

Becky Dinwoodie

From: Campuswide
Sent: Tuesday, February 14, 2017 9:07 AM
Subject: Update on an agreement reached among the Student Association, the University of Ontario Institute of Technology and Durham College

Subject: Update on an agreement reached among the Student Association, the University of Ontario Institute of Technology and Durham College

What is this about?

Information about a vote that our university's students will undertake on Wednesday, March 22 and Thursday, March 23.

What do I need to do?

Read the information below. Remember that this is a student-run voting process.

[This message is sent on behalf of Olivia Petrie, Associate Vice-President, Student Life.](#)

On February 3, an agreement (the Agreement) was reached among the Student Association (SA), the University of Ontario Institute of Technology (UOIT) and Durham College (DC). That Agreement was confirmed by an Order issued by the Ontario Superior Court of Justice on February 6.

CREATION OF TWO SEPARATE STUDENT ASSOCIATIONS

The result of the Agreement is that all parties are working together: based on their understanding of the desire of the students of one or both of the two institutions, the SA, UOIT and DC are collaboratively facilitating the process for a separate UOIT student association and a separate DC student association to emerge.

An election will be held on Wednesday, March 22 and Thursday, March 23 with two separate ballots (one for the university's students and another for the college's students). The separate ballots will include a question asking students of the respective institution whether they support the formation of a new association specifically for them. It will also provide an opportunity for students at each institution to elect the executive team and the board of directors for either a UOIT student association or a DC student association.

If the students of either of the two institutions confirm their support for the formation of a new association specifically for them, then, following the elections in March, the newly elected executives of each student association will work full-time from May to August to

establish their respective student association entity, including its structure and related documentation.

No elections will be held to elect executives or directors for the existing SA.

Ancillary fees will not increase for the 2017-2018 year above the previously planned increases that have already been approved by students.

Town hall information meetings will be conducted prior to the election days at all campus locations. A description of the rationale for separate SA's will be shared and a Q & A will be conducted with audiences. Representatives of the university will be present at the town hall meetings. The university will also assist in communications to its students.

ASSISTANCE BY AN INDEPENDENT COURT OFFICER

The result of the Agreement and the Court Order issued on February 6 is that a Chief Operating Officer (COO) has been appointed by the Court; this appointment will become effective on Monday, May 1.

The COO will, among other things, assist the two new student associations in getting established, and will oversee the untangling of the various contractual, operational, legal and other aspects of the existing SA. The COO is appointed over the existing SA, and will not make decisions for the new student associations.

STUDENT-RUN VOTING PROCESS

The university reminds staff and faculty members that this is an independent, student-run voting process. Student candidates should not solicit the intervention of university staff or faculty in their campaigns.

Please do not respond to this email, as this account does not accept messages.

Jan. 19, 2017

IN THE MATTER OF Section 101 of the *Courts of Justice Act*, R.S.O. 1990 c.C.43, as amended

DURHAM COLLEGE OF APPLIED ARTS AND TECHNOLOGY

- and -

THE STUDENT ASSOCIATION AT DURHAM COLLEGE AND UOIT

Applicant

Respondent

Court File No.: CV-17-00011668-00C

February 6, 2017 *on unopposed*

The order today is on consent of *Order to*
 UOIT does not oppose the order but reserves
 all rights to which it is entitled under
 the Act pursuant to the Collective
 Agreement & applicable legislation &
 nothing in the order abrogates such rights.

J. Miller

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings commenced at Toronto

APPLICATION RECORD
(Appointment of Receiver)

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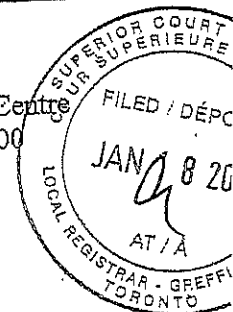
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Court File No. CV-17-00011668-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

Application under section 101 of the Courts of Justice Act, R.S.O. 1990, c. C.43, as amended.

THE HONOURABLE)	MONDAY, THE 6TH
)	
JUSTICE)	DAY OF FEBRUARY, 2017

BETWEEN:

DURHAM COLLEGE OF APPLIED ARTS AND TECHNOLOGY	
and	Applicant
THE STUDENT ASSOCIATION AT DURHAM COLLEGE AND UOIT	
	Respondent

ORDER

THIS APPLICATION, brought by Durham College of Applied Arts and Technology (“DC” or the “Applicant”) for an Order pursuant to section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the “CJA”) appointing BlueTree Advisors II Inc. as receiver of all of the property, assets and undertakings of the Student Association at Durham College and UOIT (the “SA”), was heard this day at 330 University Avenue, Toronto, Ontario.

UPON HEARING that each of DC, University of Ontario Institute of Technology (“UOIT”) and the SA have reached an agreement on, *inter alia*, certain steps to be taken by the parties on a consensual basis over the coming months, for which court approval is sought;

ON READING the affidavit of Meri Kim Oliver sworn January 17, 2017 and the Exhibits thereto (the “Oliver Affidavit”), the Supplementary Affidavit of Meri Kim Oliver sworn February 3, 2017 and the Exhibits thereto (the “Supplemental Oliver Affidavit”) and on being advised that the SA and UOIT do not acknowledge the allegations contained in the Oliver Affidavit, have not filed responding materials, nor cross-examined on the Applicant’s materials,

the parties having since agreed to terms of a consensual arrangement, the terms of which are attached hereto (the "**Consensual Framework**"), and on hearing the submissions of counsel for the Applicant, the SA, UOIT and BlueTree Advisors II Inc. and upon being advised that each of the Applicant, the SA, UOIT and BlueTree Advisors II Inc. consent to the terms of this Order;

AND UPON being advised that a Notice of Appearance has been filed by Unifor, with very short notice having been provided to Unifor of the relief sought herein;

1. **THIS COURT ORDERS** that all capitalized terms used herein and not otherwise defined are as defined in the Oliver Affidavit or the Supplemental Oliver Affidavit.

