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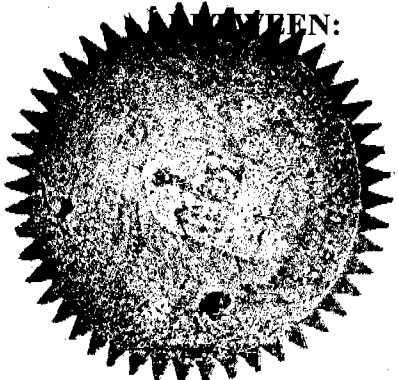
THE ORDER OF
L'ORDONNANCE DU
DATED / FAIT LE

J. Hay
Aug 29/08

Court File No.: 06-CV-310529
CP

REGISTRAR
SUPERIOR COURT OF JUSTICE

ONTARIO
SUPERIOR COURT OF JUSTICE



BEFORE:

**KATARZYNA ALICJA MATONI and
KAREN E. THOMPSON**

Plaintiffs

-and-

**C.B.S. INTERACTIVE MULTIMEDIA INC., carrying on business as CANADIAN
BUSINESS COLLEGE, CANADIAN BUSINESS SCHOOL INC., carrying
on business as CANADIAN BUSINESS COLLEGE, MAZHER JAFFERY
and ROSELYN CALAPINI**

Defendants

A Proceeding under the Class Proceedings Act, 1992

FRESH AS AMENDED
STATEMENT OF CLAIM

TO THE DEFENDANTS:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff(s). The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a Statement of Defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the Plaintiff(s) lawyers or, where the Plaintiff(s) do(es) not have a lawyer, serve it on the Plaintiff(s), and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this Statement of Claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your Statement of Defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.



Instead of serving and filing a Statement of Defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your Statement of Defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

IF YOU PAY THE PLAINTIFFS' CLAIM, and \$5000.00 for costs, within the time for serving and filing your statement of defence, you may move to have this proceeding dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the plaintiffs' claim and \$100.00 for costs and have the costs assessed by the court.

Date: *May 2nd, 2006*

Issued by

J. Grant
Local Registrar

393 University Avenue, *10th Floor*
Toronto, Ontario
M5H ~~2N9~~ *1E6*

**TO: C.B.S. INTERACTIVE MULTIMEDIA INC., carrying on business as
CANADIAN BUSINESS COLLEGE
2 Bloor Street West, Suite 2200
Toronto, Ontario
M4W 2E5**

**AND TO: CANADIAN BUSINESS SCHOOL INC., carrying on business as
CANADIAN BUSINESS COLLEGE
2 Bloor Street West, Suite 2200
Toronto, Ontario
M4W 2E5**

**AND TO: MAZHER JAFFERY
2 Bloor Street West, Suite 2200
Toronto, Ontario
M4W 2E5**



AND TO: ROSELYN CALAPINI
2 Bloor Street West, Suite 2200
Toronto, Ontario
M4W 2E5



CLAIM

1. The Representative Plaintiff Theadoshia Monckton on behalf of the class of persons described below, claim:
 - a. an Order pursuant to section 5 of the *Class Proceedings Act*, S.O. 1992, c. 6, certifying this action as a class proceeding and her as Representative Plaintiff;
 - b. damages in the amount of \$15,000,000.00;
 - c. punitive damages in the amount of \$2,500,000.00;
 - d. a declaration waiving the notice provisions of section 18 of the *Consumer Protection Act 2002*, S.O. 2002 c., 30;
 - e. pre-judgment and post-judgment interest pursuant to the *Courts of Justice Act* R.S.O 1990, c. C43;
 - f. the costs of this action on a substantial indemnity scale; and,
 - g. such other relief as this Honourable Court finds just.

The Representative Plaintiff and the Class

2. The Representative Plaintiff Theadoshia Monckton ("Monckton") is an individual residing in Regina, Saskatchewan. Prior to her enrollment in the dental hygiene program at the Canada Business College (as defined further below), Monckton was employed as a dental assistant in the province of British Columbia. As



described below, Monckton left that secure employment and relocated from British Columbia to Toronto for the sole purpose of attending the Program.

