



Electronically issued : 24-May-2022
Délivré par voie électronique
Toronto

Court File No. :

**ONTARIO
SUPERIOR COURT OF JUSTICE**

LAW SOCIETY OF ONTARIO

Plaintiff

and

CANADA NCA EXAM GURU INC., AAMER CHAUDHRY, JOHN DOE, and
JANE DOE

Defendants

STATEMENT OF CLAIM

TO THE DEFENDANTS

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff.
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 Plaintiff's lawyer or, where the Plaintiff does not have a lawyer, serve it on the Plaintiff, 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,

-2-

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 _____
Local Registrar

Address of court office: Superior Court of Justice
330 University Avenue, 9th Floor
Toronto ON M5G 1R7

TO: CANADA NCA EXAM GURU INC.
3464 Nighthawk Trail
Mississauga, ON L5N 6G3
(289) 654-6583
aamer72@hotmail.com

AND TO: AAMER CHAUDHRY
3464 Nighthawk Trail
Mississauga, ON L5N 6G3

AND TO: JOHN DOE

AND TO: JANE DOE

-3-

CLAIM

1. The Plaintiff claims:

- (a) An interim, interlocutory, and/or permanent injunction prohibiting the defendants from possessing, using, communicating, or distributing Examination Content (as defined in the Candidate Agreement and Rules and Protocol, pleaded below);
- (b) Damages in an amount to be assessed by the Court for breach of confidence, conspiracy, inducing breach of contract, and copyright infringement;
- (c) An order requiring the Defendants to deliver up to the Plaintiff the Examination Content;
- (d) An order requiring the defendants to disgorge to the Plaintiff any and all profits earned, directly or indirectly, as a result of the infringement of the Plaintiff's copyrights;
- (e) In the alternative, statutory damages in an amount to be assessed by the Court for each work or other subject matter infringed, pursuant to s. 38.1(1)(a) of the *Copyright Act*, R.S.C. 1985, c. C-42;
- (f) Punitive and aggravated damages in the amount of \$100,000.00;
- (g) Prejudgment interest under s. 128 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;

-4-

- (h) Postjudgment interest under s. 129 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
- (i) The costs of this proceeding, plus all applicable taxes; and
- (j) Such further and other relief as this Honourable Court may deem just.

The Parties

2. The plaintiff, the Law Society of Ontario (the “**LSO**”), is a corporation without share capital continued by s. 2 of the *Law Society Act*, R.S.O. 1990, c. L.8. It has a statutory mandate to regulate the practice of law and the provision of legal services in Ontario, and to license and discipline Ontario lawyers and paralegals.

3. The Defendant Canada NCA Exam Guru Inc (“**NCA Exam Guru**”) is a federally incorporated company with a registered address of 3464 Nighthawk Trail, Mississauga, Ontario.

4. NCA Exam Guru also has a commercial premise at 7025 Tomken Road, Unit 27, Mississauga, Ontario.

5. The Defendant Aamer Chaudhry resides at 3464 Nighthawk Trail, Mississauga, Ontario. Mr. Chaudhry is the sole director of NCA Exam Guru.

6. Mr. Chaudhry is a former LSO licensing candidate, but is not a licensed lawyer or paralegal.

-5-

LSO Licensing Examinations

7. The LSO creates and administers licensing examinations: a barrister examination and a solicitor examination. Both examinations are self-study, open-book, and multiple-choice. To be licensed as a lawyer in Ontario, one must pass both licensing examinations.

8. Historically, LSO licensing examinations took place in person. All candidates wrote the examinations in person, on paper, on a single day, and at a single start time (although some received accommodations under the *Human Rights Code*).

9. In the spring of 2020, because of COVID-19, the LSO began using an online, remote-proctored delivery model. Candidates could choose from multiple time-slots across multiple days.

