



# Civil Resolution Tribunal

Date Issued: June 26, 2018

File: SC-2017-003025

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Ames et al v. Eton College Canada Inc.*, 2018 BCCRT 280

**B E T W E E N :**

Dennis Ames, Clinton Tirao, and Maria Florevi Tirao

**APPLICANTS**

**A N D :**

Eton College Canada Inc.

**RESPONDENT**

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## **REASONS FOR DECISION**

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Tribunal Member:

Angus M. Gunn QC

## **INTRODUCTION**

1. The applicants Clinton Tirao (“Mr. Tirao”) and Maria Florevi Tirao (“Ms. Tirao”), are brother and sister. The respondent Eton College Canada Inc. (“Eton”) is a private post-secondary institution established in 2003 and specializing in hospitality

management, travel and tourism management, business administration, and flight attendant training. It is regulated by the Private Training Institutions Branch of the Ministry of Advanced Education (“PTIB”).

2. In March 2017 Mr. Tirao and Ms. Tirao (both adults) separately signed student enrolment contracts with Eton. Their step-father, the applicant Dennis Ames (“Mr. Ames”), made all payments to Eton for their respective programs, which is the basis upon which he has standing in this dispute. The following month, Mr. Tirao and Ms. Tirao both withdrew from their programs of study.
3. The dispute in this case concerns how much of moneys that Mr. Ames paid to Eton are recoverable. The answer depends primarily on whether the refund policy detailed in the enrolment contracts is binding on the applicants. The applicants say that it is not binding, and that they should receive a full refund of all moneys paid plus interest. Eton maintains that it has already refunded the applicants the amounts to which the enrolment contracts entitle them.
4. The applicants are self-represented in this proceeding and the respondent is represented by its registrar.

## **JURISDICTION AND PROCEDURE**

5. These are the formal written reasons of the Civil Resolution Tribunal (“tribunal”). The tribunal has jurisdiction over small claims brought under section 3.1 of the *Civil Resolution Tribunal Act* (the “Act”). The tribunal’s mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the tribunal must apply principles of law and fairness, and recognize any relationships between parties to a dispute that will likely continue after the dispute resolution process has ended.
6. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. No party asked for a hearing other than in writing. I decided to hear these disputes through written

submissions, because I find that I am able to resolve the few factual issues without an oral hearing. I find no other reasons that might require an oral hearing.

7. The tribunal may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in a court of law. The tribunal may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
8. Under tribunal rule 126, in resolving these disputes the tribunal may make one or more of the following orders:
  - a. order a party to do or stop doing something;
  - b. order a party to pay money;
  - c. order any other terms or conditions the tribunal considers appropriate.
9. At an earlier stage of this proceeding, Eton challenged the tribunal's jurisdiction to resolve the applicants' dispute. On December 5, 2017, the tribunal issued a preliminary decision that it had jurisdiction to hear this dispute and ordered that the tribunal proceeding continue: 2017 BCCRT 132. What follows is the tribunal's final decision with respect to the merits of the dispute.

## **ISSUES**

10. The issues in this dispute are:
  - a. Are the applicants bound by the terms of the enrolment contracts signed by Mr. Tirao and Ms. Tirao?
  - b. Are the applicants entitled to any further refund of the moneys they paid to Eton?

## EVIDENCE AND ANALYSIS

11. The applicants bear the burden of proof, on a balance of probabilities. I have reviewed all of the evidence and submissions provided, but refer only to what is necessary to give context to my decision.

### Eton's Admissions Policy and Enrolment Contracts Generally

12. Eton's admissions policy provides in part as follows:

- "Eton College admits qualified students without discrimination with regard to ... national or ethnic origin ... ."
- "Applicants must meet all minimum requirements to be considered for admission to Eton College and have sufficient financial support for his/her study."
- "Eton College Placement Assessment will be required if candidate does not meet minimum English Proficiency requirements as per admissions requirements."

13. Eton describes its processes for enrolment and (occasional) withdrawal as being "transparent and accountable." Those processes are approved and reviewed regularly by the PTIB. They are also disclosed to all prospective students in detail during each step of the admissions process.

14. As part of Eton's admission process, new students are asked to sign the following documents among others:

- a. an application for admission;
- b. a document titled, "Reflection and Preparedness for my Program of Study";  
and
- c. a student enrolment contract.

Eton describes its contracts as disclosing what the student can expect in return for their financial investment in their education, Eton's refund policy, other matters

required by the PTIB, and the student's program outline. The contracts are based on PTIB templates provided to all private colleges in British Columbia, and are submitted to the PTIB for approval and for confirmation that they are legally correct.

