ID 02275

In the matter of an appeal to the Commissioner under the

Private Training Act, [S.B.C. 2015], c.5 [**PTA**]

By

Ashton College

Decision

February 26, 2025

INTRODUCTION

1. Ashton College (the "Appellant") appeals the Reconsideration Decision of the Registrar, Private Training Institutions Regulatory Unit, (the "Registrar") dated October 15, 2024, (the "Reconsideration Decision") which confirmed the imposition of an administrative penalty in the amount of $1000 for contravention of section 41(2) of the *Private Training Act*, [S.B.C.2015], c.5 (the "PTA").

<u>Legislative Framework</u>

2. The provision of private career training in British Columbia is regulated under PTA and associated regulations (collectively the "Training Legislation"). The Training Legislation are consumer protection legislation designed to protect the interests of students and provide quality assurance.

3. An institution that wishes to offer private career training that is governed by the Training Legislation must hold a certificate issued under the PTA and meet all applicable standards and requirements set out in the Training Legislation.

4. The Private Training Institutions Regulatory Unit (the "PTIRU) of the Ministry of Post-Secondary Education and Future Skills oversees the regulation of career training institutions that operate in British Columbia.

5. The Registrar, appointed under section 57 of the PTA, administers the Training Legislation including issuing certificates and enforcing the standards and requirements of the Training Legislation.

6. If an institution contravenes the Training Legislation, the Registrar has a range of enforcement options available, including, for certain prescribed contraventions, the imposition of an administrative penalty under section 33 of the PTA.

7. Section 41(2) of the PTA provides as follows:

    41 (2) A certified institution must not engage in advertising or make a representation that is false, deceptive or misleading or otherwise prohibited by regulation.

8. Section 27(1)(e) of the *Fees and Student Tuition Protection Fund Regulation*, B.C. Reg. 140/2016, provides that an institution that contravenes section 41(2) of the PTA is liable to an administrative penalty of $1,000.

9. A certified institution may request a reconsideration of the decision of the Registrar imposing an administrative penalty (PTA s 45(1)(b)). Reconsideration decisions affirming the administrative penalty may be appealed to the Commissioner pursuant to section 50(1)(b) of the PTA.

10. Section 50 of the PTA provides that an appeal to the Commissioner is on the record, although evidence that was not part of the record may be considered as reasonably required for a full and fair disclosure of all matters related to the appeal (PTA section 50).

BACKGROUND

11. The following facts are not disputed.

12. On May 31, 2023, PTIRU advised the Appellant it would be conducting an on-site inspection. In response to the notice, the Appellant advised it had moved location and, since April 2020, all its programmes were offered only by distance education.

13. On June 28, 2023, PTIRU conducted a virtual inspection of the Appellant. On September 14, 2023, the Private Training Institutions Branch of the Ministry of Post-Secondary Education and future Skills ("PTIB") issued a Findings and Requirements letter (the "Findings Letter") identifying 23 contraventions by the Appellant. The Findings Letter set out areas of non-compliance and listed the requirements that the Appellant must meet to remedy the contraventions. The Findings Letter advised the Appellant that if it disagreed with the assessment of the PTIB it had an opportunity to respond and to provide records by September 28, 2023.

14. On this appeal, contraventions #9 and #16 are pertinent and are set out below. For contravention #16, two students were identified by name. The names of the students and the programmes in which they were enrolled have been anonymized to protect their privacy and consequential changes have been made to the text of the Findings Letter as necessary.

> <u>*Contravention 9 (Institution website)*</u>
>
> *Institution is engaged in advertising or is making a representation that is false, deceptive or misleading.*
>
> *The Institution's website contains the following statements advertising in-class programs. However, all programs have solely been offered online since 2020.*
>
> - *"For students who prefer being on campus, we also have in-class cohorts at our beautiful space in Vancouver, British Columbia."*
> - *"Our Commitment to learning extends to both our in-person courses that take place in our conveniently located campus in Vancouver, British Columbia, as well as our online programs which are accessible worldwide"*

- *"students are able to choose between in-class seminars at our Vancouver campus or online classes using our interactive LIVE Online format."*

- *Featured programs are advertised as "Online or In-Class"*

Statutory Reference: PTA 41(2)

Requirement: Update website to remove or revise the listed statements to clarify that there are no in-class programs offered at this time.

