

## Student Claim Based on Being Misled Decision

Complainant: ██████████

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 its operations following a two-month hiatus.

The Complainant submits the Institution misled them by not providing the Program in a timely way and 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 October 12, 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
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:	\$11,570
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:	\$11,611.25
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 temporarily suspending the Program and, as a result, failing to deliver the four-year Program without interruption?

### 5. Chronology

<b>August 31, 2023</b>	Institution notifies Complainant the Program is suspended
<b>September 2023</b>	Scheduled start date of Year 3
<b>September 4, 2023</b>	Complainant responds to Suspension Notice
<b>September 10, 2023</b>	Complainant initiates DRP
<b>September 22, 2023</b>	Institution acknowledges receipt of complaint
<b>September 25, 2023</b>	Complainant responds
<b>September 29, 2023</b>	Institution issues decision, reiterates offer to provide Herbal Consultant diploma
<b>October 10, 2023</b>	Complainant rejects offer
<b>October 10, 2023</b>	Institution responds
<b>October 12, 2023</b>	Complainant submits Complaint
<b>November 3, 2023</b>	Institution notifies students Program will resume
<b>November 10, 2023</b>	Complainant confirms they will not enroll 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 responded on September 4, 2023, and suggested the Institution raise tuition by 10%. They also enquired about the offer to switch to the Herbal Consulting program.

In their September 9, 2023 letter to the Institution initiating the DRP, the Complainant submits the following:

“As a student enrolled in the 4-year program, I believe I was misled by DHC, 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”.

The Complainant adds that the timing of the notice did not allow them to pursue other options, such as transferring to another institution. They add that other institutions may not recognize all their credits, which means they would incur additional costs. The Complainant asks for a refund of all fees paid in respect of Years 1 and 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. The matter was resolved in November 2023 and the Program resumed with a February 1, 2024 start date with increased tuition. The Institution adds that the delay was not significant and did not result in a financial hardship for the Complainant.

In their Reply, the Complainant disputes the Institution’s explanation for suspending operations: “I also have an email from an instructor stating that at no point the instructors declined to renew their contract”.

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

## 7. Decision

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

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 more timely way so as to allow the Complainant to look for alternative programs, the Institution was facing challenging circumstances and tried to provide a reasonable alternative to students. Further, and this is the determinant factor in my decision, the Complainant did not pay or enter a 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.

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: Month 18, 2024

A handwritten signature in black ink, appearing to read "Anthony Loughran", written over a horizontal line.

**Tony Loughran**

Trustee, Student Tuition Protection Fund