15. The application for admission document confirms that applicants must demonstrate English proficiency in one of four ways, failing which a "Placement Assessment" will be required. According to the admissions policy on Eton's website, an applicant who does not meet the necessary English requirements will be placed into the Business Environment Communications ("BEC") program. Once the applicant achieves the required level of proficiency in English, he or she will then enter his or her original choice of program. The BEC program serves as a "bridge" to enable individuals who lack the level of English proficiency needed for Eton's career and academic programs to acquire it. The application for admission form must be accompanied by a non-refundable application fee of \$125.00.
16. The student enrolment contract includes a section titled, "REFUND POLICY" that provides in relevant part as follows:
  1. If Eton College Canada Inc. receives tuition from the student, or a person on behalf of a student, Eton College Canada Inc. will refund the student, or the person who paid on behalf of the student, the tuition that was paid in relation to the program in which the student is enrolled if:
    - (a) Eton College Canada Inc. receives a notice of withdrawal from the student no later than seven days after the effective contract date and before the contract start date;
    - (b) the student, or the student's parent or legal guardian, signs the student enrolment contract seven days or less before the contract start date and Eton College Canada Inc. receives a notice of withdrawal from the student between the date the student, or the student's parent or legal guardian, signed the student enrolment contract and the contract start date; or
    - (c) the student does not attend a work experience component and Eton College Canada Inc. does not provide all of the hours of instruction of the work experience component within 30 days of the contract end date.

2. Eton College Canada Inc. will refund the tuition for the program and all related fees paid by the student or a person on behalf of the student enrolled in the program if the student is enrolled in the program without having met the admission requirements and did not misrepresent his or her knowledge or skills when applying for admission.
3. If a student does not attend any of the first 30% of the hours of instruction to be provided during the contract term, Eton College Canada Inc. will retain 50% of the tuition paid under the student enrolment contract unless the program is provided solely through distance education.
4. Unless the program is provided solely through distance education, if Eton College Canada Inc. receives a notice of withdrawal from a student:
  - (a) more than seven days after the effective contract date and
    - i. at least 30 days before the contract start date, Eton College Canada Inc. will retain 10% of the tuition due under the student enrolment contract, to a maximum of \$1,000.
    - ii. less than 30 days before the contract start date, Eton College Canada Inc. will retain 20% of the tuition due under the student enrolment contract, to a maximum of \$1,300.
  - (b) after the contract start date
    - i. but before 11% of the hours of instruction to be provided during the contract term have been provided, Eton College Canada Inc. will retain 30% of the tuition due under the student enrolment contract;
    - ii. and after 10% but before 30% of the hours of instruction to be provided during the contract term have been provided, Eton College Canada Inc. will retain 50% of the tuition due under the student enrolment contract.

\* \* \* \* \*

7. Eton College Canada Inc. will refund fees charged for course materials paid for but not received if the student provides a notice of withdrawal to Eton College Canada Inc. ...
8. Refunds required under this policy will be paid to the student, or a person who paid the tuition or fees on behalf of the student, within 30 days:
  - (a) of the date Eton College Canada Inc. receives a student's notice of withdrawal; [or]

\* \* \* \* \*

- (d) after the first 30% of the hours of instruction if section 3 of this policy applies.

Note: Please refer to the Eton College Canada Inc. Student Handbook for a complete list of Administrative Fees.

I have read the Refund Policy and understand, and agree to the terms:  
\_\_\_\_\_.

- 17. The student enrolment contract concludes with a “STUDENT DECLARATION” section in which the student declares (among other things) that “I have read, understood, and agreed to the terms and conditions of this enrolment contract.” The student (or his or her parent or legal guardian) must sign and date the contract, as must a representative of Eton.
- 18. The “Reflection and Preparedness” document prompts the prospective student “to do your own self-check” before the enrolment contract is signed. The prospective student is asked to confirm that he or she has read and understands seven different policies, including the “Tuition Refund” policy included in the enrolment contract. The prospective student is asked to cross-reference the seven policies with seven policy descriptions, one of which is “I may get money back or not if I drop out.” The prospective student is asked to answer yes or no to the statement, “I, the undersigned, clearly understand the content of my enrolment contract and refund policy.” The prospective student signs the “Reflection and Preparedness” document at the bottom, as does Eton’s registrar or assistant registrar.
- 19. The Eton student handbook sets out a “Withdrawal Policy” as follows:

**Purpose**

This policy is to outline the procedures for requesting Withdrawal from a Program of Study by the student and the financial consequences of such a withdrawal for the student.

Request for any such Withdrawal from a Program of Study will only be considered under extenuating circumstances and upon validation by the instructor, Registrar

and/or Education Coordinator that the reasons provided by the student for the Withdrawal are valid.

The student must make a formal request for Withdrawal in writing by completing the Program Change Request Form available at the Registrar's Office at least 2 weeks prior to the effective change date (Exceptions to notification may be made only under special circumstances).

