IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Private Career Training Institutions Agency v. Prana Yoga Teacher College Inc.,* 2013 BCSC 17

Date: 20130108
Docket: S127320
Registry: Vancouver

In The Matter of Section 24 of the
***Private Career Training Institutions Act*, S.B.C. 2003, c. 79**

Between:

Private Career Training Institutions Agency

Petitioner

And

Prana Yoga Teacher College Inc.

Respondent

Before: The Honourable Mr. Justice Voith

Reasons for Judgment

Counsel for the Petitioner:	Michelle S. Jones
The Respondent:	Unrepresented
Place and Date of Hearing:	Vancouver, B.C. November 23, 2012
Place and Date of Judgment:	Vancouver, B.C. January 8, 2013

Overview

[1] This matter involves the regulation of private career training institutions in British Columbia. The petitioner, the Private Career Training Institutions Agency (the "Agency"), is the provincial regulatory body responsible for overseeing institutions that offer private career training in BC. The respondent, Prana Yoga Teacher College Inc. (the "College") provides education to students in BC and, prior to the cancellation of its registration, was a registered institution under the *Private Career Training Institutions Act*, SBC 2003, c. 79 (the "*Act*").

[2] The Agency advised the College on several occasions that it was failing to comply with a number of requirements of the *Act*, the *Private Career Training Institutions Regulation*, BC Reg. 466/2004 (the "Regulation") and the Agency's bylaws (the "Bylaws"). The College failed to take steps to fully comply with these requirements. As a result, the Agency cancelled the College's registration under s. 8(4) of the *Act*. The College continues to operate and, in so doing, is alleged to be violating s. 7 of the *Act* which prohibits providing career training absent registration under the *Act*. As a result, the Agency seeks a permanent injunction under s. 24 of the *Act* restraining the College from contravening the *Act*, the Regulation and the Bylaws. With the Agency's concurrence, the College was represented on this application by two non-lawyers who are associated with the College.

The Statutory Framework

[3] The following provisions of the *Act* are relevant:

Definitions

1 In this Act:

...

"career training" means training or instruction in the skill and knowledge required for employment in an occupation defined in the regulations,

(a) for which the tuition charged is greater than or equal to the prescribed minimum amount, and

(b) for which the instructional time is greater than or equal to the prescribed minimum duration,

...

Objects of agency

3 The agency has the following objects:

(a) to establish basic education standards for registered institutions and to provide consumer protection to the students and prospective students of registered institutions;

(b) to establish standards of quality that must be met by accredited institutions;

(c) to carry out, in the public interest, its powers, duties and functions under this Act.

...

Prohibitions

7 (1) A person must not provide or offer to provide career training unless the person is a registered institution.

(2) A registered institution that is not an accredited institution must not represent itself, or allow itself to be represented, as being approved by the government or accredited by the agency.

Registration

8 (1) The registrar must grant registration as a registered institution to each person who

(a) applies to the agency for registration,

(b) satisfies the registrar that the person meets the requirements for registration under this Act, and

(c) pays the fees set by the bylaws.

...

(4) The registrar may

(a) suspend the registration of a registered institution for a period and subject to conditions the registrar considers appropriate in the circumstances, or

(b) cancel the registration of a registered institution

if the registrar is satisfied that the registered institution no longer complies with subsection (1) (b) or (c).

...

Reconsiderations and appeals

10 (1) A person who is affected by any of the following decisions under this Act may request, within 30 days of receiving written notice of a decision, a reconsideration of the decision by the registrar:

...

(c) the suspension or cancellation of registration or accreditation.

(2) The registrar may confirm or vary a decision referred to in subsection (1).

(3) If dissatisfied with a decision under subsection (2), a person who is affected by the decision may commence an appeal to the board by filing a notice of appeal, in the form provided by the bylaws, within 30 days of receiving the written notice of that decision.

(4) The board or a committee of the board authorized under the bylaws for the purposes of this subsection, by order, may do one or more of the following in respect of an appeal under this section:

(a) dismiss the appeal;

(b) allow the appeal and give any directions that the board considers appropriate in the circumstances;

(c) vary the decision appealed from;

(d) set terms and conditions to which the order is subject.

