

## Student Claim Based on Being Misled Decision

Complainant: [REDACTED]

Institution: 283 – Dominion Herbal College

### 1. Introduction

The Complainant was enrolled in the Clinical Herbal Therapy program [Program] and filed a complaint against the Institution [Complaint] on March 22, 2023 before withdrawing on March 24, 2023. The Complainant is seeking a full tuition refund.

The matter at issue relates to the Institution's timely provision of course materials.

**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* [PTA] 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
Withdrawal date:	March 24, 2023
Total charged:	\$ 11,570
Tuition:	\$ 11,320
Year 1 Program Fee:	\$ 4,925
Year 2 Program Fee:	\$ 6,395
Registration Fee (non-refundable):	\$ 250
Amount paid to date by Complainant:	\$ 11,570
Amount of tuition paid to date by Complainant:	\$ 11,320

### 4. Issues

The following issue arises for consideration: Did the Institution mislead the Complainant by failing to provide course materials in a timely way?

### 5. Chronology

<b>September 1, 2021</b>	Year 1 Program start date (listed in contract)
<b>September 7 and 14, 2021</b>	Complainant inquires about delivery of course materials (Year 1 - Module 1 and 2)
<b>October 21, 2021</b>	Institution notifies students that delivery of course materials (Year 1 - Module 1 and 2) was delayed because of “overseen printing and shipping delays” and confirms due date for Module 1 Lessons is extended
<b>October 24, 2021</b>	Complainant receives course materials (Year 1 - Module 1 and 2)
<b>March 10, April 2, 2022</b>	Complainant inquires about delivery of course materials (Year 1 - Module 3 and 4)
<b>April 7, 2022</b>	Institution notifies students it “encountered unforeseen delays with Module 3 & 4 material updating and printing” and confirms students can access Module 3 via Moodle until April 30, 2022. Due date for Module 3 Lessons is extended.
<b>April 20, 2022</b>	Complainant receives course materials (Year 1 - Module 3 and 4)
<b>August 21, 2022</b>	Complainant inquires about payment for Year 2
<b>August 22, 2022</b>	Institution responds it will send enrolment contract for Year 2
<b>September 1, 2022</b>	Year 2 Program start date (listed in contract)
<b>September 29, 2022</b>	Complainant follows up on payment for Year 2 and Institution provides copy of enrolment contract

<b>October 3, 2022</b>	Complainant inquires about delivery of course materials
<b>October 5, 2022</b>	Complainant pays tuition and fees
<b>October 10, 2022</b>	Institution confirms course materials have not been sent
<b>October 25, 2022</b>	Complainant inquires about delivery of Clinical Training Profile. Institution responds that Clinical Training Profile is not ready yet.
<b>November 17, 2022</b>	Complainant receives course materials (Year 2 – Module 1 and 2)
<b>November 28, 2022</b>	Complainant receives Clinical Training Profile
<b>December 8, 2022</b>	Institution notifies students delivery of course materials (Year 2 - Module 1) has been delayed due to printing and shipping delays. Module 1 Lessons due date is extended.
<b>December 8, 2022</b>	Complainant responds that because of delays, weekly hours of study have increased. Asks material to be emailed in the future.
<b>January 26, 2023</b>	Complainant inquires about withdrawing from Program
<b>January 31, 2023</b>	Complainant asks for 10-day extension to submit homework due to [REDACTED]
<b>February 14, 2023</b>	Complainant advises Institution she is withdrawing from Program
<b>February 23, 2023</b>	Complainant rescinds withdrawal
<b>March 22, 2023</b>	Complainant files Complaint
<b>March 24, 2023</b>	Complainant withdraws from Program
<b>January 16, 2024</b>	Complainant initiates DRP and submits complaint to Institution
<b>February 15, 2024</b>	Institution issues decision

## 6. Analysis

The Program is largely delivered by distance education with clinical training delivered on-site starting in Year 2. The Program is self-paced with set due dates for seminars and exams.