Procedures for Request for Withdrawal:

1. Complete the Program Change Request Form and arrange for a meeting with the Financial Aid Officer. **Request for withdrawal from the Program of Study will only be considered when the college receives a written notice from the student with explanation for the reasons for withdrawal.**
2. Upon receipt of such a Withdrawal notice from the student, the Director of Operations in consultation with the Education Coordinator and Registrar will review the request and the reasons for the withdrawal and offer the student confidential counselling to ensure that the student is making an informed decision about the withdrawal and is aware of the financial implications of such a withdrawal.
3. Any Withdrawal requested prior to 30% of program completion is subject to the refund policy found in the enrolment contract.
4. Any Withdrawal requested after 30% of program completion is subject to the refund policy found in the enrolment contract. Please note that at this point, all tuition fees, as per the original enrolment contract, are 100% non-refundable. Additional tuition fees owed due to the change will be applied.

(Boldface and underlining in original)

20. Eton says that each prospective student (and/or parent, if involved in the enrolment process) is asked to read carefully the enrolment contract and all school policies and to ask questions before signing the contract and paying a tuition deposit.
21. Eton says that throughout the admissions process all documents are explained in detail by one or more of Eton's representatives. Copies of all documents are provided to students. Eton denies that it forces prospective students to sign a contract, and emphasizes that anyone who does sign a contract has 7 days within which to withdraw and obtain a full refund (other than the application fee, which all public and private post-secondary institutions treat as non-refundable in practice).



### Mr. Tirao and Ms. Tirao Apply for Admission to Eton

22. In 2016 Mr. Tirao and Ms. Tirao emigrated from the Philippines to join their extended family in Canada. They were aged 22 and 21, respectively. They describe themselves as speaking rudimentary English, but having a very limited ability to comprehend other than conversational English.
23. In early 2017 Mr. Tirao and Ms. Tirao decided to pursue career training. Their mother and step-father supported the initiative. After exploring Eton's curricular offering, Mr. Tirao and Ms. Tirao approached Eton for admission. An Eton admissions officer discussed all the education options in a meeting with Mr. Ames, his wife, Mr. Tirao, and Ms. Tirao. Eton's registrar also spoke in person with Mr. Ames and his wife, who were comfortable that their children would be attending the correct programs. Eton then informed the group of the next steps in the admission process. All parties agreed to begin the enrollment process. Eton informed the applicants that as Mr. Tirao and Ms. Tirao were of legal age, they were able to sign their own enrolment contracts.
24. On March 10, 2017, Mr. Tirao and Ms. Tirao each signed an admission application form. Mr. Tirao indicated a desire to enter the Travel, Tourism and Flight Attendant Prep ("TTFAP") diploma program starting in April 2017. Ms. Tirao indicated a desire to enter the Hospitality Management and Flight Attendant Prep ("HMFAP") diploma program starting in April 2017.
25. Mr. Tirao and Ms. Tirao were unable to demonstrate English proficiency in one of four ways listed in the application for admission document. In accordance with that document, Eton required Mr. Tirao and Ms. Tirao to take a "Placement Assessment" to test their English-language competency.

### Ms. Tirao's Acceptance Into Eton

26. Ms. Tirao passed the Placement Assessment. Eton offered her admission into the HMFAP program starting on April 24, 2017. Representatives of Eton advised Ms. Tirao that she could cancel her contract within 7 days of signing.

27. On March 13, 2017, Ms. Tirao paid an application fee of \$125.00 and a tuition fee deposit of \$150.00.
28. The following day (March 14, 2017), Ms. Tirao signed the Reflection and Preparedness document. She correctly associated the “Tuition Refund” policy with the statement, “I may get money back or not if I drop out.” She answered “yes” to the attestation that “I, the undersigned, clearly understand the content of my enrolment contract and refund policy.”
29. Ms. Tirao also signed the Eton enrolment contract. It showed total program costs of \$16,190.00. Ms. Tirao initialed the “Refund Policy” section of the enrolment contract, confirming that she had read, understood, and agreed to the terms of that policy. She signed the declaration that (among other things) she had read, understood, and agreed to the enrolment contract’s terms and conditions. She also paid a further tuition fee deposit of \$350.00.
30. By letter dated March 28, 2017, Eton formally welcomed Ms. Tirao into the HMFAP program. On that same date, she paid a further tuition fee deposit of \$175.00.
31. Although Ms. Tirao was offered admission into the HMFAP program, she did not end up attending any classes because of events discussed later in these reasons.

#### Mr. Tirao’s Acceptance Into Eton

32. Unlike his sister, Mr. Tirao did not pass the Placement Assessment of English-language competency. As a result, he did not meet the minimum admission requirements for Eton’s diploma programs. Eton reminded Mr. Tirao and Mr. Ames of Eton’s BEC bridge program, and they asked for some time to reflect on that option.
33. On March 13, 2017, Mr. Tirao and Mr. Ames returned to Eton to speak with its admissions officer, its financial aid officer, and its registrar. Mr. Tirao and Mr. Ames indicated that Mr. Tirao wished to enrol in the BEC program. They paid an application fee of \$125.00, the BEC program tuition of \$750.00, the book fee of

\$100.00, and the student service fee of \$50.00. Because Eton's financial aid officer had left for the day, an invoice was prepared for Mr. Tirao but not an enrolment contract. Eton asked Mr. Tirao to return the next day to sign the enrolment contract.