...

Injunction

24 (1) On application by the agency, the Supreme Court may grant an injunction

(a) restraining a person from contravening this Act, the regulations or the bylaws if the court is satisfied that there are reasonable grounds to believe that the individual or organization has contravened or is likely to contravene this Act, the regulations or the bylaws,

(b) requiring a person or organization to comply with this Act, the regulations or the bylaws if the court is satisfied that there are reasonable grounds to believe that the individual or organization has not complied or is likely not to comply with this Act, the regulations or the bylaws, or

(c) requiring a person or organization not to hold themselves out

(i) as a registered institution if they are not registered under this Act, or

(ii) as an accredited institution if they are not accredited under this Act

[4] The following provisions of the Regulation are relevant:

Definitions

1 In this regulation:

...

"tuition" means the sum of the fees a payment maker must pay to an institution in respect of training or instruction...

...

Prescribed occupations

> **2** (1) In this section, "**National Occupational Classification scheme**" means the National Occupational Classification scheme, 2006, administered by the federal agency known as Human Resources and Skills Development Canada and its successors.
>
> (2) For the purpose of the definition of "career training" in section 1 of the Act, "occupation" means any occupation described in the National Occupational Classification scheme except occupations described as follows:
>
> ...

Requirements of "career training"

> **3** A program of training or instruction is "career training" for the purpose of section 1 of the Act if
>
> > (a) the tuition charged for the program is greater than or equal to $1 000, and
> >
> > (b) the time devoted to training or instruction by the program is greater than or equal to 40 hours.

[5] The National Occupational Classification scheme, referred to in s. 2 of the Regulation, includes a broad range of athletic and recreational activities. It expressly includes "yoga instructors".

Background

[6] The relationship between the Agency and the College commenced in or about 2003. The College voluntarily applied for and was granted registration as a "registered institution" under s. 8 of the *Act*.

[7] In or about June 2012, the Agency raised compliance concerns with the College.

[8] On August 31, 2012, the Registrar received a letter from the College's then legal counsel advising that the College had sought legal advice about how it could escape the regulatory oversight of the Agency:

> I have been retained by Prana Yoga College for the purposes of designing and implementing a program, promotions and student contract regime that will allow my client to operate outside the statutory jurisdiction of PCTIA.

[9] The letter further asserted that by breaking down the training program offered by the College into individual courses, with individual tuition and timing requirements, the College would be able to escape the definition of "career training" under s. 1 of the *Act*. The letter advised that the College believed these steps would be sufficient to remove the Agency's oversight.

[10] On September 5, 2012, the Registrar of the Agency responded and advised that i) registered institutions do not have the ability to unilaterally decide to operate outside the regulatory scheme established by the *Act*, the Regulation and the Bylaws, ii) the College had the obligation to satisfy the Agency that it no longer offered "career training" as defined by the Act, and iii) the College's attempt to break down its training program into individual courses and tuition amounts did not result in the College escaping the Agency's oversight:

> The Institution's website shows the programs beginning after August 31st, 2012, as being organized to ensure that no one course exceeds 40 hours and \$1,000. However, the courses, when combined, provide a program for which the Institution provides a diploma or certificate. This meets the requirements for registration under the *PCTI Act* and Regulation. *An institution cannot circumvent registration by offering many courses each of which do not go over the limit of 40 hours and \$1,000 but, when combined, clearly exceed 40 hours and \$1,000.*

[11] Finally, the Registrar noted that the College continued to be non-compliant with a number of requirements of the *Act*, Regulation and Bylaws that had previously been identified and communicated to the College in a letter dated June 26, 2012. The College's non-compliance included*, inter alia*:

- advertising or representing the College as being an accredited institution when it was not;
- failing to submit a New Program Application form with the Agency in respect of the Yin Yoga certificate program;
- failing to have a dismissal policy that met minimum refund requirements;

- failing to have a student records and archiving policy that complied with required timelines;
- failing to submit a Change of Ownership application with the Agency;
- failing to submit a Program Change Application with the Agency;
- failing to submit to the Agency and to post a copy of a valid business license for the College; and
- failing to complete a review of student files to ensure that student enrollment contracts had been properly executed by all parties involved.