ANNUAL GENERAL MEETING AND ELECTIONS

2. **THIS COURT ORDERS** that the terms of the Consensual Framework attached hereto as Schedule "A", representing an agreement among the SA, DC and UOIT be, and are hereby approved, and each of the parties are hereby authorized and directed to take all such steps to implement same in accordance with their terms. The elections being held in accordance with the terms of the Consensual Framework shall be held in lieu of the regularly scheduled SA elections for the 2017/2018 academic year and the term of office of the current SA executives and directors that would otherwise terminate upon completion of those regularly scheduled SA elections will terminate on April 30, 2017.

3. **THIS COURT ORDERS** that in implementing the Consensual Framework, to the extent of any inconsistency between the Consensual Framework and the provisions of any By-laws to which the SA is currently subject, the terms of the Consensual Framework shall prevail and each of the SA, DC and UOIT (and their respective officers, directors, employees, agents and counsel) are protected for acting in accordance with the terms of this Order pursuant to section 142 of the *Courts of Justice Act*. In furtherance of the Consensual Framework, communications in any form that are issued by the SA, DC, UOIT and their respective executives, officers, directors, employees and governors (as the case may be) shall be consistent with the communication protocol attached as Exhibit "B" to the Supplemental Oliver Affidavit.

4. **THIS COURT ORDERS** that in the event of any dispute among the SA, DC and UOIT in implementing the terms of the Consensual Framework or in carrying out the provisions of this

Order, they may return to this Court for assistance on notice to the other parties. Upon the creation of the New College SA and New UOIT SA, these parties, as well as any other party that has served and filed a Notice of Appearance, shall be entitled to appear in this proceeding.

APPOINTMENT OF CHIEF OPERATING OFFICER

5. **THIS COURT ORDERS** that pursuant to section 101 of the CJA, BlueTree Advisors II Inc. (utilizing its officer William E. Aziz) is hereby appointed as court officer over the SA to perform the role of Chief Operating Officer (“COO”) over the property, assets and undertaking of the SA acquired for, or used in relation to the business or activities carried on by the SA, including all proceeds thereof, (the “Property”), with such appointment to become effective on May 1, 2017 in accordance with the Consensual Framework.

6. **THIS COURT ORDERS** that the COO’s appointment and all provisions of this Order relating to the powers of the COO shall only be effective from and after May 1, 2017.

7. **THIS COURT ORDERS** that the COO is hereby empowered and authorized, but not obligated, to act in respect of the Property and, without in any way limiting the generality of the foregoing, the COO is hereby expressly empowered and authorized to do any of the following where the COO considers it necessary or desirable:

- (a) to act as the sole officer over the SA and take all such steps and exercise such powers as may be necessary to carry out the provisions of this Order, to assist in the implementation of the Consensual Framework, to act as court officer in overseeing the SA and its Property during the period of its appointment, and to assist and oversee all aspects of the SA from and after the date of its appointment until its termination as court officer on August 1, 2017 in accordance with the terms of this Order;
- (b) to provide assistance to the duly-elected executive and directors of the New College SA and the duly-elected executive and directors of the New UOIT SA for the purpose of establishing the new student association entities, establishing a governance structure and related documentation,

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retention of independent professional advisors and a framework for support for the New College SA and the New UOIT SA;

- (c) to assist the executives of each of the New College SA and the New UOIT SA in considering the various aspects of, and then implementing, their mandate to: (i) establish their respective student association entity, including its structure and related documentation; (ii) retain independent professional advisors as necessary; (iii) determine and create a framework for support for the student association; (iv) consider the nature or types of services to be provided to students of their respective schools through their respective student association; (v) consider the arrangements for any such services to be provided by their respective student associations on a separate basis; (vi) determine whether, and if so, to what extent, any services provided by their respective student associations might be shared with the other student association and, if so, the vehicle or entity that any shared services may be administered; (vii) consider any services provided to their respective students that either student association thinks should be administered directly by their respective Institution and the arrangements for same; (viii) determine the appropriate mechanism for allocating the SA's operational, legal, financial and contractual arrangements, obligations, liabilities and responsibilities, including shared use arrangements to which the SA is a party and any other aspects involving the old SA, to each of the new student associations; (ix) negotiate with the applicable Institution to establish new policies or agreements for the transfer of ancillary fees to each respective student association; (x) determine the manner of addressing or winding up of the corporate vehicle of the SA once all other items have been completed; and (xi) consider the cost and timing of all of the foregoing (the "New SA Mandate");
- (d) to facilitate discussions and negotiations with, or among, the Applicant, UOIT, the New College SA and the New UOIT SA and any other third

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parties, as the case may be, regarding any aspect of the New SA Mandate that involves the participation of those parties;