Prohibitions on Examination Misconduct

10. To write the licensing examinations, candidates must agree to a Candidate Agreement.

11. The Candidate Agreement is a contract between a licensing candidate and the LSO.

12. The Candidate Agreement provides that candidates must not engage in any form of dishonesty, fraud, cheating, misrepresentation, or other misconduct related to the examination. By agreeing to the Candidate Agreement, candidates acknowledge that the following actions, among others, are prohibited:

- (a) attempting to disseminate, distribute, transmit, disclose, publish, stream, reproduce, copy, alter, receive, obtain, give, or retain all or any portion of Examination Content

-6-

[defined below] (including through memorization for subsequent transcription or dissemination and including imprecise, inaccurate, or amended content);

- (b) disseminating, distributing, transmitting, disclosing, publishing, streaming, reproducing, copying, altering, receiving, obtaining, giving, or retaining all or any portion of Examination Content (including through memorization for subsequent transcription or dissemination and including imprecise, inaccurate, or amended content);
- (c) communicating with any person about Examination Content;
- (d) using Examination Content (including imprecise, inaccurate, or amended content) for any purpose other than strictly for the Candidate to write this Examination at this time and on this date;
- (e) using any Examination Content (including imprecise, inaccurate, or amended content) for any purpose other than strictly for the Candidate to write the Examination on which the content appeared, at the time and on the date it appeared to the Candidate;
- (f) failing to advise the Law Society in writing immediately should a candidate become aware that other persons are disseminating, distributing, transmitting, disclosing, publishing, streaming, reproducing, copying, altering, receiving, obtaining, giving, or retaining Examination Content (including imprecise, inaccurate, or amended content);

-7-

- (g) assisting a person to breach the security and integrity of an Examination;
- (h) being in possession of, consulting, or using an unauthorized source, such as notes taken or marks made during another LSO Examination, whether taken or made by Candidate or another person;
- (i) assisting a person to carry out any of the above activities; and
- (j) failing to report to the LSO information known about another candidate's breach of obligations in the Rules and Protocol or a breach of any obligation in a Candidate Agreement.

13. The Candidate Agreement provides that "Examination Content" includes topics, items, questions, scenarios, fact patterns, cases, correct answers, incorrect answers, and information contained in a licensing examination (including information that is imprecise, inaccurate, or amended in some fashion), but does not include information available on the LSO's website and does not include a person's feelings about a licensing examination (e.g., whether an examination is "hard," "easy," "as I expected," or "stressful") or about their performance (e.g., "I think I passed").

14. The Candidate Agreement provides that all Examination Content and materials are the exclusive property of the LSO, are protected by copyright, and are subject to the law of copyright in Canada.

15. By agreeing to the Candidate Agreement, candidates acknowledge that they have read and agreed to the LSO's Rules and Protocol for licensing examinations.

-8-

16. The Rules and Protocol contain a list of prohibited actions, which include:

- (a) breaching or attempting to breach the security of the Examination Content by any means (including seeking to make, transmit, or retain a copy or imperfect copy of any portion thereof);
- (b) communicating or attempting to communicate with any person about the Examination Content;
- (c) obtaining from any other person or entity any Examination Content (including information related to a question or answer on a Licensing Examination, such as a portion of a question or answer or the general content of a question or answer), with the exception that candidates will receive the Licensing Examination booklet directly from the Law Society for the sole purpose of completing their Licensing Examination on their scheduled Licensing Examination date and at their scheduled Licensing Examination time with integrity;
- (d) providing to any other person or entity any Examination Content (including information related to a question or answer on a Licensing Examination, such as a portion of a question or answer or the general content of a question or answer);
- (e) being in possession of, using, relying on, or consulting an Unauthorized Source or information obtained therefrom at any time, whether before, during, or after a Licensing Examination, with the exception that candidates will possess, use, rely on, and consult the content of the Licensing Examination booklet provided to them directly by the Law Society for the sole purpose of completing their Licensing

-9-

Examination on their scheduled Licensing Examination date and at their scheduled Licensing Examination time with integrity;

- (f) failing to advise the Law Society in writing immediately should they become aware of the existence of an Unauthorized Source, the use of same by another candidate, or the promotion or distribution of an Unauthorized Source by any entity or person, with the exception of a candidate's use of the Licensing Examination booklet provided to the candidate directly by the Law Society for the sole purpose of completing their Licensing Examination on their scheduled Licensing Examination date and at their scheduled Licensing Examination time with integrity;
- (g) engaging in any form of dishonesty, fraud, cheating, misrepresentation, or other misconduct in respect of a Licensing Examination;
- (h) receiving an answer to a question on a Licensing Examination from another person or entity;
- (i) permitting anything to occur that could reasonably be expected to negatively impact the security or integrity of the Licensing Examination, or failing to take measures to prevent such occurrence where such failure could reasonably be expected to negatively impact the security or integrity of the Licensing Examination;
- (j) performing any action that could reasonably be expected to negatively impact the security or integrity of the Licensing Examination; and
- (k) assisting a person to carry out any of the above activities.