Contravention 16 (Tuition Refunds)

Refund calculations for the following withdrawn students are not compliant:

Student #1

- *The student enrolled in the first year of the [program]. The student paid $7,000 in tuition. The program has 1036 hours of instruction.*

- *The program is delivered 100% via distance education*

- *The student received an evaluation on September 30, 2022, and is considered to have completed 43 of the contracted 1036 hours of instruction on that date (4.15% of the contracted program hours). There is no evidence in the student record that the student received any further evaluations.*

- *The student withdrew from the program on March 8, 2023, when they had completed no more than 30% of the program. As such, the institution my retain up to 30% of the tuition due under the student enrolment contract.*

- *Student #1 is owed a tuition refund of $4,900. The institution issued a refund of $2,300 on May 3, 2023. $2,570 of the required refund has not been paid to the student to date.*

Student #2

- *The student enrolled in the first year of a program with 1000 hours of instruction and $7,000 in tuition. The student paid $4,660 in tuition.*

- *The program is delivered 100% via distance education*

- *The student received an evaluation on May 22, 2023, and is considered to have completed 38 hours of the contracted 1000 hours of the program on that date (4.1% of the contracted program hours). There is no evidence in the student record that the student received any further evaluations.*

- *The student withdrew from the program on May 23, 2023, when they had completed no more that 30% of the program. As such the institution may retain up to 30% of the tuition due under the student enrolment contract.*

- *Student #2 is owed a tuition refund of $2,560. The institution has not provided a refund to date.*

Statutory Reference: PTR 35(6)(b)

Requirement: Provide evidence (cashed cheque or wire transfer confirmation) that refunds were issued to Student #1 and #2.

15. The Appellant requested, and the Registrar agreed to an extension of the time for the Appellant to respond to the Findings Letter to October 11, 2023. On October 11, 2023, the Appellant provided responses to the 23 contraventions set out in the Findings Letter and provided documents requested by the PTIB.

16. The following are the Appellant's responses to Contraventions #9 and #16:

    9. the website has been updated.

    16. Student #1's refund was based on the previous refund policy before the changes in April 2023. Student completed 7 out of 22 modules, equivalent to 33.33% of the program therefore section 4.2 is applicable since the student has completed more than 30% and less than 50% of the program. Therefore, [the student] was refunded $3,500.00. Please see the attached documents.

    Student 2 – please see attached documents, refund was sent to [a third party] as [they were] the one that sponsored him and paid the tuition.

17. The Appellant attached documents in support of its responses.

18. On July 18, 2024, PTIB delivered to the Appellant written notice of two Administrative Penalties issued against it (the "Administrative Penalties Letter"). The issuance of these penalties was expressly after the Registrar had reviewed the responses of the Appellant. The penalties relate to Contravention 9 (Institution website) and Contravention 16 (Tuition Refunds).

19. The following description is from the Administrative Penalties Letter:

    Contravention 9 – Institution website

    The Inspections Findings letter identified that the Institution's website makes false and misleading representations.

    In its Response, the institution advised that its website had been updated.

I am satisfied on a balance of probabilities that the Institution has contravened PTA 41(2) by making false and misleading representations on its website.

Under the authority of Private Training Act (PTA)33 and Fees and Student Tuition Protection Fund Regulation (fees Regulation) 27(1)(e), I am issuing an Administrative Penalty in the amount of $1000.

Contravention 16 – Tuition Refunds

The Inspection Findings letter identified that student tuition refunds for two withdrawn students were not calculated as required by regulation. One student was issued an incorrect refund and the other student did not receive the tuition refund owed.