- (e) to exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (f) to receive, preserve, and protect the Property, or any part or parts thereof, in such manner as it deems necessary or desirable;
- (g) to manage the business and activities of the SA in furtherance of the objectives of this Order, including the power to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or perform or cease to perform and terminate any contracts of the SA;
- (h) to engage counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the COO's powers and duties;
- (i) to make such purchases or incur such obligations on behalf of the SA as, in the opinion of the COO, are necessary or desirable to carry out its mandate under this Order or any further Order of this Court;
- (j) to receive and collect all monies and accounts now owed or hereafter owing to the SA and to exercise all remedies of the SA in collecting such monies;
- (k) to settle, extend or compromise any indebtedness owing to the SA;
- (l) to execute, assign, issue and endorse documents of whatever nature or kind in respect of the SA or the Property, whether in the COO's name or in the name and on behalf of the SA, for any purpose pursuant to this Order;

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- (m) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the SA or the Property, and to settle or compromise any such proceedings;
- (n) to meet with and discuss with such affected Persons (as defined below) as the COO deems appropriate, including the representatives of the Applicant and UOIT, on all matters relating to the SA and its Property, and to share information, subject to such terms as to confidentiality as the COO deems advisable;
- (o) to provide a copy of this Order and any other Orders made in this proceeding to any person with whom the COO has dealings in respect of the SA or the Property;
- (p) without limiting in any manner the other powers and authority granted pursuant to this Order, to exercise any contractual, corporate or other rights that the SA may have; and

to take any steps reasonably incidental to the exercise of these powers and in each case where the COO takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below) and without interference from any other Person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE COO

8. **THIS COURT ORDERS** that (i) the Applicant, (ii) UOIT, (iii) the SA, (iv) all of the SA's current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (v) all other individuals, firms, corporations, institutions, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "**Persons**" and each being a "**Person**") shall provide such assistance as may be requested by the COO either verbally or in writing, advise the COO of the existence of any Property in such Person's possession or control, grant immediate and continued access to the Property and deliver all such Property to the COO

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upon request either verbally or in writing. The granting of access to any information herein, may not be disclosed or provided to the COO due to any privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

9. **THIS COURT ORDERS** that all Persons shall forthwith advise the COO of the existence of any bank accounts, books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the SA, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "Records") in that Person's possession or control, and shall provide to the COO or permit the COO to make, retain and take away copies thereof and grant to the COO unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 9 or in paragraph 10 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the COO due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

10. **THIS COURT ORDERS** that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the COO for the purpose of allowing the COO to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the COO in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the COO. Further, for the purposes of this paragraph, all Persons shall provide the COO with all such assistance in gaining immediate access to the information in the Records as the COO may in its discretion require including providing the COO with instructions on the use of any computer or other system and providing the COO with any and all access codes, account names and account numbers that may be required to gain access to the information.

NO PROCEEDINGS AGAINST THE COO AND DIRECTORS AND EXECUTIVES OF THE SA

11. **THIS COURT ORDERS** that no action, step, proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**"), shall be commenced or continued against the COO, Directors and Executives of the SA except with the written consent of the COO, as the case may be, or with leave of this Court.

NO PROCEEDINGS AGAINST THE SA OR THE PROPERTY

12. **THIS COURT ORDERS** that no Proceeding against or in respect of the SA or the Property shall be commenced or continued except with the written consent of the COO or with leave of this Court and any and all Proceedings currently under way against or in respect of the SA, the Property, Directors or Executives of the SA are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

13. **THIS COURT ORDERS** that all rights and remedies against the SA, the COO, or affecting the Property, are hereby stayed and suspended except with the written consent of the COO or leave of this Court, provided however that nothing in this paragraph shall (i) empower the COO or the SA to carry on any business which the SA is not lawfully entitled to carry on, (ii) exempt the COO or the SA from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH THE COO

14. **THIS COURT ORDERS** that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the SA, without written consent of the COO or leave of this Court.

CONTINUATION OF SERVICES

15. **THIS COURT ORDERS** that all Persons having oral or written agreements with the SA or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the SA are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the COO, and that the COO shall be entitled to the continued use of the SA's current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the SA in accordance with normal payment practices of the SA or such other practices as may be agreed upon by the supplier or service provider and the COO, or as may be ordered by this Court.

COO TO HOLD FUNDS

16. **THIS COURT ORDERS** that all funds, monies, cheques, instruments, and other forms of payments received or collected by the COO from and after the date on which its appointment becomes effective from any source whatsoever, including without limitation any dealings with any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited (i) into one or more new bank accounts to be opened by the COO; or (ii) into the SA's existing bank accounts over which the COO has exclusive control (the "**Post Appointment Accounts**") and the monies standing to the credit of such Post Appointment Accounts from time to time, net of any disbursements provided for herein, shall be held by the COO to be utilized in accordance with the terms of this Order or any further Order of this Court.

EMPLOYEES

17. **THIS COURT ORDERS** that all employees of the SA shall remain the employees of the SA until such time as the COO, on the SA's behalf, may terminate the employment of such employees. The COO shall not be liable for any employee-related liabilities, including any

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successor employer liabilities, other than such amounts as the COO may specifically agree in writing to pay.

LIMITATION ON THE COO'S LIABILITY

18. **THIS COURT ORDERS** that the COO shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded by any applicable legislation.