The Complainant alleges that, because of delays in the delivery of course materials, the schedule was compressed and, as a result, the pace was accelerated and the Complainant had to study more hours each week to keep up.

In her February 20, 2023 Notice of Withdrawal, the Complainant writes that she is withdrawing because course materials have consistently been delivered late: “Because of this, I will not continue on in the program, as I do not feel like the time given is adequate for the materials covered, and is not in alignment with the contract signed”.

Course materials were delivered by mail and were routinely delayed. This fact is not disputed.

The Institution’s emails to students confirming delays in providing course materials refer to printing and shipping delays; ever-changing government regulations; technology updates; supplier delays and student illness. As an interim measure, the Institution extended due dates and in one instance provided online temporary access to a module.

The Complainant submits: “Although an extension was given, there was no actual time that was added to accommodate the course work being late- it was simply all due at once instead of staggered, leaving less time to complete lessons 3 and 4”.

The Complainant was required to have a copy of her Clinical Training Profile when she attended the clinics held on October 22-28, 2022 and November 14-18, 2022, as confirmed by the clinical supervisor. The Complainant only received her Clinical Training Profile on November 28, 2022, after having asked for her copy. The Student Handbook provides as follows:

Students will receive a Clinical Training Profile, including clinic policies, prior to beginning their clinic practicum in Year 2.

Students must have their Clinical Training Profile with them at all times when attending a Dominion Herbal College Approved Clinic or when online with Dominion Herbal College clinic supervisors to record their experiences and progress. Students must keep their Clinical Training Profile up-to-date.

In response, the Institution submits: “To mislead means to intentionally or knowingly state something the party knows is not true”, and denies it misled the Complainant in respect of the delivery of the course materials, or at all.

In its Response, the Institution says that course materials were sent in a timely way and blames the delay on Canada Post which “is not controlled by DHC”. The Institution submits that it revised due dates to make up for the delay in delivery. The Institution adds that it could not deliver course materials until it received payment from the Complainant.

The Institution adds that the delays did not negatively affect the Complainant and that it was her personal circumstances that led to her withdrawal – not the delay in providing course materials.

## **7. Decision**

I find the Institution misled the Complainant by failing to provide course materials, including the Clinical Training Profile, in a timely way and, on this basis, approve the claim.

The Institution consistently delivered course materials late, in essence delaying the start of each module. If this were an isolated incident, it may have been excusable. However, this was an ongoing issue and appears to be the Institution’s modus operandi.

The Complainant inquired about the delivery of the materials on numerous occasions and made it clear that she was negatively impacted.

I do not accept the Institution’s submission that Canada Post was to blame, and the situation was therefore outside its control, or that delivery was delayed because the Complainant’s payment was overdue. The evidence submitted in support of the claim shows the Institution made different excuses each time delivery was delayed. Notably, in each instance, the Institution attempted to shift responsibility to either a third party or the Complainant, and in this respect failed to take accountability for the delay and the effect it had on students’ ability to progress through the Program. Further, I find the Complainant paid tuition and fees when due.

The recurrent delays in providing course materials when they were needed and promised resulted in the Program not being delivered as contracted. As described by the Complainant, the delay in delivering the materials meant that the regular and expected pace of the Program was disrupted, compressing the time allotted for each module, and making it difficult for her to keep up.

That the Institution did not intentionally mislead the Complainant is not relevant. I do not need to find intention in order to find that the Complainant was misled for the purposes of PTA 23(1)(b).

For these reasons, I approve the claim.

I authorize payment of \$11,320 from the Fund. The payment 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 (PTA 25).

The Institution is required to repay the total amount of \$ 11,320 to the Fund (PTA 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 PTA. Parties may wish to seek legal advice regarding a judicial review by the BC Supreme Court.

October 4, 2024



---

**Joanna White**

Trustee, Student Tuition Protection Fund