

## Student Claim Based on Being Misled Decision

Complainant: [REDACTED]

Institution: 283 – Dominion Herbal College

### 1. Introduction

The Complainant completed two years 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 did not enroll in Year 3 after the program resumed, and submits the Institution misled her by not providing the Program in a timely way, without any interruption. She is asking for a full refund of tuition paid to date.

The Complainant exhausted the Institution's dispute resolution process [DRP] prior to filing this complaint on November 22, 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.
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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 Diploma
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:	\$ 11,870
Tuition:	\$ 11,620
Year 1 Program Fee:	\$ 5,075
Year 2 Program Fee:	\$ 6,545
Registration Fee (non-refundable):	\$ 250
Amount paid to date by Complainant:	\$ 11,870
Amount of tuition paid to date by Complainant:	\$ 11,620

### 4. Issues

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

### 5. Chronology

August 31, 2023	Institution notifies students Program is suspended
September 1, 2023	Scheduled start date of Year 3
September 11, 2023	Complainant initiates DRP
September 30, 2023	Institution issues decision [ <b>Decision 1</b> ]
October 11, 2023	Institution issues decision [ <b>Decision 2</b> ]
October 17, 2023	Complainant responds
November 3, 2023	Institution notifies students Program will resume
November 22, 2023	Complainant files Complaint
December 23, 2023	Institution confirms Program will resume on February 1, 2024
December 2024	Email exchanges between the parties. Complainant confirms she will not enrol in Year 3.

## 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 Years 2 and 3 to enrol in the Herbal Consulting program and be granted an Herbal Consulting diploma.

The Complainant asked for her transcripts and inquired about switching to another institution.

In her September 11, 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. 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 asks the Institution refund tuition paid in respect of Years 1 and 2.

In Decision 1, the Institution refuses to issue a refund and says that it is "working diligently to resolve the matter with the instructors; however, it is not within our control". The Institution adds that if the Complainant accepts the offer for an Herbal Consultant diploma it will waive the registration and program fees.

In Decision 2, the Institution submits that "to mislead, one must intentionally or knowingly state something not true", which is not the case here. The Institution explains it had to suspend the Program when instructors did not renew their employment contracts and asked for a pay increase.

The Complainant submitted copies of emails from instructors in support of the Complaint, essentially questioning the Institution's assertion that instructors asked for a raise. In its Response, the Institution says the instructors who submitted the emails were not involved in the negotiations.

My decision does not address issues that were not communicated to the Institution as part of the DRP.

## 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.

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 into 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.

To clarify, I did not consider whether or not the Institution intended to mislead the Complainant. There is no requirement for me to establish an institution's intent to mislead to find an institution misled a student in respect of a significant aspect of the program.

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



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**Joanna White**  
Trustee, Student Tuition Protection Fund