COO'S ACCOUNTS

19. **THIS COURT ORDERS** that the COO shall be entitled to receive such remuneration as is set out in an engagement letter dated January 12, 2017 annexed as Exhibit "AA" to the Oliver Affidavit (the "**Engagement Letter**") and the terms of such remuneration are hereby approved, and all references to "Receiver" and "receivership proceedings" referred to therein shall refer and apply to the role of Chief Operating Officer and these proceedings respectively. Counsel to the COO shall be entitled to be paid its reasonable fees and disbursements at its standard rates and charges unless otherwise ordered by the Court.

DURATION OF COO'S APPOINTMENT

20. **THIS COURT ORDERS** that the New College SA, New UOIT SA and the COO, and each of UOIT and DC to the extent applicable, shall negotiate and attempt to resolve all issues arising in respect of the New SA Mandates on or before July 14, 2017. Should any issues remain to be resolved, the COO shall report to the Court and the parties shall return to the Court for advice and directions, and if required a determination as to any remaining issues prior to August 1, 2017. The Court's determination of any such issues shall be binding on the SA, New College SA, New UOIT SA, UOIT and DC.

21. **THIS COURT ORDERS** that the COO's appointment shall terminate effective August 1, 2017.

SERVICE AND NOTICE

22. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the “Protocol”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the *Rules of Civil Procedure*. Subject to Rule 3.01(d) of the *Rules of Civil Procedure* and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a case website shall be established in accordance with the Protocol with the following URL “<http://sadcuoit.ca/#>”.

23. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the COO is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to affected or interested parties at their respective addresses as last shown on the records of the SA and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

GENERAL

24. **THIS COURT ORDERS** that the COO may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder, or to seek any additional powers that it deems appropriate for carrying out the purpose of this Order.

25. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the COO and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the COO, as an officer of this Court, as may

be necessary or desirable to give effect to this Order or to assist the COO and its agents in carrying out the terms of this Order.

26. **THIS COURT ORDERS** that the COO be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.

27. **THIS COURT ORDERS** that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the COO and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

IN THE MATTER OF Section 101 of the *Courts of Justice Act*, R.S.O. 1990 c.C.43, as amended

**DURHAM COLLEGE OF APPLIED ARTS AND
TECHNOLOGY**

- and - **THE STUDENT ASSOCIATION AT DURHAM COLLEGE
AND UOIT**

Applicant

Respondent

Court File No.: CV-17-00011668-00CL

ONTARIO
**SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**
Proceedings commenced at Toronto

ORDER
(Appointing Receiver)

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Lawyers for the Applicant

EXHIBIT "D"

This is Exhibit "D" referred to in the affidavit
of Meri Kim Oliver sworn before me
this 3rd day of February, 2017

SDBall

A commissioner for taking affidavits

Stephane D. Ball, B.A., LL.B.

Court File No. CV-17-00011668-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

Application under section 101 of the Courts of Justice Act, R.S.O. 1990, c. C.43, as amended.

BETWEEN:

DURHAM COLLEGE OF APPLIED ARTS AND TECHNOLOGY

Applicant

and

THE STUDENT ASSOCIATION AT DURHAM COLLEGE AND UOIT

Respondent

AFFIDAVIT OF MERI KIM OLIVER
(Sworn February 3, 2017)

I, Meri Kim Oliver, of the City of Bowmanville, in the Province of Ontario, MAKE
OATH AND SAY:

1. I am the Vice President, Student Affairs of Durham College of Applied Arts and Technology (“**Durham College**”) and I have personal knowledge of the matters to which I hereinafter depose. Where I do not possess personal knowledge, I have stated the source of my information and belief and, in all such cases, believe such information to be true.
2. On January 17, 2017 I swore an affidavit in this proceeding, in support of the appointment of a receiver by the Court.
3. Since January 24, 2017, counsel for each of the Student Association at Durham College and UOIT (the “**SA**”), Durham College, and the University of Ontario Institute of Technology (“**UOIT**”) (collectively, the “**Parties**”) have engaged in discussions in an effort to find a consensual path forward.

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4. As a result of those discussions, the Parties have jointly developed a framework that outlines and describes the path forward to be taken by each of the Parties (the “**Framework**”). Agreement by the Parties on the Framework and the other documents referred to herein was only reached at 3:00 p.m. today. Attached hereto as Exhibit “A” is a copy of the Framework.

5. In view of the fact that each of Durham College and UOIT are post-secondary institutions, the Parties operate on the basis of an academic calendar year. The timing of the SA’s annual general meeting (“**AGM**”) and annual student elections are based on the academic calendar, and must be completed before students commence exams in April, and conclude their studies for the summer. Accordingly, student elections are held March 22-23 and the AGM is scheduled to be held on Tuesday, February, 7, 2017.

6. I am advised by Erica Britton, General Manager of the SA, that the date of the AGM cannot be moved forward to provide the Parties with any additional time. The date of the AGM has been set for some time, it has been advertised all over all campuses in a poster campaign and online, it is a date that works for the directors, executives and third parties who need to attend, buses have been hired to bring students from other campuses, third party contractors have been hired to provide various items from food, to sound and lighting, and therefore it would be costly, difficult (given the limited resources of the SA and the difficulty in finding a date that works for everyone's schedule) and confusing to the students to reschedule the AGM at this time.

7. The SA is responsible for communicating with students of both Durham College and UOIT. Since the commencement of the proceeding on January 17, 2017 certain communications have been issued by the SA with respect to the steps taken by Durham College in seeking the appointment of a receiver by the Court, and its views on a potential path forward.

