but only in a manner that does not disclose, directly or indirectly, the identity of the Class Member whose claim was decided.

Representation and Support

7. A Class Member may be represented at any stage of the process provided for by this Plan by Class Counsel or by another lawyer or representative of the Class Member's choice. A Class Member may be accompanied at any stage of the claims process under this Plan by an individual whose function is to provide support to the Class Member.

Court Supervision

8. The Court shall supervise the administration and operation of this Plan, and may give directions to ensure its proper implementation.

Counselling

9. A Direct Claimant may be referred for counselling by contacting the Counselling Administrator by telephone at (416) 690-0076 or by e-mail at vicki.kelman@sympatico.ca.

10. The Counselling Administrator shall promptly arrange for the Direct Claimant to obtain appropriate counselling.

11. The counselling provided to a Direct Claimant under this Plan shall be available for a reasonable period, as determined by the Counselling Administrator in consultation with the counselling professional providing the counselling to the Direct Claimant. The Counselling Administrator shall review periodically, and no less frequently than every four months, the necessity for the Direct Claimant to continue to receive counselling under this Plan.

12. The determination of the Counselling Administrator under paragraph 11 may be appealed to the Mediator-Arbitrator. After consultation with the Direct Claimant and UCC, the Mediator-Arbitrator shall determine the procedures to be followed in the appeal and the timing of these procedures, with a view to ensuring that the appeal is adjudicated expeditiously and that each party is given a fair and equal opportunity to present a case and to respond to the other party's case.

13. Despite section 35 of the *Arbitration Act, 1991*, the Mediator-Arbitrator may at any time during the appeal process attempt to mediate a negotiated resolution of the appeal.

14. The decision of the Mediator-Arbitrator in the appeal shall be final and binding. There shall be no further appeal from the decision to the Court or to any other court or tribunal.

Claims

15. Class Members have until **[90 days from date of certification order]** to make claims for compensation from UCC. A Direct Claimant may claim compensation whether or not he has obtained counselling under this Plan.

16. A Class Member who wishes to make a claim shall send a completed Claim Form to the Mediator-Arbitrator by mail or fax, postmarked or delivered on or before **[90 days from date of certification order]**, at Box 482, Station "R", 2 Laird Drive, Toronto, Ontario, M4G 4E1, fax: (416) 481-9792.

17. The Mediator-Arbitrator shall promptly send a copy of any completed Claim Form received by the Mediator-Arbitrator to counsel for UCC.

Negotiations

18. UCC may make an offer of compensation to a Class Member based on its evaluation of the claim set out in the completed Claim Form. Before making an offer UCC may request further information from the Class Member.

19. UCC shall respond to a claim, by making an offer of compensation, requesting further information or advising that it is not prepared to make an offer of compensation, within 45 days of receipt of a completed Claim Form.

20. If UCC requests further information and the Class Member provides further information in response to the request, UCC shall respond to the claim, by making an offer of compensation or advising that it is not prepared to make an offer of compensation, within 30 days of receipt of the further information unless UCC and the Class Member agree to an extension of time.

21. If UCC makes a compensation offer, UCC and the Class Member shall attempt in good faith to reach a final and binding agreement on the payment of compensation.

Mediation

22. If UCC does not make a compensation offer, or if UCC makes a compensation offer and UCC and the Class Member are unable to reach agreement, or at the Class Member's election at any time, the claim shall proceed to mediation.

23. The mediator shall be the Mediator-Arbitrator, who shall attempt to assist the Class Member and UCC in negotiating a resolution of the claim.

24. After consultation with the Class Member and UCC, the Mediator-Arbitrator shall determine the procedures to be followed in the mediation and the timing of these procedures, with a view to maximizing the possibility of a negotiated resolution of the claim. The procedures may include, without limitation, the exchange of written mediation briefs and the disclosure of documents, medical or other expert reports and other information.

Arbitration

25. If mediation does not result in a resolution of the claim, the claim shall proceed to arbitration.

26. Despite section 35 of the *Arbitration Act, 1991*, the arbitrator shall be the Mediator-Arbitrator.

27. After consultation with the Class Member and UCC, the Mediator-Arbitrator shall determine the procedures to be followed in the arbitration and the timing of these procedures, with a view to ensuring that the claim is adjudicated expeditiously and that each party is given a fair and equal opportunity to present a case and to respond to the other party's case. The parties expect that the procedures to be followed in the arbitration of any claim for a significant amount will include the submission of written statements, documentary and oral discovery, the provision of medical or other expert reports and an oral hearing.

28. If the Mediator-Arbitrator considers it necessary, the Mediator-Arbitrator may obtain the assistance of a medical or other expert or order an independent medical examination of the Class Member.

29. At any time during the arbitration process the Mediator-Arbitrator may resume the attempt to mediate a negotiated resolution of the claim.

30. The decision of the Mediator-Arbitrator in the arbitration shall be based on the law applied by Ontario courts.

31. The decision of the Mediator-Arbitrator in the arbitration shall be final and binding. There shall be no appeal from the decision to the Court or to any other court or tribunal.

**UCC COUNSELLING AND CLAIMS RESOLUTION PLAN
COMPENSATION CLAIM FORM**

Submit completed form, including any supporting documentation, to:

**Mediator/Arbitrator
Box 482
Station "R", 2 Laird Drive
Toronto ON M4G 4E1**

Fax: (416) 481-9792

NOTE: This form is for claiming compensation only. If you are a former student of UCC and wish to obtain private and confidential counselling under the Plan, at the expense of UCC, please contact the Counselling Administrator at (416) 690-0076 or vicki.kelman@sympatico.ca.

Name of claimant _____

Name of lawyer or other representative (if any) _____

Person to be contacted concerning this claim claimant _____ lawyer/representative _____

Contact Information

Address _____

Telephone _____

Fax _____

E-mail _____

Preferred method of contact – mail, fax or e-mail _____

Amount of compensation claimed _____

Reasons for claim and details

(Attach an explanation, in as much detail as possible, of what happened, including where and when. Also attach copies of supporting documentation if available, including medical reports,

lists of any expenses claimed and statements of income.)

Date _____

Signature of claimant or lawyer/representative