

Student Claim Based on Being Misled Decision

Complainant: ██████████

Institution: 283 – Dominion Herbal College

1. Introduction

The Complainant completed two of the four-year Clinical Herbal Therapy online program [Program] and planned to enrol in the third year before the Institution temporarily suspended the Program. The Institution later resumed offering the Program.

The Complainant submits the Institution misled them by not providing the Program in a timely way and is asking for a refund of tuition paid in respect of Year 2.

The Complainant exhausted the Institution's dispute resolution process [DRP] prior to filing this complaint on December 28, 2023 [Complaint].

For the reasons outlined below I find the Institution did not mislead the Complainant regarding a significant aspect of the Program and, accordingly, deny the claim.

2. Statutory Scheme

Section 23(1) of the *Private Training Act* [Act] provides that, a student may file a claim against the Student Tuition Protection Fund [Fund] on the ground that a certified institution misled the student regarding any significant aspect of an approved program of instruction in which that student was enrolled. Claims are filed with the Trustee, being the minister or the person to whom the minister has delegated the relevant powers or duties.

Claims must be filed no later than one year after the student completed or was dismissed or withdrew from the program and only after the student has exhausted the institution's dispute resolution process.

Following receipt of the complaint, the process is as follows:

Claim the student was misled		
Who	What	When
Trustee	Gives a copy of the claim to the institution	As soon as practicable
Institution	May respond to the claim [Response]	Within 15 days of receiving a copy of the claim from the Trustee
Trustee	Gives the Response from the institution, if any, to the student	Within 15 days of receiving the Response from the institution
Student	May reply to the Response from the institution [Reply]	Within 15 days of receiving the Response from the Trustee
Trustee	Must give the Reply from the student, if any, to the institution	Within 15 days of receiving the Reply from the student
Trustee	Adjudicates the claim to determine whether any refund should be issued, and provides written reasons to the student, the institution, and the registrar.	

If a claim is approved, the Trustee may authorize payment from the Fund of all or a portion of the tuition paid to the institution by or on behalf of the student. Section 25(4) of the *Fees and Student Tuition Protection Fund Regulation* requires that payments from the Fund be directed first to the government if all or a portion of the tuition was paid using funds from a provincial or federal student assistance program, and then to the claimant.

3. Program Information

Program:	Clinical Herbal Therapy
Student Enrollment Contract Year 1:	
Start date:	September 1, 2021
End date:	August 31, 2022
Student Enrollment Contract Year 2:	
Start date:	September 1, 2022
End date:	August 31, 2023
Total charged:	\$ 12,040
Tuition:	\$ 11,690
Year 1 Program Fee:	\$ 5,045
Year 2 Program Fee:	\$ 6,645
Registration Fee (non-refundable):	\$ 350
Amount paid to date by Complainant:	\$ 12,040
Amount of tuition paid to date by Complainant:	\$ 11,690

4. Issues

The following issue arise for consideration: Did the Institution mislead the Complainant by temporarily suspending the Program and, as a result, failing to deliver the four-year Program without interruption?

5. Chronology

August 31, 2023	Institution notifies Complainant Program is suspended
September 2023	Scheduled start date of Year 3
September 9, 2023	Complainant initiates DRP and submits complaint to Institution
September 29, 2023	Institution issues decision [Decision 1]
October 10, 2023	Institution issues decision [Decision 2]
November 3, 2023	Institution notifies students Program will resume with a February 1, 2024 start date
December 28, 2023	Complainant files Complaint

6. Analysis

The Complainant completed two years of the four-year Program and was scheduled to start Year 3 in September 2023. The Complainant did not enter into an enrolment contract or pay any fees in respect of Year 3.

On August 31, 2023, the Institution notified all students that, due to financial difficulties, the Program was suspended “for the 2023-2024 academic year”. The Institution did not provide any information as to when the

Program may resume and offered students enrolled in Year 2 and 3 to enrol in the Herbal Consulting program and be granted an Herbal Consulting diploma.

In her September 9, 2023 letter to the Institution initiating the DRP, the Complainant refuses the Institution's offer for an Herbal Consulting diploma and submits the following:

As a student enrolled in the 4-year program, I was misled by [the Institution], as the program should have continued without interruption until my graduation (2025). With this suspension, the length of the program has significantly changed without my consent. Our contract, or the Student Handbook, do not state that the program can be put on hold. I believe suspending the program is a breach of contract as [the Institution] is failing to fulfill its obligations to the students. Upon signing up for the 4-year program, I agreed to pay a fee for education and the school accepting my payment entered upon a covenant.

The Complainant adds that the timing of the notice did not allow her to pursue other options, such as transferring to another institution. She says that the Program is unique and other institutions may not recognize all her credits, which means she would incur additional costs.

The Complainant is asking the Institution to issue an Herbal Consultant Diploma and refund tuition paid in respect of Year 2.

In Decision 1, the Institution agreed to waive the fees in respect of the issuance of the Herbal Consultant Diploma but refused to refund tuition paid. The Institution says it fulfilled its obligations under each enrolment contract entered in respect of Years 1 and 2.

The Complainant accepted the Institution's offer of an Herbal Consulting Diploma, however she maintains she is owed a tuition refund in respect of Year 2.

In response, the Institution submits that "to mislead, one must intentionally or knowingly state something not true". The Institution says it was forthright in all its communications and "never intentionally or knowingly made an untrue statement to [the Complainant]". The Institution explains it had to suspend its operations in August 2023 when four of its five instructors did not renew their employment contracts and asked for a significant pay increase. This Institution adds that this was unexpected and threatened its financial viability. The issue was resolved in November 2023 and the Program resumed with a February 1, 2024 start date with increased tuition. The Institution adds that while it advertised a four-year program, it did not enter into a contract in respect of Year 3, the delay was not significant, and did not result in financial hardship for the Complainant.

7. Decision

After having carefully reviewed the parties' submissions, I find the Complainant was not misled in respect of a significant aspect of the Program and, accordingly, deny the claim.

To clarify, there is no requirement for me to establish an institution's intent to mislead in order to find an institution misled a student in respect of a significant aspect of the program.

While it would have been preferable for the Institution to communicate the need to suspend its operations in a timelier way so as to allow the Complainant to look for alternative programs, the Institution was facing challenging circumstances and tried to provide a reasonable option to students. Further, and this is the determinant factor in my decision, the Complainant did not pay or enter an enrolment contract for Year 3. While the Program was advertised as a four-year program and it was reasonable for the Complainant to expect the Program would be provided without interruption, I do not find the Institution misled the Complainant by delaying the start of Year 3.

For these reasons, the claim is denied.

This decision is final. The Trustee does not have authority to re-open or reconsider the decision and there is no appeal under the Act. Parties may wish to seek legal advice regarding a judicial review by the BC Supreme Court.

Date: June 20, 2024



Joanna White
Trustee, Student Tuition Protection Fund