8. In connection with the consensus Framework developed by the Parties, and given the timing of the upcoming AGM and the importance of the upcoming elections, the Parties decided it would be prudent to develop a communications protocol to confirm to the students of Durham College and UOIT that the Parties are now proceeding consensually, to ensure that all communications made by the Parties are consistent with the Framework, and to ensure that students are provided with clear, consistent information at the AGM and in respect of the upcoming

elections. Attached hereto as Exhibit "B" is a copy of the communications protocol developed and agreed to by the Parties.

9. In order to implement the Framework and the communications protocol, the Parties negotiated the form of Order that they are requesting be granted by the Court. Attached hereto as Exhibit "C" is a copy of the draft Order requested by the Parties.

10. In view of the fact that the AGM will take place in four (4) days' time and the necessity for clear information to be provided to all students on an urgent basis in advance of that AGM, the Parties seek this relief from the Court on an urgent basis.

11. Yesterday, (on February 2, 2017) a Notice of Appearance in this proceeding was served by counsel for Unifor, the union representing certain employees of the SA. Annexed hereto and marked as Exhibit "D" is a copy of the Notice of Appearance served on behalf of Unifor.

12. I am advised by D.J. Miller of Thornton Grout Finnigan, Durham College's counsel in this matter, that Unifor's counsel will be notified of the Parties' intended urgent attendance in Court this afternoon and will be provided with a copy of this Affidavit in support of the Order sought, albeit that such notice will be extremely abbreviated in view of the timing of when the Framework and other documents are finalized.

13. I am further advised by D.J. Miller and do verily believe that Unifor's counsel will be fully involved in discussions relating to the SA's collective agreement, which discussions will not take place until after May 1, 2017.

14. I swear this Affidavit in support of the granting of the Order attached as Exhibit "C", and for no other or improper purpose.

SWORN BEFORE ME at the City of
Bhamu, in the Province of Ontario this
3rd day of February, 2017

SDBell

Commissioner for Taking Affidavits

Stephane D. Bell, B.A., U.B.

Meri Kim Oliver
MERI KIM OLIVER

EXHIBIT "A"

This is Exhibit "A" referred to in the affidavit
of Meri Kim Oliver sworn before me
this 3rd day of February, 2017

SDBell

A commissioner for taking affidavits

Stephanie D. Bell, K.A., L.L.B.

FRAMEWORK (Joint Proposal of the SA, DC and UOIT)

The following sets out the basic outline of a process for establishing two new student associations.

I. Overview of Preliminary Steps

1. The SA, DC and UOIT agree on a process for the next steps in terms of the pre-election and the post-election time period.
2. All three parties support a consensus communications plan (in the form developed as at February 2) to inform the students of DC and UOIT about the collaborative effort of all three parties to establish the two new student associations, including what it will mean to the students. The implementation of the communications protocol will include the message to be relayed through the AGM to be held on February 7. Each of the SA, DC and UOIT (which includes their respective executives, officers, directors, staff and governors, as the case may be) will ensure that all communications in any form (including Twitter and Facebook) are consistent with the consensus communications plan.
3. This Framework document will be annexed as a Schedule to a court Order to be sought on a consent basis from a Judge of the Commercial Court in the pending application proceeding to reflect: (1) the course of action to be implemented relating to the pre- and post-election time period; (2) the appointment of BlueTree Advisors II Inc. (Bill Aziz) as COO with such appointment becoming effective post-election time period between May 1 – August 1; and (3) the inclusion of a comeback date (anticipated to be mid-July) to resolve any outstanding issues.
4. Subject to confirmation as to a Judge's availability, all three parties will attend in Court Friday afternoon February 3, 2017 to seek approval of the Order incorporating this Framework, on a consent basis.

II. Timeline

A. February 1 – February 7 (AGM)

1. Finalize (i) this Framework document, (ii) the Communications Plan and (iii) the form of Consent Order;
2. Obtain Consent Order from the Court; and
3. Commence implementation of communications plan and ensure that messaging by all parties is consistent with the communications plan.

B. February 7 – March 22 (Election Day)

1. Communications Plan: Continue to implement joint communications plan, including hosting town halls and other communications to explain the new student association structure (two associations) to students, leading up to the elections. This will include the

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fact that people putting their names forward to stand in the elections will be elected for a student association for the institution at which they are a student.

2. Both UOIT and DC to monitor the elections, along with the assistance of an independent body such as the College Student Alliance, a Chief Returning Officer and Deputy Returning Officers or similar parties to be agreed upon by all three parties. If there are any disputes, the parties are able to return to the Court to seek the Court's assistance.
3. If either Institution believes that there are flaws in the election process, they will have access to the Court to seek assistance and any additional oversight.
4. Election of preliminary executives / directors for each new student association at the spring elections in March (separate ballots for each institution). The elections will be conducted in accordance with the current bylaws and policies of the SA, except as modified by this Framework:
 - (a) Number of initial executives proposed: three for the DC student association; three for the UOIT student association
 - (i) Executives to consist of one President and two Vice-Presidents;
 - (ii) Executives will be the group for each student association with the mandate to: (i) establish their respective student association entity, including its structure and related documentation; (ii) retain independent professional advisors as necessary; (iii) determine and create a framework for support for the student association; (iv) consider the nature or types of services to be provided to students of their respective schools through their respective student association; (v) consider the arrangements for any such services to be provided by their respective student associations on a separate basis; (vi) determine whether, and if so, to what extent, any services provided by their respective student associations might be shared with the other student association and, if so, the vehicle or entity that any shared services may be administered; (vii) consider any services provided to their respective students that either student association thinks should be administered directly by their respective Institution and the arrangements for same; (viii) determine the appropriate mechanism for allocating the SA's operational, legal, financial and contractual arrangements, obligations, liabilities and responsibilities, including shared use arrangements to which the SA is a party and any other aspects involving the old SA, to each of the new student associations; (ix) negotiate with the applicable Institution to establish new policies or agreements for the transfer of ancillary fees to each respective student association; (x) determine the manner of addressing or winding up of the corporate vehicle of the SA once all other items have been completed; and (xi) consider the cost and timing of all of the foregoing (the "New SA Mandate");

