



Court File No.:

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

SAMANTHA D. SUNGA

Plaintiff(s)

-and-

UNIVERSITY OF TORONTO

Defendant

(Proceeding pursuant to the *Class Proceedings Act*, 1992, S.O. 1992, c.6)

STATEMENT OF CLAIM

TO THE DEFENDANT(S):

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiffs. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the *Rules of Civil Procedure*, serve it on the Plaintiffs' lawyer or, where the Plaintiffs do not have a lawyer, serve it on the Plaintiffs, and file it, with proof of service, in this court office, **WITHIN TWENTY DAYS** after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the *Rules of Civil Procedure*. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date: _____

Issued by: _____

Address of court office: 393 University Avenue, 10th Floor
Toronto, ON M5G 1E6

**TO: UNIVERSITY OF TORONTO
27 King's College Circle
Toronto, ON M5S 1A1**

CLAIM

1. The Plaintiff, Samantha D. Sunga, claims on behalf of herself and each member of the Class (defined below) (collectively the “**Plaintiffs**”):

- (a) An Order appointing the Plaintiff, Samantha D. Sunga as a Class Representative;
- (b) An Order pursuant to the *Class Proceedings Act, 1992*, certifying this action as a class proceeding;
- (c) An Order for damages in the amount of \$100 million and/or awarding an amount equal to the student fees paid by the Class to the University during the COVID-19 Impacted Period (defined below), pursuant to *inter alia* the *Frustrated Contracts Act*, R.S.O., 1990, Chapter F.34, and breach of contract;
- (d) In the alternative, an Order finding the University has been unjustly enriched for receiving payments of student fees by the Plaintiffs during the COVID-19 Impacted Period as defined below, and an Order issuing applicable refunds to the Plaintiffs;
- (e) Pre-judgment and post-judgment interest;
- (f) The costs of this proceeding; and
- (g) Such further and other relief as this Honourable Court may deem just.

THE PARTIES

2. The Plaintiff brings this action pursuant to the *Class Proceedings Act, 1992*, S.O. 1992, c.6.

3. The Plaintiff, Samantha D. Sunga (the “**Representative Plaintiff**”), resides in Ontario. The Representative Plaintiff was enrolled as a full-time student during the 2019-2021 academic terms (“**COVID-19 Impacted Period**”) at the University of Toronto.

4. The Representative Plaintiff is a representative of a class of persons (the “**Class**”), all of whom paid student fees (mandatory, ancillary, and incidental fees) to the University of Toronto

during the COVID-19 Impacted Period.

5. The Defendant, the University of Toronto (“**University**”) is an institution of higher learning located in the Province of Ontario.

THE CLASS

6. The Class is defined as follows:

All students enrolled at the University of Toronto who paid student fees during the Covid-19 Impacted Period.

THE UNIVERSITY OF TORONTO

7. The University was founded in 1827 and describes itself as “Canada’s leading institution of learning, discovery and knowledge creation.”¹

8. There were more than 90,000 students enrolled in the University with approximately 72,000 undergraduate students and approximately 20,000 graduate students.

9. The University offered and marketed in-person experiences to prospective and current students. It also marketed itself by highlighting the on-campus experience as a benefit of enrollment at the University.

(a) “Students get a head start on their futures through U of T’s only co-op program as well as internships, hands-on research, community engagement and a vibrant campus life.”²

(b) “Get moving at any of the state-of-the-art facilities on each campus, and through a variety of different classes, fitness programs and sports teams. We have Canada’s largest intramural sports program and one of North America’s largest and most successful intercollegiate sports programs with 44 teams participating in 26 sports. Olympic and national-team athletes are among our coaches and competitors,

¹ <https://www.utoronto.ca/about-u-of-t>

² <https://www.utoronto.ca/university-life/campuses/scarborough>

and over 900 student athletes represent U of T. Almost 10,000 students play intramural sport as a fun and social activity.”³

(c) “Enjoy a coffee in a historic building over 100 years old, use the same world-class athletic facilities used in the 2015 Pan Am/Parapan Am Games, lose track of time in our beautiful library collections.”⁴

(d) “Cultivate your curiosity, explore your passions and create your own community with one of the more than 1,000 different clubs and student-run organizations across our three campuses. You’ll find a club for almost every pursuit – from beekeeping to breakdancing, magic to mah-jong, Quidditch to space robots. Some clubs focus on cultural connections or spiritual ties, and others, such as Departmental student societies, on academic interests. Meet fellow enthusiasts and like-minded colleagues.”⁵

10. The student fees at the University were charged for access to campus resources, facilities, and experience to the Representative Plaintiff and all members of the Class.

11. The students paid such fees for a robust and comprehensive educational experience.

12. Student fees are charged to students to provide access to services and resources, which were denied during the COVID-19 Impacted Period.

COVID-19

13. Commencing on March 15, 2020 and through the COVID-19 pandemic, the University suspended various services and closed its various facilities, including but not limited to: athletic, recreation and physical activity facilities, libraries, and other university facilities/services.

14. As such, the Representative Plaintiff and the Class no longer had access to the various facilities and services for which they had already made full payment.

³ <https://future.utoronto.ca/university-life/campus-life/>

⁴ <https://www.utoronto.ca/university-life>

⁵ <https://future.utoronto.ca/university-life/campus-life/>

15. The campus closure and the suspension of services deprived the Representative Plaintiff and the Class significant opportunities and experiences for which they had pre-paid in full.

16. To date, the Representative Plaintiff and the Class have not received the applicable refund for the student fees paid during the COVID-19 Impacted Period.

CLAIMS FOR RELIEF

FRUSTRATION AND BREACH OF CONTRACT

17. The Representative Plaintiff and the Class entered into a contract with the University whereby the Plaintiffs paid student fees in exchange for access to on-campus experiences, services, resources, opportunities, and facilities.

18. The University failed to provide access to these facilities and/or services during the COVID-19 Impacted Period.

19. Nonetheless, the University of Toronto failed to reimburse the Representative Plaintiff and the Class.

UNJUST ENRICHMENT

20. The University received full payments of student fees during the COVID-19 Impacted Period. However, the Plaintiffs were deprived of the access to facilities, resources, services and opportunities.

21. The University has been unjustly enriched by receiving and retaining full payments for facilities and services that were not made available during the COVID-19 Impacted Period.

22. There is no juristic reason for the University's enrichment and the Plaintiffs' deprivation. As such, the Plaintiffs are entitled to reimbursement of the student fees paid during the COVID-19 Impacted Period.

23. For all of the foregoing reasons, the Plaintiffs seek judgment against the University.

24. The Plaintiffs propose that this action be tried in the City of Toronto.

September 9, 2022

OWENS WRIGHT LLP

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Toronto, ON M4S 3B1

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Lawyers for the Plaintiffs

SAMANTHA D. SUNGA

- and-

UNIVERSITY OF TORONTO

Plaintiff(s)

Defendant

Court File No.:

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT

TORONTO

Service accepted on behalf of the Defendant,
The Governing Council of the University of Toronto
(improperly named in the pleading as University of Toronto),
this 6th day of March, 2023.

STATEMENT OF CLAIM

OWENS WRIGHT LLP

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Lawyers for the Defendant, The Governing Council of
the University of Toronto (improperly named in the
pleading as University of Toronto)