

Student Claim Based on Being Misled Decision

Complainant: [REDACTED]

Institution: 1365 – Kootenay Columbia College of Integrative Health Sciences

1. Introduction

The Complainant graduated from the registered massage therapy program [**Program**] in August 2023. Immediately following graduation, she made a complaint to the Institution that she and her cohort (January 2021 intake) had been misled in relation to the overall duration of the program. Specifically, she says she enrolled in what she was led to believe was a full time 2-year intensive massage therapy program spread over 6 terms (3 terms per year), when in actuality, the first year of the Program was part time, delivered over 5 terms (January 2021 – August 2022). This extended the length of the Program and delayed her graduation by roughly 8 months, which she says resulted in significant financial loss and hardship. The Complainant alleges that had she known, she would have elected to enrol in the September 2021 intake instead of the January 2021 intake. The Complainant requests a refund in respect of tuition paid for Year 1 of the Program (\$16,502.44).

The Institution denies it misled the Complainant, points to the enrolment contract for the first 8-months of Year 1 which specifies part time delivery, and says it fulfilled the contract and provided the Program in its entirety. The Institution notes that at no time during the Program did the Complainant raise concerns with the part time schedule. As the Complainant successfully completed the Program and is eligible to sit the registration examinations, the Institution submits there is no basis to issue a refund.

The Complainant filed a complaint with PTIB [**Complaint**] on September 25, 2023. The Complainant exhausted the Institution's dispute resolution process prior to filing the 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* [**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:	Registered Massage Therapy
Student Enrollment Contract (Year 1 – PT) [Contract #1]:	
Start date:	January 4, 2021
End date:	August 20, 2021
Student Enrollment Contract (Year 1 – FT) [Contract #2]	
Start date:	September 7, 2021
End date:	April 4, 2022
Student Enrollment Contract (Year 1 – FT) [Contract #3]	
Start date:	May 9, 2022
End date:	August 19, 2022
Student Enrollment Contract (Year 2 – FT): [Contract #4]	
Start date:	September 6, 2022
End date:	August 18, 2023
Graduation date:	August 18, 2023
Total charged:	\$33,549
Tuition:	\$30,875
Malpractice Insurance fee:	\$735
Student fees:	\$860

Material and supply fees:	\$904
Student Record Archiving fee:	\$25
Application fee:	\$150
Amount paid to date by Complainant:	\$33,549
Amount of tuition paid to date by Complainant:	\$30,875

4. Issues

The following issue arises for consideration: Was the Complainant misled by the Institution in relation to the overall duration of the Program?

5. Chronology

February 2020	Complainant applies to the Program as a new “full-time student”.
March 2020	Complainant signs contract for September 2020 intake (September 8, 2020-August 13, 2021). This contract specifies “Full Time”. Appendix A lists program delivery over 6 terms.
June 2020	Complainant requests deferral to January 2021 intake.
September 2020	Complainant signs new contract (January 11, 2021 – August 13, 2021). This contract specifies “Part Time”. Appendix A lists program delivery over 6 terms.
January 2021	Complainant signs revised contract, with start and end dates unchanged. This contract specifies “Part Time”. Appendix A lists program delivery over 6 terms.
January 11, 2021	Complainant starts the Program.
March 2021	Contract revised at Complainant’s request to add an extra course and extend end date to August 20, 2021. Complainant signs Contract #1. This contract specifies “Part Time”. Appendix A lists program delivery over 6 terms.
August 2021	Complainant signs Contract #2 (September 7, 2021-April 22, 2022). This contract specifies “Full Time”. Appendix A lists program delivery over 6 terms.
March 2022	Complainant signs Contract #3 (May 9, 2022-August 19, 2022). This contract specifies “Full Time”. Appendix A lists program delivery over 6 terms.
July 2022	Complainant signs Contract #4 (September 6, 2022-August 16, 2023). This contract specifies “Full Time”. Appendix A lists program delivery over 6 terms.
August 16, 2023	Complainant graduates.
August 24, 2023	Complainant initiates DRP.
September 13, 2023	Institution denies Complainant’s request for refund.
September 25, 2023	Complainant files Complaint.

6. Analysis

In February 2020, the Complainant applied as a new full-time student to the Program.

The Program is advertised on the Institution’s website as follows: “The RMT program at KCCIHS is offered over a 22.5-month period. This intensive massage therapy program takes place throughout six semesters (90 weeks)...”

Page 2 of the RMT Program Information and Application Pack states: “KCC now provides a standalone two-year Registered Massage Program. This intensive program runs over 6 semesters (90 weeks).” Page 3 provides the Program “...consists of six, fifteen week semesters spanning over 90 weeks...”

Appendix A, which is appended to each of the contracts signed by the Complainant, lists the Program as consisting of 6 terms.

The Complainant was initially accepted into the September 2020 intake. In March 2020, the Complainant signed an enrolment contract for Year 1 (September 2020 – August 2021). This contract specified the schedule as “Full Time”.

The Complainant wished to defer to the January 2021 intake and, in September 2020, signed a new 8-month contract (January – August 2021). This contract specified the schedule as “Part Time”. The Complainant says this schedule change was not brought to her attention and she believed that she was simply deferring her start date. She says the Institution did not explain to her that there was any difference to the Program between the September 2020 intake and the January 2021 intake.

In January 2021, the Complainant signed a revised contract. The start and end dates remained unchanged. The contract again specified the schedule as “Part Time”.

In March 2021, the Institution revised the contract at the Complainant’s request to add an extra course and extend the end date to August 20, 2021. This contract specified “Part Time”.

In August 2021, the Complainant signed a contract (September 7, 2021-April 22, 2022) and the contract reverted to “Full Time”.