(Collectively the "Unfulfilled Conditions")

[12] On September 7, 2012, the College's then legal counsel wrote to the Agency and advised that, as a result of the changes instituted by the College (set out in its letter of August 31, 2012), the College was operating outside the Agency's oversight and that the Agency had no say in the private contractual dealings between the College and its students.

[13] On September 9, 2012, the College's then legal counsel again e-mailed the Agency and said:

> This client is committed to doing what is necessary to escape regulation and will do what is required to accomplish that. Many of its competitors are not regulated. This College is not focused on satisfying your existing conditions.

[14] On September 10, 2012, the Agency suspended the College's registration as a result of its failure to meet the Unfulfilled Conditions. In its letter, the Agency advised that the College's registration would be reinstated once compliance with the Unfulfilled Conditions was achieved. The Agency further advised that failure to comply by October 1, 2012 would result in the Agency cancelling the College's registration.

[15] The Agency's letter of September 10, 2012 also identified the appropriate process for challenging the Agency's decision to suspend registration:

> You should also be aware that, under Section 10(1) of the Act, an institution may request a reconsideration of the decision to suspend its registration. The written request outlining the reasons why the Registrar should reconsider her decision must be received at the Agency within 30 days of receiving this letter.

[16] Notwithstanding this suspension, the College continued to operate without having complied with the Unfulfilled Conditions. It did not seek reconsideration of the Agency's decision under s. 10(1) of the *Act*.

[17] As a result, on October 2, 2012, the Agency cancelled the College's registration, effective immediately. The Agency's October 2, 2012 correspondence also identified the appropriate process for challenging the Agency's decision to cancel its registration:

> Prana Yoga may request a reconsideration of my decision to cancel its registration pursuant to s. 10(1) of the Act. Any request for reconsideration must be made in writing and must be received by the Agency within 30 days of your receiving this letter.

[18] The College appears to have ignored the cancellation of its registration and to be operating in contravention of the regulatory regime I have described. At no time has the College sought reconsideration of the Agency's decision under s. 10(1) of the *Act*.

[19] The Agency now argues that the College is no longer a registered institution, that it continues to provide career training to students studying to become yoga instructors in BC and that it is doing so in contravention of the prohibition found in s. 7 of the *Act*.

Analysis

[20] The respondent has, in either the written materials before me or in its oral submissions, raised four distinct reasons that the relief sought by the petitioner should not be granted. Those reasons are:

i) the respondent provides spiritual training and its activities are not directed to enabling persons to obtain "career training" or the means of earning a livelihood;

ii) the respondent did not breach the regulatory regime established by the *Act*, the Regulation and the Bylaws;

iii) the respondent, by virtue of how it has structured its fee payment and course selection options, falls outside of the ambit of the *Act* and the Regulation; and

iv) the respondent has effectively "contracted out of" *Act* and the Regulation.

[21] Before turning to these disparate issues I wish to note that though the petitioner's materials reference the fact that the respondent failed to appeal either its September 19, 2012 suspension of registration or its October 2, 2012 cancellation of registration, it did not expressly argue that the present proceeding constitutes a collateral attack on those decisions.

[22] In *R. v. Consolidated Maybrun Mines Ltd*., [1998] 1 S.C.R. 706, Madam Justice L'Heureux-Dubé, for the court, determined that the question of whether a court can or should determine the validity of an administrative order on a collateral basis depends on the intention of the legislature. That intent, in turn, is to be determined by reference to a non-exhaustive catalog of factors. It is apparent that at least some of the issues raised by the respondent on this application are issues which could properly have been raised under the *Act* following the suspension and cancellation of its registration.