34. Mr. Ames insisted during the meeting that Mr. Tirao be in the same class as Ms. Tirao, or else Ms. Tirao would withdraw. It appears that Mr. Tirao switched his program preference from the TTFAP program he nominated on his application to the HMFAP program into which his sister had been accepted. It was understood that Mr. Tirao would work hard to succeed in the BEC bridge program and then join his sister in the latter program starting on April 24, 2017.
35. What happened next is the subject of the primary factual disagreement between the parties. According to Eton:
  - a. Mr. Tirao and Mr. Ames attended at Eton on March 14, 2017; and
  - b. Mr. Tirao signed the enrolment contract while Mr. Ames sat in the reception area in close proximity.
36. The applicants agree that Mr. Tirao signed the enrolment contract on March 14, 2017, but deny that Mr. Ames accompanied him that day. In support of that denial, the applicants provided a letter from what I infer was his employer stating he "worked 10am-2pm on March 14th, 2017, performing drop offs to potential business clients." The applicants also provided a letter from what I infer was the employer of Mr. Tirao's and Ms. Tirao's mother, stating that she "worked .... on March 14 and 15/2016 ... ."
37. Again, representatives of Eton advised Mr. Tirao that he could cancel his contract within 7 days of signing.
38. No "Reflection and Preparedness" document signed by Mr. Tirao was placed into evidence, but the Eton enrolment contract he signed was. It showed him as enrolling in a four-week BEC program starting on March 27, 2017, and ending on

April 21, 2018. It showed total program costs of \$1,025.00. Mr. Tirao wrote his name next to the “Refund Policy” section of the enrolment contract, confirming that he had read, understood, and agreed to the terms of that policy. He signed the declaration that (among other things) he had read, understood, and agreed to the enrolment contract’s terms and conditions. Mr. Tirao also signed a “Statement of Disclosure” acknowledging that he had discussed his decision with his friends/family. He also paid a further tuition fee deposit of \$350.00.

39. It appears that the parties expected Mr. Tirao to complete the BEC program and then proceed on to the HMFAP program. In addition to the payments made for the BEC program, Mr. Tirao paid a further \$675.00 in tuition fee deposits on March 14 and 28, 2017 for the HMFAP program (with the application fee being waived on this, the second program to which Mr. Tirao applied).
40. Mr. Tirao’s first day of class in the BEC program occurred on March 27, 2017. The applicants say that Mr. Tirao was again tested for English-language competency, that he then had a half-day consultation class, and that he decided that he was not comfortable pursuing his studies at Eton. The applicants contend that Mr. Tirao’s involvement with Eton was simply evaluative, with no instruction and no content.
41. Eton provided a Grades and Attendance chart for Mr. Tirao showing that he attended the first four days of class on March 27 to 30, 2017, that he was sick and absent for the next two days of class on March 31 and April 3, 2017, and that he was unexcused and absent for the next eleven days of class from April 4 to 19, 2017. The chart shows that on April 20, 2017, Mr. Tirao withdrew from the course. The applicants did not reply to this evidence.

#### Mr. Tirao and Ms. Tirao Withdraw From Eton

42. On April 21, 2017, Mr. Tirao and Ms. Tirao wrote separate letters to Eton withdrawing from their respective programs.
43. Mr. Tirao’s letter stated, “I, Clinton Tirao, would like to inform, whom it may concern, that I will not be attending Hospitality Management and Flight Attendant

Preparation Diploma and my English Language Course as well. I would like to thank the staff, teacher, and student I met, who were so giving and friendly.”

44. Ms. Tirao’s letter stated, “I, Maria Florevi Tirao, would like to inform you that I will not continue my course – Hospitality Management and Flight Attendant Preparation Diploma. I would like to thank the staff, teacher, student that I met and thank you for the opportunity that you gave to me.”

