

NO.
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

PLAINTIFF

AND:

**HER MAJESTY THE QUEEN IN RIGHT OF
THE PROVINCE OF BRITISH COLUMBIA**

DEFENDANT

Brought Under the *Class Proceedings Act*

STATEMENT OF CLAIM

1. The Plaintiff is a businessman and resides at ***, in the District of North Vancouver, in the Province of British Columbia.
2. The Defendant, Her Majesty the Queen in Right of the Province of British Columbia, is named in the proceedings pursuant to the provisions of the *Crown Proceeding Act*, R.S.B.C. 1996, c. 89 and amendments thereto.
3. The Plaintiff is the father of two school-aged children who are currently attending as students at Windsor Secondary School situate at 931 Broadview Drive, in the District of North Vancouver, in the Province of British Columbia.
4. The Plaintiff's two children are:
 - (a) *** who is currently in grade 10; and
 - (b) *** who is currently in grade 8.

5. Both of the Plaintiff's children have attended public schools within the Province of British Columbia commencing in Kindergarten and continuing each year to the present.
6. For both of the Plaintiff's children, each year that they have attended school, the Plaintiff has been required to pay and has paid to the respective schools on behalf of his children, course fees and various other fees for which he has been billed on an annual basis.
7. For the current year, the Plaintiff has been billed and has paid to Windsor Secondary School as follows:

(a) For ***:

Course Fees:

Electronics 11	\$15.00
French 10	\$10.00
Physical Education 10	\$15.00
Planning 10	\$2.50
Science 10	\$22.00

General Fees:

Student Fee	\$40.00
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Optional:

*PAC: Tax deductible Donation	\$25.00
Yearbook	\$40.00
Total:	\$169.50

(b) For ***:

Course Fees:

Drama 8	\$7.50
French 8	\$15.00
Physical Education 8 Boys	\$15.00
Technology 8	\$15.00
Visual Arts 8	\$7.50

General Fees:

Student Fee	\$40.00
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Optional:

*PAC: Tax deductible Donation	\$25.00
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Yearbook	\$40.00
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Total:	\$165.00
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8. During the current year and during each year that the Plaintiff's children have attended schools within the Province of British Columbia, the schools attended have been provincial schools organized for educational purposes and directly owned, operated, and maintained by or on behalf of the Defendant.
9. Fees billed to and paid by the Plaintiff as aforesaid have been unlawfully charged by the Defendant in contravention of the provisions of the *School Act*, R.S.B.C. 1996, c. 412.
10. The Plaintiff is entitled to be reimbursed for all amounts paid to the Defendant as aforesaid, the Defendant having been unjustly enriched by the receipt and retention of such funds.
11. The Plaintiff seeks 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 Plaintiff and the Plaintiff claims restitution in the full amount of the said trust.
12. In the alternative, the Plaintiff says that all monies paid by him to the Defendant as aforesaid were paid under a mistake of law or alternatively that payment was induced by a misrepresentation of the law by the Defendant on whose knowledge of the law the Plaintiff was entitled to rely.

CLASS PROCEEDINGS ACT

13. This action is brought on behalf of the Plaintiff 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 PLAINTIFF CLAIMS ON HIS 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 Plaintiff;
- (b) an accounting of all fees paid by the Plaintiff to the Defendant as aforesaid;
- (c) a declaration of trust in favour of the Plaintiff 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 5th day of October, 2006.

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