The Complainant graduated in August 2023, as did the cohort that started in September 2021.

The crux of the Complaint is the allegation that the Complainant was misled in respect of the part time schedule for the first 8-month contract and the overall duration of the Program:

I am claiming that I had no information provided to me that indicated my program length and expected graduation would be any different from the advertised 2 years. In fact I had the Appendix A attached to my student contract that listed the program delivery over 6 terms. As stated by [the Institution] in the RMT info application pack...the program is delivered over 6 semesters. This is misleading information...

The Complainant says that she didn’t become fully aware of the extended duration of the Program until September 2021, at which point it was too late for her to transfer to another program without further delaying her graduation date:

...[M]y January 2021 intake group did not understand the ramifications of the ill-defined part-time program until September 2021 when our group of 8 merged with the incoming ill-defined full time group of 9 students beginning the program...

...we had no idea until Sep 2021 that we would end up having some classes on our own some classes with 2 other cohorts. I could have simply chosen not to defer my acceptance and

reapplied...for September 2021 if they had bothered to tell me how this program was being delivered.

The Complainant says that she made significant life changes to relocate and attend what she understood was a 2-year program. She alleges she suffered significant financial loss occasioned by the 8-month extension. Had she been told that the program was part time, she would have likely deferred to the September 2021 intake, postponed her move and continued to work in her full time employment. In addition, she incurred additional living expenses and the extension delayed her graduation and entry into the work force.

Regarding the timing of the Complaint, the Complainant explains that she saw no point in bringing it forward while enrolled in the Program as there was nothing the Institution could have done at that point to remedy the situation and she was wary of creating conflict between herself and the Institution. She cites the inherent power imbalance between students and institutions and says she was concerned she would become a target if she brought a complaint. Immediately following graduation, the Complainant made a complaint to the institution on behalf of her cohort.

The Institution denies misleading the Complainant. The Response is summarized below:

- This dispute is governed only by the contract and generally applicable laws of contract, not the PTA.
- The Institution speaks through and makes promises and representations in contracts.
- The Institution relies on the clear and non-ambiguous contracts both parties agreed to.
- The program contractually promised was provided.
- No remedy because no evidence of loss caused by the Institution.
- The Complainant did not dispute the part-time program until August 2023.
- The Trustee has limited remedial authority and can only authorize payments related to the provision of services (eg specific tuition paid for an unprovided program).

7. Decision

I find the Institution did not mislead the Complainant with respect to the part time schedule for the first 8 months of the Program. As it was this part time schedule that resulted in delaying the Complainant's graduation from the Program, I also find that the Institution did not mislead the Complainant in respect of the overall duration of the Program.

While the Institution could have been clearer in its communications with the Complainant about the change to the schedule from full time to part time when she initially deferred her start date, I find it significant that the Complainant signed a total of three enrolment contracts (September 2020, January 2021, March 2021), each of which indicated a part time schedule. The Institution has not explained why it made the change for the January 2021 intake, but the change was nonetheless indicated on the enrolment contract. I recognize that there can be an imbalance of power between an institution and a student and that the inclusion of an identical version of Appendix A in each contract, which described a full time program over 6 terms, was inaccurate and confusing. However, a student must exercise a degree of due diligence when contracting for a program. I also do not find it credible that the Complaint would not have appreciated that the part time

delivery of the first 8 months would impact the overall duration of the Program. In these circumstances, I do not find the conduct of the Institution rises to the level of “misleading” within the meaning of PTA 23(2)(b).

For these reasons, the claim is denied.

Notwithstanding my decision to deny the claim, the Institution makes submissions in its Response that warrant comment and clarification.

In its Response, the Institution distinguishes between “contract” and “non-contract” materials, with the implication that the Complainant’s reliance on “non-contract” materials is not appropriate. In my view, this distinction is not relevant. The Institution is prohibited under the PTA from making misleading representations. The Trustee is not limited to consideration of the contract terms when determining whether a student was misled. Students rely on a variety of sources of information to make a decision about whether to enrol in a program. The contract is only one way that information is communicated to students. In this case, it was appropriate for me to consider all representations and information provided to the Complainant, including the enrolment contract, advertisements, and application package, to determine whether she was misled in relation to the part time schedule and program length.

The Institution submits that the contract is the exclusive source of the Institution’s rights and duties. This may be correct in terms of contract law, but this is not a civil claim and performance of the contract is not at issue. My role as Trustee is to determine whether the student was misled regarding a significant aspect of the program within the meaning of PTA 23(2)(b).

Similarly, the Institution submits that “this dispute is governed only by the contract and generally applicable laws of contract – and not by the PTA”. Again, I do not accept this submission. The relationship between a student and an institution is set within a regulatory scheme and engages more than the terms of the enrolment contract. As Trustee, I have been given authority under the PTA to adjudicate claims, not to adjudicate contractual disputes.

Finally, the Institution submits that because the terms of the contract were fulfilled and the Program provided in full, the Complainant experienced no loss and therefore no remedy flows. This is incorrect. Any statutory remedy flows from the Trustee’s finding that the student was misled. Unlike in a civil claim, there is no requirement that the Complainant “prove her loss” or “repudiate the entire contract and argue she had received no value”. The Trustee has broad discretion to refund tuition up to the amount paid following a finding that a claim is justified: PTA 25(1)(b). There is no basis for the Institution’s submission that the PTA “only allows remedies directly related to what tuition is paid for – provision of services”.

The Complaint 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: March 18, 2024

A handwritten signature in black ink, appearing to read "Anthony Loughran", is enclosed in a thin black rectangular border.

Tony Loughran
Trustee, Student Tuition Protection Fund