-10-

17. Similar to the Candidate Agreement, the Rules and Protocol define “Examination Content” as all information and material (including partial, partially inaccurate, and partially erroneous information and material) related to any Licensing Examination that is not disclosed publicly by the LSO on its website, including all of the following to the extent that they are not disclosed publicly by the LSO on its website:

- (a) any topic, item, question, scenario, fact pattern, case, correct answer, and incorrect answer on a Licensing Examination;
- (b) the format, structure, organization, process, and evaluation of a Licensing Examination;
- (c) the types of questions and answers that appear on Licensing Examinations; and
- (d) all materials that may be provided by the LSO to candidates in connection with a Licensing Examination during a Licensing Examination (including the Licensing Examination booklet containing questions and answers (correct and incorrect) as well as the Scantron answer sheet), but excluding the LSO Study Materials.

18. For the purposes of the Rules and Protocol, “Licensing Examination” means a licensing examination administered by the LSO and “Law Society Study Materials” means the Licensing Examination study materials provided to candidates by the LSO.

The Defendants Have Disseminated Examination Content

19. NCA Exam Guru offers preparation courses for the barrister examination and the solicitor examination. Mr. Chaudhry, the principal of NCA Exam Guru, leads some of the courses.

-11-

20. Representatives of NCA Exam Guru have sent those enrolled in the preparation courses documents containing questions from LSO licensing examinations.

21. During lectures, Mr. Chaudhry has displayed examination questions from a larger document. He described the questions as “sample questions.” The questions were from real LSO examinations.

22. Further, the defendants have answers to LSO examination questions, including from the November 2021 barrister examination.

23. During the sitting period of the November 2021 barrister examination, Mr. Chaudhury and/or other NCA Exam Guru representatives (with Mr. Chaudhury’s knowledge or at his direction) distributed to NCA Exam Guru clients documents containing answers to the examination (the “**Cheating Documents**”). This distribution occurred in a variety of ways, including but not limited to Skype chats, WhatsApp messages, and email.

24. The defendants disseminated the Cheating Documents to allow their clients to cheat on the November 2021 barrister examination. Mr. Chaudhury, in particular, encouraged clients to use the Cheating Documents.

25. A number of candidates used the Cheating Documents in the November 2021 barrister examination.

26. The LSO pleads that the defendants have engaged in similar conduct in relation to other LSO licensing examinations. The LSO is continuing to investigate in that regard.

-12-

27. To guard against similar misconduct during the Winter 2022 examination sittings, scheduled for March 2022, the LSO cancelled the scheduled online examination sitting and scheduled new examination sitting dates in April 2022.

28. The LSO incurred significant expense in rescheduling the licensing examinations. Candidates who were scheduled for the March 2022 sitting period have also experienced cost, inconvenience, and stress.

29. The defendants are liable to the LSO for breach of confidence, conspiracy, inducing breach of contract, and copyright infringement.

Breach of Confidence

30. The defendants committed the tort of breach of confidence. The Examination Content has the necessary quality of confidence about it. The LSO has not and does not provide candidates (or anyone) with answers to licensing examinations or questions from past examinations. Under the Candidate Agreement, Examination Content is confidential.

31. The Examination Content was imparted to the defendants in circumstances importing an obligation of confidence. Although it is unknown how the defendants obtained the Examination Content, they had actual and constructive knowledge that it was imparted in breach of confidence.

32. The use of the Examination Content by the defendants was unauthorized and the Examination Content was used in an unlawful manner to the detriment of the LSO. The LSO did not, at any point, authorize the defendants to obtain and disseminate the Examination Content. The Candidate Agreement and the incorporated Rules and Protocols explicitly prohibit the

-13-

dissemination, transmitting, publishing, reproducing, copying, giving or retaining of the Examination Content. By obtaining and disseminating the Examination Content, the defendants harmed the LSO, the licensing examination process, and the legal profession.