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- (iii) Executives for each new student association will be paid part-time in April, full-time through May-August and on some basis to be determined after August. Salary will be based on the current corresponding monthly salaries of the president and full time vice presidents of the SA;
- (b) Number of initial directors for each new student association: up to seven (7) for DC student association and up to seven (7) for UOIT student association (one from each location/faculty at each institution). This number can be increased or decreased by each student association in future.
 - (i) Directors will not have an active role in the day-to-day implementation / transition phase from May to August as described in the New SA Mandate, with such function being undertaken by the Executives of each student association. The directors of each student association will be responsible for considering, reviewing and approving / ratifying all decisions made by the Executives of their own student association.
 - (ii) Once the New SA Mandate has been completed, the directors will resume ordinary duties as prescribed under each student association's governance documents.
 - (iii) Initially, directors will be paid by their respective student association on a per meeting basis consistent with the current per meeting fees paid to SA directors. Once the new associations are operational, they will each establish the fees to be paid to directors.
5. All three parties to implement the agreed upon communications protocol and attempt in good faith to consensually address any concerns relating to the election or new student associations that may arise from students of either institution, in accordance with the communications protocol. No communications will be issued by any of the SA, DC or UOIT which would have the effect of creating any confusion regarding the consensus recommendation of those parties as to the creation of two separate student associations, or undermine the process leading to the elections.
 6. Vote: The offices for the prospective candidates up for election for the respective roles in each student association is as identified above. DC will provide a statement and question to be included on the ballot for the election relating to the Executives and directors for the new DC student association, the substance of which will be as set out on Schedule "A" hereto, with any amendments to be approved by DC. UOIT may, if it chooses, provide a statement and question to be included on the ballot for the election relating to the Executives and directors for the new UOIT student association, which question must be approved by UOIT.
- C. March 22 – May 1 (Effective date of new executives and directors for each student association)
1. DC, UOIT and SA's counsel can use this time period to assist with coordinating with new SAs and any counsel/advisors they retain, to be up and ready to implement as of May 1.

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2. UOIT and DC also use this time to see if any transition steps can start to be taken and start assisting with the organization (to whatever extent requested) in respect of the two student associations.
- D. May 1 to August 1 (Formation of the new student associations, assumption by the newly-elected executives and directors of their roles in the new student associations and implementation of the New SA Mandate)*
1. Elected Executives of each student association to undertake the New SA Mandate.
 2. Elected directors of each student association to review, consider and ratify all decisions made by the elected Executives relating to the New SA Mandate.
 3. COO works with the Executives for each student association with respect to the items set out above;
 4. Comeback Court hearing set in mid-July to resolve any outstanding issues;
 5. Outside date to complete the New SA Mandate by August 1.

III. The AGM

1. The SA will revise and update the existing Agenda currently posted on its website, withdraw the motion regarding a proposal put forth by the SA and the holding of a referendum, and update the Agenda to address the joint framework agreed upon by the SA, DC and UOIT.
2. In addition to any communications sent out on a consensus basis prior to the AGM, the AGM will be the first in-person public forum where the SA endorses the two student association model (not the shared services model described in its motion currently on the website).
3. The SA will explain the election process, the roles and anticipated duties associated with each role and the procedure moving forward post-election. The SA should encourage a high level of engagement and refer to communications that will be ongoing throughout the election process.
4. The AGM will be open to representatives of UOIT and DC. Counsel for each party will also be in attendance and will be available to answer any questions.

IV. Existing SA and Institutional Relationships

1. There will be no elections held to replace the directors and executives of the current SA.
2. During the interim period and until each student association is fully organized and in a position to manage and administer a transfer of ancillary fees from its respective Institution,

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the Institutions will continue to manage ancillary fees collected by students of each Institution in the same way that they are currently managing the ancillary fees.

3. Each student association may decide to provide all, some or none of the services currently provided by the SA. Each student association may also decide to share all, some or none of the services currently provided by the SA to students of both Institutions. Their decisions will be respected by the Institutions.
4. Neither Institution will seek to assume responsibility for a service undertaken by the current SA unless requested by its respective new student association.
5. The salaries of the current SA executives and directors will be paid from funds held by the current SA to May 1. The salary of the current staff employed by the current SA will continue to be paid by the COO from funds held by the current SA until the Executive of each new student association determines their respective staffing needs. Once this has been determined, each student association will be responsible for the payment of its staffing requirements.
6. The salaries of the elected Executives and elected directors for each new student association will be paid by each respective student association. The COO will account for and pay from the funds of the current SA, until such funds are transferred to each respective student association. From and after May 1, the new student associations will each determine their own staffing requirements and will make such arrangements as they determine on a go-forward basis.
7. The assets and liabilities of the current SA will be addressed on a fair basis, and each new student association will be responsible for the liabilities of the current SA and entitled to the assets of the current SA as negotiated between them (such discussions and negotiations being facilitated by the COO). If not resolved, it will be addressed at the Comeback motion.