[23] I have not, however, formally considered whether the respondent is foreclosed from now advancing one or more of the issues it seeks to raise. I have arrived at this conclusion for several reasons: (i) the petitioner did not formally raise the issue in its materials, (ii) the issue was not argued before me, (iii) the respondent was not represented and (iv) I have, in any event, concluded that the respondent

cannot succeed. In such circumstances, I consider it more appropriate and fruitful for the respondent to fully understand the basis upon which I have arrived at my conclusions.

i) The Respondent does not Purport to Provide Career Training

[24] The respondent says that its programs are not designed to provide its students with the means of earning an income. The issue of what constitutes "career training" under the *Act* and the Regulation is, however, prescribed.

[25] Under the *Act*, an institution offers "career training" if i) it offers training in the skills and knowledge necessary for employment in specific occupations, ii) the tuition for the training is greater than or equal to the prescribed minimum amount, and iii) the instructional time for the training is greater than or equal to the prescribed minimum duration.

[26] Each of these requirements is satisfied in this case. “Yoga instructor”, as I have said, falls within the ambit of the relevant National Occupational Classification scheme. So too, I observe, do occupations as diverse as bridge, chess and Tai Chi instructor. Section 3 of the Regulation fixes the threshold for tuition at greater than or equal to $1,000. The threshold for instructional time is set at greater than or equal to 40 hours.

[27] The respondent makes various programs available to its students. These programs exceed both the prescribed tuition and instructional time thresholds. Thus, the present website of the respondent purports to offer a "Level 1 Yoga Teacher" certification program. That program contemplates 200 hours of training for a fee of $3,500 (before discounts). The respondent’s "Level 2 Upgrade (Intensive) Yoga Teacher Diploma" contemplates 300 hours of training for a fee of $5,400 (before discounts).

ii) The Respondent did not Breach the *Act*, Regulation or Bylaws

[28] The respondent asserted that not all of the complaints or violations initially alleged by the petitioner had merit. I make two observations. The first is that, at this

point in these proceedings, the respondent's registration has been terminated. The issue of whether the respondent was, at an earlier point in time, in breach of the relevant regulatory regime is neither here nor there. Second, this assertion by the respondent, that it had been in compliance with the requests made of it, was expressed as a proposition and was not developed before me. The Agency's letter of September 5, 2012 asserts that the respondent had failed to meet a list of ten different requirements. No effort was made before me to address the specifics of that letter nor do I understand the respondent's materials, which are not easily understood, to do so.

[29] Two further matters are also salient to this issue. First, the letters which the respondent's former counsel wrote to the Agency were directed to developing a strategy that would place the respondent outside of the purview of the *Act* and Regulation. That strategy was designed so that the respondent would be exempt from and would not have to comply with the *Act* and the Regulation. There was limited suggestion in those letters that the activities of the respondent were fully compliant with the *Act*, Regulation and the Bylaws. Indeed, the September 9, 2012 e-mail from the respondent's former counsel recognized that the respondent was "not focused on satisfying" the petitioner's conditions.

[30] Second, the October 2, 2012 letter of the Agency canceled the respondent's registration and made that cancellation effective immediately. As of the date of the application before me, the respondent's website continued to assert or represent that the respondent was properly registered with the petitioner. That wrongful act, without more, engages s. 24 of the *Act*.

iii) The Activities of the Respondent are Structured so as to Fall Outside of the Purview of the *Act* and Regulation

[31] The letter of former counsel for the respondent proposed, as I have said, that the respondent would restructure its programs so that they fell below the tuition and training thresholds of the Bylaws. The Agency responded that these proposals would be ineffective. I agree. They would be ineffective because they would represent a

transparent attempt to circumvent the object of the *Act* and Regulation. They would also be ineffective because they would remain inconsistent with the requirements of the *Act* and Bylaws. Thus, for example, the definition of "tuition" in the Bylaws "means the sum of the fees a payment maker must pay to an institution....” (underlining added). Restructuring fees from a global tuition payment scheme to a series of smaller payments for individual courses or segments of the program is thus not likely to render the *Act* inapplicable.

[32] For present purposes, what is particularly important is that the respondent has not in fact altered its internal fee and tuition structure and that its website continues to offer programs that, for the reasons I have explained, constitute "career training".

iv) Contracting out of the *Act* and the Regulation

[33] The primary submission of the respondent was that it had agreed with the petitioner, by way of contract, to opt out of the *Act* and the Regulation. I was told that the respondent sought to avoid further friction with the petitioner, that it did not consider the *Act* and Regulation relevant to its activities, that its students were content with its services and that no complaints of any sort had been made in respect of its services or programs.