For programs delivered solely through distance education, PTR 35(6)(b) provides that certified institution may retain 30% of the tuition paid or payable under the student enrolment contract if the student completed no more than 30% of the program on the date the student provides a notice of withdrawal to the institution.

In its Response, the institution provided evidence that both students were refunded.

I am satisfied on a balance of probabilities that the Institution has contravened PTR 35(6)(b) by failing to calculate student tuition refunds in accordance with regulation.

Under the authority of PTA 33 and Fees Regulation 28(3)(f), I am issuing an Administrative Penalty in the amount of $750.

20. The Administrative Penalties Letter advised the Appellant of its right to request a reconsideration of the administrative penalties on one or more of the following grounds:

    a. The registrar erred in law;

    b. The registrar failed to observe the principles of natural justice in making the decision; or

    c. evidence has become available that was not available at the time the administrative penalties decision was made.

21. The Administrative Penalties Letter advised the Appellant that any request for reconsideration must be made within 15 days of service of the administrative penalty and must be accompanied by a $100 reconsideration fee and identify the grounds for the request from the list above. The appropriate form was attached to the Administrative Penalties Letter.

22. The Appellant delivered its request for reconsideration of both Administrative Penalties on August 2, 2024. It listed its grounds for each of the 2 appeals as, “registrar erred in law” and “Registrar failed to observe the principles of natural justice”.

23. With respect to the administrative penalty assessed for Contravention 9 (Institution Website,) the Appellant identified the following grounds:

Breach of Natural Justice

a. *failure to conduct a fair hearing by not allowing an opportunity to be heard. The basis for this ground was that the Registrar had relied solely on documents sent by the Appellant as required by a compliance investigator. The Appellant says that the requirement that it amend its website was not correct based on its PTIB registration and the "factual situation". Further, the Appellant says that the compliance officer was inexperienced and sought unnecessary explanations and clarifications.*

b. *The hearing was unfair as the Registrar relied on the statements of the compliance officer in relation to the false and misleading claims on the Appellant's website.*

c. *The Registrar failed to provide adequate reasons for the decision that the website contained false and misleading representations.*

Error in Law

a. *The Registrar erred in law by misinterpreting the words "false" and "misleading" as they appear in the PTA.*

24. With respect to the administrative penalty assessed for Contravention 16 (Student Refunds), the Appellant identified the following grounds:

Breach of Natural Justice

a. *Reliance by the Registrar on the opinions of an "inexperienced" compliance officer including whether 2 students had received the correct tuition refund, failing to allow the Appellant to present its case in person and provide written argument, instead relying on the compliance officer. The Appellant also said that the Registrar had not provided adequate "details of the students" that were said not to have received the correct tuition refunds and ignoring the refund calculations it provided.*

Error in Law

a. *Use by the Registrar of an incorrect interpretation of the provisions of the PTA in respect of student tuition refunds.*

25. On October 15, 2024, the PTIB delivered, by letter dated October 11, 2024, the Registrar's Reconsideration of Administrative Penalty Decision (Contravention #9) and by separate letter of the same date the Registrar's Reconsideration of Administrative Penalty Decision (Contravention #16). The Registrar confirmed the Administrative Penalty Decision with respect to Contravention #9 and rescinded the Administrative Penalty Decision with respect to Contravention #16, finding that the Appellant did not contravene PTR 35(6)(b).

26. On November 14, 2024, the Appellant delivered a Notice of Appeal from the Registrar's Reconsideration of Administrative Penalty Decision in respect of Contravention #9. The grounds for appeal are stated as follows:

    a. The Registrar erred in law in reaching a decision that the Appellant had contravened Section 41(2) of the PTA, and/or

    b. The Registrar erred in law by imposing an administrative penalty in terms of Section 33 of the PTA.

ISSUE

The issue is whether there is a legal or other basis for setting aside or varying the Reconsideration Decision of the Registrar imposing a $1,000 Administrative Penalty on the Appellant with respect to Contravention #9.