3. The Defendant corporations were incorporated pursuant to the laws of Ontario. At all material times, the corporate Defendants carried on business as a private career college known as the "Canadian Business College". The corporate Defendants are hereinafter referred to as the "CBC". Among other programs, the CBC offered the Program, which is the subject matter of this action.
4. The Defendant Mazher Jaffery ("Jaffery") is an individual residing in Toronto. At all material times, he was a director and employee of the CBC. The Defendant Roselyn Calapini ("Calapini") is an individual residing in Toronto and the wife of Jaffery. At all material times, she was the General Manager and otherwise an employee of the CBC. Calapini was the person who authorized the registration of the CBC as a corporation.
5. Jaffery and Calapini were the sole shareholders of the CBC. They were the directing and controlling minds of the affairs, licensing, registration, contracts, programs, statements and representations of the CBC. In particular, but without limiting the generality of the foregoing, they either made or authorized, directed, acquiesced in, condoned, or encouraged the making of the contracts, breaches of contract, breaches of collateral warranty, misrepresentations and failures to disclose referred to herein for their own personal benefit as employees and shareholders of the CBC. Jaffery and Calapini are personally responsible for the contracts, acts and omissions referred to herein.



6. This action is brought on behalf of the following class of persons (the "Class"), namely:

All persons who, after July 30, 2005 and prior to the earlier of: (i) Canadian Business College's ("CBC") dental hygiene program (the "Program") being accredited by the Commission on Dental Accreditation of Canada and (ii) the date notice of certification is given to Class Members, entered into contracts for enrolment in the Program ("Contracts"), other than persons who:

- a) signed waivers substantially in the form attached hereto as schedule "A" (the "Waiver") at or prior to the time they entered into the Contracts and prior to the time they paid any monies to CBC;
- b) refused to sign the Waiver after they entered into the Contracts or paid any monies to CBC, withdrew from the Program, and were reimbursed by CBC for all costs incurred by them in relation to their enrolment in the Program; and,
- c) signed the Waiver after they entered into the Contracts or paid any monies to CBC, received an offer from CBC at the time that they were presented with the Waiver to reimburse them for their costs in relation to their enrolment in the program should they wish to withdraw from the Program and declined such offer.



Becoming a Registered Dental Hygienist

7. Both private and public education institutions in Ontario offer accredited Dental Hygiene programs.
8. Pursuant to the terms of the *Regulated Health Professions Act, 1991* S.O. 1991, c. 18, and the *Dental Hygiene Act, 1991* S.O. 1991, c. 22, the certification of Registered Dental Hygienists is governed by the College of Dental Hygienists of Ontario (the "College"). Only those individuals registered with the College in Ontario may represent or describe themselves as Dental Hygienists.
9. To practice dental hygiene in the province of Ontario, a person must be registered with the College. In order to apply for registration with the College, an applicant must be a holder of a certificate issued by the National Dental Hygiene Certification Board (the "National Board"). In order to acquire a certificate issued by the National Board, applicants must successfully write the National Dental Hygiene Certification Board Examination (the "Examination").
10. An applicant who is a graduate or a student of a dental hygiene program that was accredited by the Commission on Dental Accreditation of Canada ("CDAC") or the American Dental Association Commission on Dental Accreditation, on the date of the applicant's graduation have the right to write the Examination.
11. An institution offering a dental hygiene program must first make an application for eligibility for accreditation. After a successful application for eligibility, the program will be or can be subsequently reviewed for accreditation. If a program

is not accepted for eligibility, the program cannot become accredited. This process of applying for eligibility and accreditation can take years.