Conspiracy

33. The defendants committed the tort of conspiracy. Mr. Chaudhry, NCA Exam Guru, and other individuals associated with NCA Exam Guru agreed to obtain the Examination Content and disseminate it to the licensing candidates who were registered for the NCA Exam Guru preparation courses. Certain candidates joined in this agreement by accepting, and in some cases using, the Examination Content. The conspirators used unlawful means: obtaining, disseminating, and using the Examination Content violated the Candidate Agreement and the Rules and Protocol. The conspirators also knew that their acts would harm the LSO and other candidates, and such harm has in fact resulted.

Inducing Breach of Contract

34. The defendants induced the licensing candidates to whom they provided the Examination Content to breach their contracts. The candidates had agreed to the Candidate Agreement and the incorporated Rules and Protocols, which prohibit the use and dissemination of Examination Content.

35. The defendants had actual and constructive knowledge that it was prohibited to disseminate and use Examination Content. In particular, they knew of the Candidate Agreement and the Rules and Protocols.

-14-

36. By obtaining and disseminating the Examination Content, the defendants induced the licensing candidates to breach their agreements with the LSO. The LSO has suffered harm as a result.

Copyright Infringement

37. The LSO holds a copyright in the Examination Content. The Candidate Agreement provides that all Examination Content and other examination materials are the exclusive property of the LSO, are protected by copyright, and are subject to the law of copyright in Canada. The LSO has not expressly or implicitly authorized any of the defendants to use the Examination Content.

38. The defendants have unlawfully infringed the LSO's copyright in the Examination Content by obtaining, using, and disseminating it. As a result, the LSO has suffered damage.

39. The LSO pleads and relies upon the *Copyright Act*, R.S.C., 1985, c. C-42.

Remedy

40. The LSO is entitled to damages for the defendants' unlawful conduct, which caused loss to the LSO, including:

- (a) Damage to the LSO's reputation;
- (b) Damage to the integrity of the LSO's licensing process, requiring costly remedial steps to address, including cancelling and rescheduling the Winter 2022 licensing examinations; and

-15-

(c) Costs of investigating the defendants' unlawful conduct.

41. The LSO is entitled to an order for the delivery up of the Examination Content, including pursuant to ss. 34 and 38(1) of the *Copyright Act*.

42. The LSO claims disgorgement of any and all profits that the defendants earned from the use of the Examination Content for the breach of confidence and the copyright infringement, including pursuant to s. 35 of the *Copyright Act*.

43. In the alternative, the LSO is entitled to statutory damages, pursuant to s. 38.1(1)(a) of the *Copyright Act*.

44. The court should award punitive and aggravated damages. The defendants were, at all time, aware that their conduct would harm the LSO. Their conduct was high-handed, dishonest, oppressive, harsh, vindictive, reprehensible, malicious, and in disregard of the integrity of the LSO and the legal profession.

-16-

Date: May 24, 2022

STOCKWOODS LLP
Barristers
Toronto-Dominion Centre
TD North Tower, Box 140
77 King Street West, Suite 4130
Toronto ON M5K 1H1

Nader R. Hasan (54693W)
Tel: 416-593-1668
naderh@stockwoods.ca

Fredrick R. Schumann (59377L)
Tel: 416-593-2490
fredricks@stockwoods.ca

Alexandra Heine (83154R)
Tel: 416-593-1669 (Direct)
Fax: 416-593-9345
AlexandraH@stockwoods.ca

Tel: 416-593-7200
Fax: 416-593-9345

Lawyers for the Plaintiff

LAW SOCIETY OF ONTARIO and CANADA NCA EXAM GURU INC., et al
Plaintiff Defendants

Court File No.

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at TORONTO

STATEMENT OF CLAIM

STOCKWOODS LLP

Barristers

Toronto-Dominion Centre
TD North Tower, Box 140
77 King Street West, Suite 4130
Toronto ON M5K 1H1

Nader R. Hasan (54693W)

Tel: 416-593-1668
naderh@stockwoods.ca

Fredrick R. Schumann (59377L)

Tel: 416-593-2490
fredricks@stockwoods.ca

Alexandra Heine (83154R)

Tel: 416-593-1669 (Direct)
Fax: 416-593-9345
AlexandraH@stockwoods.ca

Tel: 416-593-7200

Fax: 416-593-9345

Lawyers for the Plaintiff