V. Role of the Executives and Directors

1. Role of the Executives of each association between May 1 – August 1 will be to implement the New SA Mandate.
2. The Executive positions for each new student association (3 for each) will be full-time for the summer. Thereafter, the compensation for the Executives will be as the Executives for each student association determine, and approved by the directors, based on the needs of the respective student association going forward. It is not anticipated there will be any vacant positions to be filled by a fall election, but that will be decided by each association.
3. The role of the directors will be to review, consider and ratify the decisions made by the Executive under the New SA Mandate. No decisions made by the Executive will become effective until approved by the directors and such decisions shall be ratified at directors' meetings of each student association.

VI. Role of the Chief Operating Officer

1. The Consent Order to be obtained on Friday, February 3 will provide for the appointment of Blue Tree Advisors II Inc. as COO effective May 1, 2017.
2. COO will assist the two groups of Executives with all aspects regarding the New SA Mandate.
3. UOIT and DC will be available to be involved in these preliminary organizational steps. COO will facilitate consultations between each student association, DC and UOIT throughout this mandate.
4. If necessary, an assistant will be made by available by the SA to each student association to help with scheduling and holding meetings, circulating materials, etc. The assistant will be someone already employed by the current SA and will be paid by the existing SA.
5. The COO will act as the custodian of the SA, including its assets, liabilities, contractual and other operational aspects.
6. The COO will assist the two new student association Executives in implementing the New SA Mandate.
7. The COO will attempt to have each new student association develop a schedule and milestones for completing the New SA Mandate.
8. COO will not make decisions regarding the formation of either association, the services to be provided by either association, any services to be shared or similar matters. Those decisions are for the Executives of each respective student association to make. However, the COO will act as facilitator and provide information to assist each student association in reaching decisions and resolving differences in a timely manner.
9. As decisions are made on the form of each new student association, the COO will assist in implementing the transfer of assets / agreements / services to the each respective student association or the Institutions themselves, as negotiated with and agreed upon by affected parties, or by motion brought to the Court on notice to the affected parties.
10. The COO will facilitate in negotiating the future employment requirements, including the negotiations regarding any assignment of the Collective Agreement or any new Collective Agreement(s), if required.
11. All parties will have court protection for actions taken pursuant to the Consent Order.
12. Comeback hearing scheduled in mid-July to:
 - (a) address any outstanding issues or any impasses;
 - (b) allow the COO to report back to the Court regarding the status of the transition;

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- (c) allow the COO and the parties to seek the Court's direction to assist the two student associations in resolving any remaining issues; and
- (d) establish a path forward with the intention that all outstanding issues will be resolved by the outside date of Aug. 1.

VII. Fees

1. DC will pay for the fees of the COO and its counsel between Jan. 12 – Feb. 12 and between May 1 – Aug. 1.
2. COO's role will be placed on hiatus between Feb. 12 and May 1, until his court appointment as COO becomes effective.
3. Upon the termination of the COO on August 1, 2017 pursuant to the Order dated February 3, 2017 and the expiry of DC's payment period on August 1, any fees payable in respect of any new process required to address any unresolved issues will be as agreed amongst the two new student associations, DC and UOIT, or as determined by the Court.

SCHEDULE "A"

Over the past 10 years, Durham College has grown to more than 11,000 full-time postsecondary and apprenticeship students. Based on their collective understanding of the desire of students of one or both Institutions, Durham College, UOIT and the Student Association all recommend the creation of **separate** student associations for each of Durham College and UOIT.

The (new) Student Association at Durham College will have elected officials, a governing board, and a constitution with independent governance – comprised **entirely** of Durham College students.

The DC Student Association will operate separately and independently from Durham College. The purpose of a DC Student Association is to provide superior advocacy, services and support to DC students through more active participation and engagement.

Please confirm if you agree with the following:

- o Durham College students are best served by a Student Association that is comprised of and directed by Durham College students only, with a mandate to focus on providing services primarily to Durham College students.

Yes No

EXHIBIT "B"

This is Exhibit "B" referred to in the affidavit
of Meri Kim Oliver sworn before me
this 3rd day of February, 2017

SD Bell

A commissioner for taking affidavits

Stephane D. Bell, B.A., L.H.B.

Proposed Communications Protocol

Objectives

To communicate consistent messages regarding the consensus path forward for the student association (SA) to the collective communities of Durham College (DC) and UOIT regarding the formation of two separate student associations.

To reduce the potential for misinformation to be created/shared as a result of independent messaging from individual organizations, or individuals within those organizations.

To engage students at UOIT and DC in dialogue about the future of student representation and leadership for student associations of each institution.

To inform the students at UOIT and DC about the upcoming elections process and the unique roles that will be taken on by the Executives of each respective student association, including the manner of addressing the various contracts, shared services, liabilities and operational aspects to which the existing SA is subject.

References to "communications" means public communications in any form or media, including Facebook and Twitter.

References to the SA, DC and UOIT means all Executives, directors, officers, employees and governors, as applicable, of the respective organizations.

Target Audiences

Students on all campuses and learning sites for DC and UOIT.

Current community members and alumni for both Institutions.

Media that might make inquiries regarding the changes and/or process.

