

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

THE HONOURABLE ) TUESDAY, THE 30TH  
 )  
MR. JUSTICE COLIN L. CAMPBELL ) DAY OF DECEMBER, 2003

B E T W E E N:

YVAN J.M. PRODEUS, MARINA PRODEUS,  
JACK PRODEUS and TANYA PRODEUS

Plaintiffs

- and -

DOUGLAS IAN BROWN and UPPER CANADA COLLEGE

Defendants

*Proceeding under the Class Proceedings Act, 1992*

**J U D G M E N T**

THIS MOTION, made by the plaintiffs, on consent of the defendants, for certification of this action as a class proceeding and approval of the settlement of this action, was heard this day at 361 University Avenue, Toronto.

ON READING the amended statement of claim, the order of the Honourable Mr. Justice Winkler dated November 27, 2003, affidavit of C. Innes van Nostrand sworn December 12, 2003, the affidavit of David Outerbridge sworn December 18, 2003 and the consent of the parties, and on hearing the submissions of counsel for the plaintiffs and the defendant Upper Canada College, no one appearing for the defendant Douglas Ian Brown although properly served,

**Certification**

1. THIS COURT ORDERS that this action is certified as a class proceeding on behalf of a class comprising any former student of Upper Canada College (“UCC”) who alleges that he was

sexually assaulted by the defendant Douglas Brown (a “Direct Claimant”), and the spouse, same-sex partner, children, grandchildren, parents, grandparents, brothers and sisters of any Direct Claimant.

### **Settlement Approval**

2. THIS COURT ORDERS AND ADJUDGES that the settlement set out in the Settlement Agreement dated August 26, 2003, a copy of which is Exhibit “G” to the affidavit of David Outerbridge (the “Settlement Agreement”), is fair and reasonable and in the interests of the class.

3. THIS COURT ORDERS that the settlement, including the plan for providing counselling to Direct Claimants and for resolving the claims of all class members against UCC annexed as Schedule A to the Settlement Agreement (the “Plan”), is approved as amended, and that the parties shall implement the settlement and the Plan in accordance with their terms.

### **Notice to Class Members**

4. THIS COURT ORDERS that notice of the certification of this action as a class proceeding and of approval of the settlement, substantially in the form of the notice attached as Schedule A to this judgment, shall be given to class members as follows:

- (a) counsel for the plaintiffs shall ensure that the notice is published on two separate days in the national edition of The Globe and Mail within 14 days of the date of this order; and
- (b) counsel for the plaintiffs shall, within seven days of the date of this order, prepare in mailing-ready form and provide to UCC sufficient copies of the notice to be mailed to all former students of UCC who attended UCC at any time from September 1975 to June 1993, and UCC shall, within seven days of receipt of these copies from counsel for the plaintiffs, send these copies of the notice by ordinary mail in a manner that does not identify the source of the notice as UCC, to these former students at their last addresses known to UCC.

5. THIS COURT ORDERS that UCC shall pay the reasonable cost of giving notice to class members in accordance with paragraph 4 of this order.

### **Opting Out**

6. THIS COURT ORDERS that class members have until March 29, 2003 to opt out of this proceeding.

7. THIS COURT ORDERS that a class member who wishes to opt out shall send a written election to opt out by mail or fax, postmarked or delivered on or before March 29, 2003, to Box 482, Station "R", 2 Laird Drive, Toronto, Ontario, M4G 4E1, fax: (416) 481-9792.

8. THIS COURT ORDERS that copies of the written opt out elections shall be provided on receipt to counsel for the representative plaintiffs and counsel for UCC.

### **Binding Effect and Claims Bar**

9. THIS COURT ORDERS that the settlement is binding on all class members who do not opt out in accordance with paragraph 7 of this order, and that the remedies contemplated in the Settlement Agreement and the Plan shall be the sole remedies available to these class members as against the defendants in relation to the subject matter of this action, including any matter that is or that could have been raised in the amended statement of claim, to the exclusion of all other remedies that might otherwise be available at law or in equity or otherwise.

10. THIS COURT ORDERS that no class member who is bound by the settlement may make any claim or commence any action or proceeding of any kind against UCC or any current or former member of the Board of Governors, officer, employee or agent of UCC (including their respective representatives, executors, administrators, successors and assigns) in relation to the subject matter of this action, including any matter that is or that could have been raised in the amended statement of claim, except in accordance with the Settlement Agreement and the Plan.

11. THIS COURT ORDERS that no class member who is bound by the settlement may make any claim or commence any action or proceeding of any kind against any person or corporation or the Crown in relation to the subject matter of this action, including any matter that is or that could have been raised in the amended statement of claim, in which any claim could arise against UCC or any current or former member of the Board of Governors, officer, employee or agent of UCC (including their respective representatives, executors, administrators, successors and assigns) for contribution or indemnity or any other relief over.

### **Supervision and Directions**

12. THIS COURT ORDERS that the Honourable Mr. Justice Winkler shall supervise the implementation of this order and the settlement, including the Plan, and that the parties shall report to the Honourable Mr. Justice Winkler from time to time and on completion of the Plan in the form and manner as he may direct.

13. THIS COURT ORDERS that any party and any other person affected by this order or the settlement may move on reasonable notice to the parties to Mr. Justice Winkler, or if he is not available, to another judge of this Court designated in accordance with rule 37.15 of the *Rules of Civil Procedure*, for orders and directions concerning the implementation of this order and the settlement, including the Plan, and that the judge to whom the motion is made may grant further orders and give directions as may reasonably be required for their proper implementation.

" Colin L. Campbell J."