DISCUSSION

27. The Appellant says that because section 41(2) of the PTA is in Division 4 -Offences section of the PTA, an adverse finding requires a determination of a state of mind "…normally associated with the commission of a crime and incorporating a certain state of mind". It says that there is no evidence that the statements identified by the Registrar in the Findings Letter were made with the intent to deceive or mislead the public or to gain any advantage and therefore the Registrar erred in finding a breach of section 41(2) of the PTA. Further it says that the opportunity to correct the information relating to on-site education set out in the Findings Letter is confirmation or at least evidence that the errors on the website relating to on-site education were inaccuracies that needed to be corrected and nothing more.

28. Further, the Appellant's position is that while section 32 of the PTA authorized the Registrar to issue a compliance order, which it equates with the Finding and Requirements letter of September 14, 2023, that its action in correcting the identified non-compliant language should have "..been the end of the matter." It also says that at the time of the Findings Letter it was authorized to offer both in-class and online courses but that it had chosen not to offer online education after the end of the pandemic. The inaccurate statements on its website were an unfortunate oversight by the Appellant's webmaster. Further it says that it would not have been possible for a student to enroll in an on-site course as none were offered.

29. The Appellant's position with respect to the imposition of the administrative penalty relating to Contravention #9 is that section 33(1) of the PTA "..only permits the Registrar to impose an administrative penalty if an institution failed to comply with a compliance order or contravened the PTA or regulations. It says that is compliance to the requirements in the Findings and Requirements letter shielded it from the imposition of an administrative penalty.

30. In response, the Registrar says that as the Reconsideration Decision affirmed the administrative penalty, the issue in this appeal is the reasonableness and justification for the Reconsideration Decision as well as the underlying decision to impose the administrative penalty in relation to Contravention #9. It says that the administrative penalty was reasonable and justified in the circumstances.

31. The Registrar says that the overarching obligation on institutions to provide accurate information to students is embodied in section 41(2) of the PTA which prohibits false and misleading advertising and representations and section 17(2)(j) of the PTR which requires that the information in the institution's publications and on the institution's, website is accurate and current. The Registrar notes that the Findings Letter with respect to Contravention #9 identified 4 examples from the Appellant's website referring to in-class instruction, contrary to its admission that no on-site classes had been offered since April 2020. The Registrar also points to the Appellant's one-line response to Contravention #9 in the Findings Letter advising that the website had been updated as an admission of the identified non-compliance.

32. Further the Registrar rejects that the Appellant's continued use of terms such as "in-class seminars", "in-person courses" or attendance at the Vancouver campus were simple errors, saying that they were false and designed to drive interest in its programme offerings and enhance their online image as a learning institution. It points to the 3-year delay between the cessation of on-site classes and the identification of these statements during the inspection as evidence supporting the Registrar's position that these were not simple errors.

33. The Registrar rejects the Appellant's position that evidence of an intention to deceive, mislead or gain an advantage is a requirement for a determination under section 41(2) of the PTA. Similarly, it says that evidence of harm to a student is not a prerequisite of a determination under that section. The Registrar says that the Appellant is incorrect in its statement that a compliance order was issued under section and that compliance precluded further action pointing out that the Findings Letter is different from a compliance order. In this case the Registrar delivered a Findings Letter and, after receipt of the Appellant's response decided to issue an administrative penalty under section 33 of the PTA.

34. The Registrar says that the imposition of an administrative penalty under section 33(1) is authorized and justified even when a finding of non-compliance has been rectified saying it is consistent with the consumer protection aspect of the Training Legislation. Students rely on accuracy in advertising to make significant financial and career decisions. Therefore, the confirmation of the administrative penalty imposed for Contravention #9 is both reasonable and justified notwithstanding the changes made to the website following the Findings Letter.

DECISION

35. Section 50 of the PTA provides that an institution may bring an appeal of a reconsideration decision under section 48 of the PTA.