[34] Furthermore, I was told that the contract it relied on, in concept, was one where the respondent communicated to the petitioner that it would assume a contract existed with the petitioner unless the petitioner took a contrary position. There are at least two difficulties with this argument:

a) the respondent cannot contract out of legislation enacted in the public interest; and

b) even if it could, no contract was formed as the petitioner did not accept any offer from the respondent.

(a) **The respondent cannot contract out of legislation enacted in the public interest**

[35] As Justice Wilson, for the Court, stated in *Potash v. Royal Trust Co.*, [1986] 2 S.C.R. 351 at 371, there is a "long standing principle that parties cannot contract out of statutory provisions enacted in the public interest." To permit otherwise would defeat the purpose of the legislation.

[36] In *Litowitz v. Standard Life Assurance Co. (Trustee of)* (1996), 30 O.R. (3d) 579, 143 D.L.R. (4th) 77 at 83-84 (C.A.), Justice Robins of the Ontario Court of Appeal confirmed that "consumer protection" legislation falls under this principle:

> While it would not have been so described at the time the legislation was first enacted, in contemporary terms the legislation is consumer protection legislation. Sections 10 and 18 were clearly intended to protect individuals from being locked into long-term mortgages at what may become unfavourable interest rates by making mortgages given by them open for repayment after their first five years. This protection may not as a matter of public policy be contracted out of or waived. [Emphasis added.]

[37] The *Private Career Training Institutions Act* is both consumer protection legislation and legislation enacted in the public interest. The *Act* states as much in sections 2 and 3. Section 2 creates the Private Career Training Institutions Agency; and section 3 states, in part, that the objects of the Agency are "(a) to establish basic education standards for registered institutions and to provide consumer protection to the students and prospective students of registered institutions" and "(c) to carry out, in the public interest, its powers duties and functions under this Act". (Emphasis added.)

[38] Without this provision, I would still conclude the legislation is aimed at consumer protection. The *Act* establishes, *inter alia*, a "Student Training Completion Fund" (the "Fund") which compensates students who paid tuition but could not complete their training because their school ceased to operate. The Fund is largely financed by fees levied on the training institutions regulated by the *Act*. Allowing training institutions to contract out of the *Act* would deplete the fund and attenuate protection of the students, *i.e.* the consumers. As was argued in *Potash*, such a result would "defeat the whole purpose of [the legislation]" (*Potash* at 372).

[39] Any contract, express or implied, that purported to remove the respondent from the purview of the *Act* and the Regulation would not be enforced by this Court.

(b) There was no contract in any event

[40] Even if the respondent were able to contract out of the *Act*, no contract was formed between the parties in this case. Based on the evidence and arguments before me, at least one of the indispensible elements of a contract is missing: the petitioner did not accept the respondent's offer.

[41] At this stage, it is important to keep in mind that the party alleging the existence of a contract bears the burden of establishing, on a balance of probabilities, that the contract was formed (see *Miura v. Miura* (1992), 66 B.C.L.R. (2d) 345 at para. 14, 12 B.C.A.C. 278 (C.A.); and *Coal Harbour Properties Partnership v. Liu*, 2005 BCSC 873 at para. 32).

[42] To create a contract, one party must extend an offer and the other party must *accept* that offer. "Without an offer and acceptance, there is no contract" (G.H.L. Fridman, *The Law of Contract in Canada,* 6th ed. (London, Ont: Carswell, 2011) at 25). "An 'offer' means the signification by one person to another of his willingness to enter into a contract with him on certain terms. The language or conduct involved must be capable of being interpreted as revealing an intention to be bound. The offer must not be ambiguous" (Fridman at 27).

[43] To accept the offer, there must be "signification by the offeree [*i.e.* the Agency] of his willingness to enter into a contract with the offeror [*i.e.* Prana Yoga]" (Fridman at 45). In determining whether there was an offer and acceptance, courts will look at the actions of the parties from the perspective of an "objective reasonable bystander" (Fridman at 15).