#### Eton’s Response to Withdrawals By Mr. Tirao and Ms. Tirao

45. Eton confirmed Mr. Tirao’s withdrawal from the BEC program by letter dated May 1, 2017. The letter noted that the BEC program had a start date of March 27, 2017, and an end date of April 21, 2017, and that Mr. Tirao withdrew from the program on April 21, 2017 – the last day of the program. The letter referred to the “Refund Policy” detailed in Mr. Tirao’s enrolment contract, and noted that refunds after a program starts are limited to situations in which less than 30 per cent of the hours of instruction to be provided during the contract term has been provided. As the Eton student handbook confirms, after 30 per cent of program completion all tuition fees are non-refundable. The letter concluded by noting that the fees owed under Mr. Tirao’s contract were \$1,025.00, that Mr. Tirao had paid \$1,025.00, that Eton would be retaining the full \$1,025.00, and that no refund was owing to Mr. Tirao.
46. Eton dealt separately with the \$675.00 in tuition fee deposits that Mr. Tirao paid on account of the HMFAP program. Mr. Tirao’s eligibility for admission to that program remained pending until his completion of the BEC bridge program. Because Mr. Tirao never completed the bridge program, he was never admitted into the HMFAP program and never signed an enrolment contract for it. As a result, Mr. Tirao owed nothing to Eton on account of this program. By letter dated May 11, 2017, Eton wrote to Mr. Tirao and enclosed a cheque for \$675.00, reflecting the total tuition fee deposits paid for him on account of the HMFAP program. The cheque, made payable to Mr. Ames and referencing “Refund for Clinton Tirao”, was cashed on May 23, 2017.

47. Eton confirmed Ms. Tirao's withdrawal from the HMFAP program by letter dated May 1, 2017. The HMFAP program from which Ms. Tirao withdrew was scheduled to start on April 24, 2017, meaning that her notice of withdrawal dated April 21, 2017, came just three days before the scheduled start date. Under section 4(a)(ii) of the refund policy set out in Ms. Tirao's enrolment contract, if a notice of withdrawal is received fewer than 30 days before the contract start date then Eton will retain 20 per cent of the tuition due under the student enrolment contract to a maximum of \$1,300.00. Although Ms. Tirao had paid a total fee deposit of only \$675.00, the tuition due under her enrolment contract was \$13,795.00 – of which 20 per cent came to \$2,759.00. The enrolment contract limited Eton's maximum entitlement to \$1,300.00 plus the non-refundable application fee of \$125.00 for a total of \$1,425.00. Since Ms. Tirao had so far paid a total of \$800.00, Eton was entitled to a further payment of \$625.00 from Ms. Tirao. The letter indicated, though, that Eton would waive this remaining balance for "compassionate reasons." The letter also indicated that if Ms. Tirao chose to return to study at Eton within 12 months, Eton would credit back to Ms. Tirao the \$800.00 she had already paid.

#### Applicants' Key Submissions

48. The applicants say that Mr. Tirao's and Ms. Tirao's enrolment contracts with Eton are not binding upon them because:
- a. they were compelled to sign by Eton's administration;
  - b. their lack of English comprehension meant that they did not entirely understand the implications of those contracts;
  - c. they are unfamiliar with Canadian contract law;
  - d. they did not have a representative with them when they signed the contracts to help them understand them;
  - e. the contracts' terms are too vague;

- f. the contracts make no specific reference to the student handbook; and
  - g. there was an understanding during the signing that the money paid to Eton was a refundable down-payment for the courses, whereas only a small portion of the amounts paid has been repaid.
49. Mr. Tirao and Ms. Tirao deny that they were ever students at Eton. They seek an order allowing them to recover all application fees, all tuition fees, an alleged overpayment of \$350.00, plus interest, which they say totals \$2,450.00. They also seek to recover a total of \$125.00 in tribunal fees that they have paid.

#### Respondent's Key Submissions

50. Eton says that, contrary to Mr. Ames' statements, he was fully involved in all discussions concerning Mr. Tirao and Ms. Tirao. It adds that Mr. Ames came in on his own, telephoned Eton to speak with Eton representatives, and made all payments to Eton for his step-children. Eton says that Mr. Tirao did start attending classes at Eton. Eton maintains that it complied with the enrolment contract and has followed all policies and procedures established as part of Eton's admissions requirements, enrolment procedure, contract signing, withdrawal process, and refund policy.

#### Analysis: Are the applicants bound by the terms of the enrolment contracts signed by Mr. Tirao and Ms. Tirao?

51. The applicants have identified seven grounds upon which they say that Mr. Tirao's and Ms. Tirao's enrolment contracts with Eton are not binding upon them. I will consider each in turn.

(i) *Allegation that Mr. Tirao and Ms. Tirao Were Compelled to Sign by Eton's Administration*

52. A contract is enforceable because it represents a voluntary agreement by the parties to the terms of the contract. In contending that Mr. Tirao and Ms. Tirao

were compelled to sign their enrolment contracts, the applicants in effect argue that they entered into those contracts against their own free will and that the contracts do not reflect a voluntary agreement.

53. I find that the applicants have not established on a balance of probabilities that Mr. Tirao and Ms. Tirao entered into their enrolment contracts against their own free will or involuntarily. Certainly Eton insisted that the contracts be signed as a condition of admission to their programs. This fact alone does not establish a form of involuntariness or duress that would render the contracts unenforceable. The applicants met with representatives of Eton for the first time on March 10, 2017, and the enrolment contracts were not signed until four days later. The applicants had a “cooling off” period of several days before the contracts were signed and became enforceable. In the case of Mr. Tirao and Mr. Ames, there was a follow-up visit to Eton on March 13, 2017, to discuss academic options.
54. The evidence does not support a finding that Mr. Tirao and Ms. Tirao signed the enrolment contracts involuntarily. Even if it did, the applicants acknowledge being told that the enrolment contracts could be cancelled within 7 days of signing. The applicants took no steps to do so within that 7-day period. If Mr. Tirao and Ms. Tirao considered that they had been compelled to sign their enrolment contracts, they had ample opportunity to get out of them.
55. The applicants have not proven on a balance of probabilities that Mr. Tirao and Ms. Tirao were compelled to sign their enrolment contracts, and that they are unenforceable as a result. I dismiss this allegation.