Key Messages (to be communicated prior to the AGM, reinforced at the AGM and continued on throughout the election process)

1. All parties are working together: The SA, DC and UOIT are collaboratively facilitating the process for a separate DC student association and a separate UOIT student association to emerge.
 - a. The SA will issue a communication statement ASAP after the court order is obtained, the content of which is to be approved by each of UOIT and DC.
 - b. DC and UOIT may issue separate communications supporting the SA's communication, with the message to be in all respects consistent with this communication protocol.

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2. The statement issued by the SA immediately upon the court order being issued will supercede any previous statement made or any position taken by the SA relating to the formation of two student associations.
3. Each new student association will determine the services that the students of their respective institution want from their student association and consider the costs of providing such services.
4. Ancillary fees for students of UOIT and DC will not increase for the 2017/18 year above the previously-planned increases that have previously been approved by students. Ancillary fees for DC students will also have been set prior to the elections for the 2018/19 academic year. Accordingly, fees for the next 2 years for DC students will already be in place before the elections.
5. Emphasis that this is a fresh start for student leadership for each Institution. UOIT will have its own student organization for the first time in its history, and DC will once again have its own student organization.
6. An election will be held with two separate ballots (one for UOIT students and another for DC students) to elect the Executive and Board of each of the UOIT student association and DC student association. Dates, times and locations for each Institutions' students will be communicated once determined.
7. After the AGM, Town Halls will be conducted to provide information to the students of each Institution in advance of elections about how to participate.
8. Students from each Institution will have the opportunity to provide input through these Town Halls on the formation / structure of their respective student association.
9. The entire process is protected by a Court Order that has been agreed upon on a consensual basis by the SA, DC and UOIT. All three parties, in addition to the COO, will operate under the Court Order to work towards the two new student associations and help untangle issues.
10. Both UOIT and DC will have contact numbers [and emails] dedicated for students asking questions with respect to the creation and election of the two new student associations.

Communications Channels

The following communications channels will be used, based on the type of message required. Not all channels will be used for all key messages above.

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- Student Association website, social media sites and Student Centre postings.
- The Chronicle of DC-UOIT.
- UOIT and DC digital signage; social media channels, student e-mail, and student portals.
- DC and UOIT webpages and bulletin boards.
- DC and UOIT information packages to faculty for dissemination to students.
- Town Hall meetings for each institution.
- Student Association AGM.

Gathering Input

1. Teams located at key social sites at all campus locations. Teams will provide information on new directions for student leadership and will be trained to respond to questions from students. Survey to be completed by students about what they want from future student leaders. Composition of teams to be discussed amongst the SA, DC and UOIT. DC will utilize a staff team provided by its athletic director. UOIT will utilize a team from Student Life. The SA to advise as to people to be made available for these teams.
2. Separate town hall meetings will be conducted for students of each institution at all campus locations. A description of the rationale for separate SA's will be shared and Q & A will be conducted with audiences. Representatives of DC and UOIT (and their counsel, if they choose) will be present at the town hall meetings for their own institution.
3. AGM will be structured to provide input into process, not to receive directives on implementation.
4. Organizational websites and social media sites will be developed for input and comment by students. Responses to any questions posted will be coordinated among the SA, DC and UOIT.

Timeframe

1. Communications about current process leading up to election to continue until election dates in March.
2. Communication and updates about activities of Chief Operating Officer to continue through summer.
3. Anticipated follow-up messaging and status updates to last until October 2017 with follow-up one year out in February 2018.

4. All communications by any of the SA, DC or UOIT in respect of the SA or the process outlined in the Framework annexed to the Court Order are to be consistent in all respects with the terms of the Framework. Any party may return to Court to address communications that do not comply with such agreement.
5. Once the COO is in place on May 1 until August 1, communications relating to the SA or the two new student associations made by DC, UOIT, the SA or either of the new student associations are to be approved by the COO.
6. After August 1, 2017, the two new student associations, DC and UOIT will agree to the form of any status updates sent to the students of DC and UOIT relating to the new student associations and the work that has been accomplished.

Budget

Each organization is responsible for its own costs associated with the communications activities

EXHIBIT "C"

This is Exhibit "C" referred to in the affidavit
of Meri Kim Oliver sworn before me
this 3rd day of February, 2017

JD Bell

A commissioner for taking affidavits

Stephane D. Bell, B.A., LL.B.

Court File No. CV- 17-00011668-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

IN THE MATTER OF Section 101 of the *Courts of Justice Act*, R.S.O. 1990 C.c.43 as amended.

BETWEEN:

DURHAM COLLEGE OF APPLIED ARTS AND TECHNOLOGY

Applicant

- and -

THE STUDENT ASSOCIATION AT DURHAM COLLEGE AND UOIT

Respondent

NOTICE OF APPEARANCE

The respondent, Unifor, intends to respond to this application.

February 2, 2017

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Court File No. CV-17-00011668-00CL

DURHAM COLLEGE OF APPLIED ARTS AND TECHNOLOGY

Applicant

THE STUDENT ASSOCIATION AT
DURHAM COLLEGE AND UOIT

Respondent

- and -

IN THE MATTER OF Section 101 of the *Courts of Justice Act*, R.S.O. 1990 c.C.43, as amended

ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)

Proceedings commenced at Toronto

NOTICE OF APPEARANCE

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DURHAM COLLEGE OF APPLIED ARTS AND TECHNOLOGY

Applicant

THE STUDENT ASSOCIATION AT DURHAM COLLEGE AND UOIT

Respondent

Court File No.: CV-17-000116688-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

Proceedings commenced at Toronto

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