[44] In September 2012, the respondent sent the petitioner a document titled "AFFIDAVIT OF NOTICE OF INJURY AND CONSPIRACY TO COMMIT TORTS" ("Affidavit of Injury"). On page 5, this document states:

> If PCTIA believes it answered all the conditional set statements issued on behalf of [Prana Yoga] by a member of the Bar Association, then PCTIA may issue a sworn affidavit under penalty of perjury, within 7 business days by registered mail and failure to provide such an affidavit will be taken as the facts herein; PCTIA ignored [Prana Yoga's] good faith compliance and the CEO is solely responsible for breaking trust established between [Prana Yoga] and PCTIA.

[45] The "facts" in the Affidavit of Injury state, in part, "PRANA YOGA TEACHER COLLEGE by its own competent volition chooses to revoke any and all contracts with PCTIA and dissolve any application date ending near October 31 2012".

[46] In effect, the respondent argues that the petitioner's silence regarding the "conditional set statements issued on behalf of [the respondent's former counsel]" constituted acceptance of the "facts" in the Affidavit of Injury, as was contemplated on page 5.

[47] I doubt whether these provisions in the Affidavit of Injury amount to an "offer" as defined by Fridman, above. But I need not determine that issue as there was clearly no acceptance of the putative offer.

[48] Generally, silence *does not* amount to acceptance (*Hamilton v. Busch* (1994), 92 B.C.L.R. (2d) 198 at para. 75, 42 B.C.A.C. 265 (C.A.)). In certain circumstances, acceptance *can* be inferred from silence (*IBI Group v. LeFevre & Co. Property Agents Ltd.*, 2004 BCSC 298 at para. 29). But, as previously stated, there must be "signification by the offeree of his willingness to enter into a contract with the offeror".

[49] In this case, there is no evidence that the petitioner signified an intent to enter into a contract that would remove the respondent from the authority of the *Act*. After receiving the Affidavit of Injury, the petitioner sent letters to the respondent indicating the contrary: that the respondent *continued* to fall under the *Act* and was required to comply therewith. There is no evidence on which a reasonable person could conclude that the petitioner intended to contract with the respondent for withdrawal from the *Act*. Absent such evidence, the petitioner's silence cannot be construed as acceptance. Absent acceptance there can be no contract.

Section 24

[50] Section 24 of the *Act* allows the court to restrain a person from contravening the *Act*, the Regulation and the Bylaws in circumstances where it is satisfied that there “are reasonable grounds to believe” that a party has or is likely to contravene the *Act*, the Regulation and the Bylaws.

[51] In *Mugesera v. Canada (Minister of Citizenship and Immigration)*, 2005 SCC 40, [2005] 2 S.C.R. 100 at para. 114, in joint reasons, the Court said:

> ...The FCA has found, and we agree, that the "reasonable grounds to believe" standard requires something more than mere suspicion, but less than the standard applicable in civil matters of proof on the balance of probabilities: *Sivakumar v. Canada (Minister of Employment and Immigration)*, [1994] 1 F.C. 433 (C.A.), at p. 445; *Chiau v. Canada (Minister of Citizenship and Immigration)*, [2001] 2 F.C. 297 (C.A.), at para. 60. In essence, reasonable grounds will exist where there is an objective basis for the belief which is based on compelling and credible information: *Sabour v. Canada (Minister of Citizenship & Immigration)* (2000), 9 Imm. L.R. (3d) 61 (F.C.T.D.).

[52] I am satisfied that the evidence before me meets the foregoing standard. Accordingly, I order that the respondent, until such time as it is properly registered under the *Act*, be restrained from providing, or offering to provide, training or instruction in the skill and knowledge required as a yoga instructor for which:

a) the tuition charged for the training or instruction, whether in individual segments or collectively, is greater than or equal to $1,000; and

b) the time devoted to training or instruction, whether measured in individual courses or workshops or collectively, is greater than or equal to 40 hours.

[53] The respondent is also to pay the petitioner its costs in the amount of $2,500.

“Voith J.”