(ii) *Allegation that Mr. Tirao’s and Ms. Tirao’s lack of English Comprehension Meant that They Did Not Entirely Understand the Implications of Those Contracts*

(iii) *Allegation that Mr. Tirao and Ms. Tirao are Unfamiliar with Canadian Contract Law*



(iv) *Allegation that Mr. Tirao and Ms. Tirao Did Not Have a Representative With Them When They Signed the Contracts to Help Them Understand Them*

(v) *Allegation that Mr. Tirao and Ms. Tirao Understood that the Money Paid to Eton Was a Refundable Down-Payment*

56. I will next consider four related grounds upon which the applicants argue that Mr. Tirao's and Ms. Tirao's enrolment contracts are not binding upon them. The applicants maintain that Mr. Tirao and Ms. Tirao did not sufficiently understand the English language or Canadian contract law to understand the implications of their enrolment contracts, and that they had no representative when them when they signed to help them understand those implications. I understand the applicants to argue that Mr. Tirao and Ms. Tirao misunderstood the terms of the refund policy set out in the enrolment contracts, mistakenly believing that under that policy the money they paid to Eton was only a refundable down-payment.

57. To create an enforceable contract, it is sufficient for the parties to understand the substance of their agreement. The enforceability of a contract does not require any of the parties to have an understanding of contract law. The legal doctrine of *non est factum* is available in contract where there is no consent in fact to the document. A contract will be unenforceable where the transaction it purports to effect is essentially different in substance from the transaction intended. The law will provide relief in cases where consent is truly lacking, but even persons who lack understanding are expected to act responsibly and carefully according to their circumstances in putting their signature to legal documents. The applicants bear the burden of proving that the *non est factum* doctrine applies.<sup>1</sup>

58. The law presumes that all individuals have the capacity to contract. Where a person claims the opposite, strict proof is required. Individuals may lack capacity

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<sup>1</sup> See, for example, *Dmyterko (Litigation Guardian) v. Kulikowsky* (1992), 47 E.T.R. 66 at 103-104 (paras. 129-133) (Ont. Gen. Div.).

for a variety of reasons. Examples may include minors, individuals with mental illnesses, individuals who are under the influence of drugs or alcohol, and individuals who do not understand the English language but purport to enter into a contract written in English.<sup>2</sup>

59. I am satisfied that Mr. Tirao and Ms. Tirao lacked fluency in English. Nevertheless, it was unnecessary for them to be fluent in English for their English-language enrolment contracts to be enforceable. An enforceable contract would arise so long as Mr. Tirao and Ms. Tirao had a sufficient understanding of the English language to appreciate the nature of the obligations to which they were agreeing. The evidence in this case does not establish, on a balance of probabilities, that Mr. Tirao and Ms. Tirao lacked that appreciation. I note in particular the following:

- Mr. Tirao and Ms. Tirao acknowledge having an ability to comprehend conversational English.
- It appears that all of the discussions that Mr. Tirao and Ms. Tirao had with representatives of Eton were conducted in English. There is no evidence that either Mr. Tirao or Ms. Tirao expressed any lack of understanding of those discussions or ever requested the assistance of a translator.
- The Eton website and all Eton documents were written in English. There is no evidence that either Mr. Tirao or Ms. Tirao needed or asked for any of these materials to be translated.
- Eton's curriculum is taught entirely in English, a fact that Mr. Tirao and Ms. Tirao would have known.
- Eton informed the applicants that it regarded Mr. Tirao and Ms. Tirao as able to sign their own enrolment contracts because they were of legal age. The applicants did not challenge that view.

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<sup>2</sup> See, for example, *Kaur Estate v. Bhandar* (1996), 6 R.P.R. (3d) 173 at 180 (paras. 33-34).

