

Student Claim Based on Being Misled Decision

Complainant: [REDACTED]

Institution: 638 – Kosmetae Academy

1. Introduction

The Complainant withdrew from the Hair & Facial Design program [**Program**] on November 3, 2023 and filed this complaint on January 8, 2024 [**Complaint**].

The Complainant alleges that she was misled in relation to the Institution's location, facilities and program outline. Specifically, the student enrolment contract lists a location on George Ferguson Way, Abbotsford [**Location 1**], but the Complainant was directed to attend classes first at a private farm of an employee of the Institution, and then later at a public library. Neither of these temporary locations had the equipment necessary to complete the practical components of the Program (e.g. salon equipment or furniture). Instead, the class completed the theory components of the Program only. The Complainant alleges that, during her attendance in the Program, the Institution was effectively operating without a location. The Complainant also disputes the Institution's tuition refund calculation and says that she attended less than 10% of the Program at the time she withdrew.

The Institution denies that it misled the Complainant, as alleged or at all. It says that when the Complainant enrolled in the Program, it was in the process of moving to a new location [**Location 2**] and that the Complainant was given a tour of the Location 2 in August 2023. In particular, the Complainant knew that she would not be attending classes at Location 1. The renovations to Location 2 were not completed in time for the Program start date and the Institution was not able to secure alternate commercial space for the interim period. The Institution says that the Complainant was eager to start the Program and did not wish to delay her studies until Location 2 was ready. The Institution maintains that its refund calculation is accurate and complies with its refund policy.

The matters at issue are whether the Complainant was misled in relation to the location, facilities and program outline.

For the reasons outlined below I find the Institution misled the Complainant regarding a significant aspect of the Program and, accordingly, approve 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 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:	Hair & Facial Design
Start date:	September 11, 2023
End date:	December 11, 2024
Withdrawal date:	November 3, 2023
Total charged:	\$ 19,344
Tuition Fee:	\$ 15,350
Tuition:	\$ 14,750
Lab Fee:	\$ 600
Application Fee:	\$ 100
Administration Fee:	\$ 100
Textbook	\$ 465
Uniform:	\$ 144
Supplies	\$ 2,743
GST	\$ 197.60
PST	\$ 244.09
Trade Show and Field Trip Fees (not included in fees)	\$ 100
Tuition paid by Complainant:	\$ 15,350
Amount refunded by Institution to date:	\$ 9,502.08

4. Issues

The following issues arise for consideration: Was the Complainant misled in relation to the location and facilities of the Institution and the program outline?

5. Chronology

July 31, 2023	Complainant enrolls in Program
September 11, 2023	Program start date
October 30, 2023	Complainant's last day of attendance
November 3, 2023	Notice of withdrawal
November 11, 2023	Institution calculates tuition refund due
November 16, 2023	Complainant disputes refund calculation
December 19, 2023	Complainant follows-up on refund request
January 8, 2024	Complainant files Complaint

6. Analysis

The student enrolment contract is signed July 31, 2023 and lists Location 1 under the heading "Institution Information". The Complainant says in her Reply that she registered for the Program on August 7, 2023 at Location 1 and that, counter to the Respondent's claim that she was given a tour of Location 2, she has "...never seen any other location". She says that one week before the Program was scheduled to start, she received a phone call from the Institution telling her to report to an employee's farm. She says she attended 22 days at this location and then was told to report to the Abbotsford public library where she attended 6 days. During this time, the Complainant says they did "theory only" as neither location had the furniture or equipment necessary to complete the practical skills components of the Program. When the Complainant was directed yet again to report to a different public library, she withdrew from the Program.

The Complaint is summarized as follows:

I was completely misled. I was under the impression the program was to be delivered on site where I registered and where I had seen the equipment and furniture. It was never made clear that there was no location for academy, and we would be bouncing between residential farm to public library.

The Institution has a different version of events. It says the Complainant knew at the time she enrolled in the Program that the Institution was moving to Location 2 and she would not be attending classes at Location 1. The Institution also says that when it became evident that the renovations to Location 2 would not be completed by September, it requested the Complainant delay her intake date, however, the Complainant insisted on starting the Program as scheduled. Further, the Institution says the Complainant was told that the focus at the beginning of the Program would be on theory, not practical skills. The Institution says that the Complainant agreed to the reorganization of the courses (theory first) as "she just wanted to learn".

In its Response dated February 6, 2024, the Institution says that it has refunded an amount of \$9,647 to “student loans”. This is not accurate. On January 16, 2024, the Institution’s refund cheque for \$9,502 was returned for non-sufficient funds. On March 8, 2024, the Institution issued a refund of \$589.08. On May 29, 2024, the Institution refunded an additional \$8,913.

7. Decision

For the following reasons, I find the Institution misled the Complainant in respect of the location and facilities and approve the claim. The Complainant is entitled to a full refund of tuition paid.

While I am sympathetic to the predicament the Institution found itself in September 2023 with improvements to the new location not completed, I find the decision to start the Program without a suitable facility to be unacceptable. It is the Institution’s responsibility to ensure that the facilities from which it provides the Program enable students to meet the learning objectives of the program. The temporary locations, including the private farm and the public library, were wholly inappropriate and clearly do not meet this standard. Regardless of whether the Complainant indicated her preference to start on the scheduled start date, I find it was misleading for the Institution to commence the Program without a suitable location.

Finally, I note the Institution includes in its Response irrelevant and highly inappropriate personal details about the Complainant’s familial and financial circumstances. I remind the Institution of its duty to promote the fair and respectful treatment of students: *Private Training Regulation, 45(2)*.

The Complainant is entitled to a refund of \$7,975. This amount takes into account the \$600 lab fee, which is properly characterized as tuition, and the refunds issued by the Institution. The refund is calculated as follows: \$15,350 (tuition paid by Complainant) - \$7,375 (tuition refunded by Institution) = \$7,975.

As Trustee, in accordance with s.25 of the Act, I authorize payment of \$7,975 from the Fund. The payment from the Fund will be directed in the following order: 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 second, to the Complainant.

The Institution is required to repay the total amount of \$7,975 to the Fund (Act, s.27).

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