36. The orders available on an appeal under Section 50 are a dismissal of the appeal, allowing the appeal and giving any appropriate directions to the registrar, and, varying the decision, including reducing the amount of an administrative penalty. In the present case, the Appellant requests that the appeal be allowed and the administrative penalty vacated. It does not ask for a reduction in the amount of the Administrative Penalty.

37. My task is to determine if there is a legal basis for the Reconsideration Decision to be set aside or varied.

38. I start by noting that the Appellant does not dispute that, at the time of the Registrar's inspection, its website contained the language that the Registrar identified in Contravention #9. The Appellant says that the administrative penalty ought to be set aside because there is no evidence that these statements were intended to be false, deceptive, or misleading and that such evidence is a requirement because section 41(2) of the PTA which prohibits false or misleading representations is found in Division 4 – Offences of the PTA. It characterizes these references as simple errors and that no harm was done because no student could apply for on-site courses as there were none.

39. I also note that the Appellant does not raise any issues of administrative/procedural unfairness as a ground for appeal of the Reconsideration Decision.

40. I agree with the Registrar that there is no requirement for a finding of intent to mislead or deceive or that any student was mislead for a finding under section 41(2) of the PTA that an institution engaged in advertising or made representations that are false, deceptive or misleading, or otherwise prohibited by regulation. First, I note that section 33(2) of the PTA precludes a prosecution for an offence under the PTA in circumstances where an administrative penalty has been determined. In my view, this recognizes that the same conduct might be the subject of an administrative penalty or a prosecution but not both. A choice must be made. In this case, the Registrar chose to issue an administrative penalty.

41. Further, in my view, the wording of section 33(1) of the PTA supports the conclusion that no finding of intent is required to justify the imposition of an administrative penalty in this case.

42. Section 33(1)(a) of the PTA provides as follows:

> **33** (1) If the registrar is satisfied on a balance of probabilities that an institution has
> (a)contravened a provision of this Act **or the regulations** prescribed by the Lieutenant Governor in Council, or

56. The *Private Training Regulation*, B.C. Reg 153/2016 provides as follows at section 17(2)(j):

> **17** (2) A certified institution must do all of the following:
> (j) ensure that the information in the institution's publications and on the institution's website, if any, is accurate and current;

57. This section, is, in my view a complete answer to the Appellant's position that evidence of an intention to deceive or mislead is required to support the imposition of an administrative

penalty. Section 33(1) only requires that the registrar be satisfied on a balance of probabilities that the institution has contravened either a provision of the PTA or of the regulations. The Appellant does not dispute that the language identified in Contravention #9 was neither accurate nor current.

58. I am also unable to agree with the Appellant's submission that the Registrar's imposition of an administrative penalty under section 33 of the PTA was in error because it had complied with a compliance order. In this case there was no compliance order issued by the Registrar. Rather, what occurred is that the Appellant responded to the Findings Letter by making corrections to the impugned language identified by the Registrar in Contravention #9. This is different from a compliance order. Further, in imposing the administrative penalty the Registrar did not say that it was based on the failure of the Appellant to comply with a compliance order. The administrative penalty was based on the findings in the Findings Letter which had not been disputed by the Appellant.

59. The Appellant suggests that its remediation of Contravention #9 ought to have precluded the imposition of an administrative penalty. It offers no legislative or other legal support for that position. The Registrar says that it has broad discretion under section 33 of the PTA to issue an administrative penalty if satisfied, on a balance of probabilities, that the institution has contravened section 41(2) of the PTA. In the present case, I am satisfied on the evidence before me that the Appellant contravened both section 41(2) of the PTA and section 17(2)(j) of the Regulation, and as such the Registrar was entitled to issue an administrative penalty notwithstanding any remediation by the Appellant. This, in my view is consistent with the consumer protection aspect of the Training Legislation. Students rely on an institution's advertising to make serious financial and career decisions. In the present case, the Appellant's website was not accurate for a number of years.

60. For the reasons above I dismiss the appeal.

February 26, 2025