- Eton required that applicants demonstrate English proficiency, failing which a “Placement Assessment” will be required. Again, Mr. Tirao and Ms. Tirao were aware of that aspect of Eton’s program.
- Ms. Tirao passed the Placement Assessment, establishing a sufficient fluency in English to be eligible for admission.
- Although Mr. Tirao did not pass the Placement Assessment, his admission application shows that he obtained his undergraduate degree from the University of Nueva Caceres in the Philippines. From this I infer that he would have been familiar with the post-secondary application process generally and the importance of the admission documents he was asked to sign.
- Both Mr. Tirao and Ms. Tirao completed their admission application forms and their “Reflection and Preparedness” documents in English and (it appears) in their own hand.
- The student enrolment contracts are written in plain English and do not contain complex or specialized vocabulary.
- The student enrolment contracts for Mr. Tirao and Ms. Tirao contain a detailed refund policy section that both Mr. Tirao and Ms. Tirao initialled in their own hand. The contracts concluded with a “STUDENT DECLARATION” section in which both Mr. Tirao and Ms. Tirao declared (among other things) that they had “read, understood, and agreed to the terms and conditions of this enrolment contract.” Additionally, Ms. Tirao successfully completed a “Reflection and Preparedness” document, confirming that she had read and understand the “Tuition Refund” policy (among others). She correctly cross-referenced that policy to the statement “I may get money back or not if I drop out.” She answered “yes” to the statement, “I, the undersigned, clearly understand the content of my enrolment contract and refund policy.”

- Neither Mr. Tirao nor Ms. Tirao identified any English-language problems in their respective letters of withdrawal, both of which were written in functional (if not perfectly fluent) English.
  - Mr. Tirao and Ms. Tirao lived with Mr. Ames, who was fluent in English and would have been able to explain any terms in the enrolment contracts they did not understand.
  - At no time during the 7-day cancellation period did Mr. Tirao or Ms. Tirao seek any clarification of the enrolment contracts' terms.
60. The applicants allege that Mr. Tirao and Ms. Tirao understood that the money they paid to Eton was merely a refundable down-payment. According to the refund policy set out in the enrolment contract, if Eton received a notice of withdrawal within 7 days after the effective contract date and before the contract start date then the student (or the person who paid on his or her behalf) would indeed receive a refund in full. After 7 days, though, the amount of the refund upon withdrawal dropped depending on the timing of the withdrawal.
61. Mr. Tirao did not end up withdrawing from the BEC program until April 21, 2017 – the last day of the program. I find that Mr. Tirao could not reasonably have expected that he could make a down-payment to Eton for the BEC program, register for the program, start attending the program classes, withdraw from the program on the last day, and obtain a refund of moneys paid.
62. In summary, the applicants have not established on a balance of probabilities that Mr. Tirao or Ms. Tirao lacked a sufficient understanding of English to appreciate the nature of the obligations that they entered into. In particular, the applicants have not established a lack of understanding of the refund policy applicable to the money they paid to Eton.
63. If I had reached the opposite conclusion, and found that Mr. Tirao or Ms. Tirao (or both) lacked a sufficient understanding of English to appreciate the nature of their

enrolment contracts, it would have been necessary to consider the effect of Mr. Ames' involvement in the admissions process. In that case, I would have regarded his involvement as significant in two respects.

64. First, Eton says that Mr. Ames attended every meeting that Mr. Tirao and Ms. Tirao had with Eton representatives, that Mr. Ames was part of Mr. Tirao's and Ms. Tirao's education decisions, and that he was fully involved in all discussions concerning Mr. Tirao and Ms. Tirao. Mr. Ames does not deny this allegation generally, but does deny that he accompanied Mr. Tirao and Ms. Tirao at their meetings with Eton representatives on March 14, 2017, when they signed their enrolment contracts. I am unable to find that Mr. Tirao and Ms. Tirao attended those meetings without Mr. Ames. I find it implausible that Mr. Ames would accompany Mr. Tirao and Ms. Tirao for all of the preparatory meetings and discussions, but then allow them to attend meetings on March 14, 2017, to sign the enrolment contracts in his absence. The letter from what I infer is Mr. Ames' employer says only that Mr. Ames worked from 10:00 a.m. until 2:00 p.m. "performing drop offs to potential business clients". It is unclear where those drop offs occurred and whether they would preclude Mr. Ames from attending meetings with Eton between 10:00 a.m. and 2:00 p.m. In any event, it would certainly not preclude Mr. Ames attending meetings at Eton before 10:00 a.m. or after 2:00 p.m. If (as I have found) Mr. Ames was present when the enrolment contracts were signed, then he would have been especially able to explain to Mr. Tirao and Ms. Tirao any contractual terms they failed to understand.
65. Second, Mr. Ames' involvement is also significant even if he did not accompany Mr. Tirao and Ms. Tirao when they signed their enrolment contracts. As noted, those contracts established a 7-day period within which Mr. Tirao and Ms. Tirao could have cancelled them after signing. Therefore, even if Mr. Ames did not accompany Mr. Tirao and Ms. Tirao to their meetings on March 14, 2017, I find it probable that they would have discussed their enrolment contracts with him at some point over the following week. Eton says that it provided Mr. Tirao and Ms. Tirao with copies of their contracts, and the applicants did not challenge that

statement. If when they signed the contracts Mr. Tirao and Ms. Tirao failed to appreciate the obligations they were assuming, there would have been ample time for Mr. Ames to have explained those obligations to them over the following 7 days before those terms became binding. I find it likely that he did so.

66. In the result, I find that Mr. Tirao and Ms. Tirao had a sufficient command of the English language to appreciate the nature of the obligations to which they were agreeing. I also consider that Mr. Tirao and Ms. Tirao would have had ample opportunity to understand fully any contractual terms about which they were unsure. I conclude that the applicants have not proven that language issues provide a basis upon which to treat the enrolment contracts as unenforceable.

*(iv) Allegation That the Enrolment Contracts' Terms Were Too Vague*

67. The applicants also maintain that the enrolment contracts' terms were too vague to be enforceable. The applicants do not identify which contractual terms are said to fall into this category. They also do not identify in what way those terms are alleged to be vague. I do not find any of the refund policy's wording to be vague.
68. The applicants have not proven that alleged vagueness provide a basis upon which to treat the enrolment contracts as unenforceable.

*(v) Allegation that the Enrolment Contracts Make No Specific Reference to the Student Handbook*

69. The applicants' final criticism of the enrolment contracts is that they make no specific reference to the Eton student handbook. This is incorrect factually (the enrolment contracts do in fact refer to the handbook) and it is irrelevant legally. The obligations of Mr. Tirao, Ms. Tirao, and Eton (including the refund policy) are established by the enrolment contracts, not the student handbook. The enrolment contracts therefore do not need to refer to the student handbook in order for the refund policy to be enforceable.

70. Since the applicants have not established that the enrolment contracts are unenforceable on any of the grounds alleged, it follows that Mr. Tirao and Ms. Tirao are bound by the refund policy contained in those contracts. The remaining issue is whether Eton has abided by the refund policy in its dealings with Mr. Tirao and Ms. Tirao.

Analysis: Are the applicants entitled to any further refund of the moneys they paid to Eton?

71. Mr. Ames paid a total of \$2,500.00 to Eton on behalf of Mr. Tirao and Ms. Tirao to register them in three different programs:
- a. \$1,025.00 on behalf of Mr. Tirao on account of the BEC program;
  - b. \$675.00 on behalf of Mr. Tirao on account of the HMFAP program; and
  - c. \$800.00 on behalf of Ms. Tirao on account of the HMFAP program.
72. I will consider for each of these programs separately the value of the refund to which the enrolment contracts entitled the applicants.
73. With respect to the BEC program, Mr. Tirao's enrolment agreement provided for no refund of any amount paid to Eton if Mr. Tirao withdrew after 30 per cent of the hours of instruction to be provided during the contract term have been provided. In this case, Eton received Mr. Tirao's notice of withdrawal on the last day of the BEC program – by which point 100 per cent of the hours of instruction to be provided during the contract term had been provided. Under the enrolment contract's refund policy, no amount was refundable for the \$1,025.00 that Mr. Ames paid for Mr. Tirao to take the BEC program. I find that the applicants are not entitled to any further refund in respect of the BEC program.
74. With respect to Mr. Tirao's registration in the HMFAP program, Mr. Tirao never received admission to it because he never completed the BEC bridge program. As a result, Mr. Tirao owed nothing to Eton on account of the HMFAP program. Eton has already refunded the \$675.00 paid by Mr. Ames on behalf of Mr. Tirao for the

HMFAP program. I find that the applicants are not entitled to any further refund in respect of Mr. Tirao's registration in the HMFAP program.

75. Lastly, with respect to Ms. Tirao's registration in the HMFAP program, Ms. Tirao withdrew three days before the program's scheduled start date. According to the enrolment contract, if Eton receives a notice of withdrawal fewer than 30 days before the contract start date then Eton will retain 20 per cent of the tuition due under the student enrolment contract to a maximum of \$1,300.00. By the time of her withdrawal, Ms. Tirao had paid an application fee of \$125.00 and a fee deposit of \$675.00, for a total of \$800.00. Since the total tuition due for the HMFAP program was \$13,795.00, the enrolment contracts entitled Eton to retain 20 per cent of that amount or \$1,300.00 (whichever was less) plus the non-refundable application fee of \$125.00. Eton was therefore entitled to "retain" \$625.00 more than it had been paid on behalf of Ms. Tirao. Eton did not require Ms. Tirao to make up the shortfall, citing compassionate reasons. In the circumstances, I find that the applicants are not entitled to any further refund in respect of Ms. Tirao's registration in the HMFAP program.
76. The applicants have not proven that the enrolment contracts are unenforceable, or that the refund policies contained in those contracts entitle the applicants to any further refund of the moneys they paid Eton. The applicants' claims therefore fail. As the applicants have not succeeded, I find that they are not entitled to reimbursement of tribunal fees or any dispute-related expenses.
77. The respondent made no claim for dispute-related expenses.



## **ORDER**

78. I order that the applicants' claims be and are hereby dismissed.

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Angus M. Gunn QC, Tribunal Member