12. An applicant who is a graduate of non-accredited dental hygiene program may only write the Examination at the discretion of the National Board. The National Board will not advise a student of a non-accredited dental hygiene program whether the discretion will be exercised to allow the student to write the Examination until he or she completes the program and individually applies to write the Examination. The National Board does not generally permit a graduate of a non-accredited program to write the Examination.
13. A graduate of a non-accredited dental hygiene program, who is permitted to write the Examination and does so successfully, must then also successfully complete a provincial clinical assessment. Graduates of an accredited dental hygiene program are not required to complete this additional clinical assessment.
14. There is a significant period of time (approximately nine months or more) associated with an application by a graduate of a non-accredited program for permission to write the Examination and the subsequent clinical assessment.
15. The Program at the CBC was not, and is not, accredited. The CBC had not even applied for eligibility prior to offering the Program to the public. The CBC did subsequently apply for eligibility to seek accreditation for the Program. The Defendants knew or ought to have known that the curriculum of the Program and the application by the CBC for eligibility were deficient and would not have resulted in the CDAC granting the Program eligibility. The CBC's application for

accreditation of Program was rejected by the CDAC. The Class members do not have the right to write the Examination.

The Facts

16. In or about the spring of 2005, the CBC first offered the Program to the public. The Program was to last 18 months. The first session of the Program commenced in June 2005. The next sessions commenced in September 2005 and January 2006. Monckton enrolled in the session that commenced on January 30 2006.
17. The cost of the Program varied from Class member to Class member but was generally in excess of \$15,000 for tuition plus other costs, expenses and taxes.
18. The cost for Monckton was supposed to be \$17,500 for tuition, although that price was unilaterally increased to \$19, 500, and \$2,482.40 for books, for a total enrollment cost of \$21,982.40.
19. Many of the Class members, including the Representative Plaintiff, left secure and gainful employment in order to participate in the Program, with the objective of becoming dental hygienists and earning a higher income in that capacity. Some Class members, including, but not limited to Monckton, moved to Toronto to be in a position to participate in the Program.
20. The Program was described in advertisements and otherwise by the CBC as a "Dental Hygienist Program". Among other things, the CBC described the Program in documents or brochures in the following terms:



“Program Overview

The Dental Hygiene program prepares students to meet the needs of a dynamic profession. The program clearly articulates the dental hygiene process model of care, comprising preparation, assessment, planning, implementation and evaluation.

The program will prepare the graduate for the legal and ethical responsibilities of a dental hygienist and with a basic understanding of business practices related to self-employment. With new current standards and practices, the Dental Hygienists are becoming important members in the dental health initiatives in Canada. At Canadian business College, students will educate themselves in the profession of dental hygiene, including dental prevention modalities.

...

An important part of the program will to (*sic*) become familiar with the regulating bodies, the licensing agencies, the employment market, observing jurisprudence and recognizing the potential hazards of dental products and techniques. Overall commitment to preserving dental health through education and preventative counseling will render the graduate worthy of practicing in Canada.

Graduates of this program must successfully complete National Dental Hygiene Certification Examination to be eligible for registration by the college of Dental Hygienists of Ontario.

Career Opportunities (*sic*)

The field of dental hygiene offers a wide variety of opportunities. In Canada, registered dental hygienists (RDHs) may pursue careers in both clinical and community practice...

...

As a Dental Hygienist, the graduate may work independently, interdependently and collaboratively with health professionals in a variety of practice settings, including private dental practices, community clinics, public health programs, institutions and long term care facilities. The graduate may choose to work as an employee or be self-employed.

Certification

The Dental Hygiene Program in Canadian Business College will prepare the participant for the responsibilities of the dental hygienist, with the understanding of the requirements for the National Dental Hygiene Certification Examination.”

21. The CBC also distributed a handbook for the Dental Hygiene Program dated 07/09/2005 to the Class members, which read in part as follows:

“The Dental Hygiene Program at Canadian Business College prepares hygiene practitioners who are able to think critically and function with a high level of professionalism. Graduates will have the knowledge, skills and attitudes necessary to provide preventative, educational and therapeutic dental hygiene services in collaboration with individuals and groups.

OUTCOMES

Upon successful completion of the Dental Hygiene program the graduate will be able to:

1. Function as a professional Dental Hygienist

...
...

PROGRAM OUTCOMES

Upon successful completion of the Dental Hygiene program the graduate will be able to:

1. Function as a professional Dental Hygienist
 - a. Apply provincial and national professional codes of conduct and standards of practice
 - ...
 - f. Practice within the legal framework for dental hygiene services in Ontario
 - ...”

22. The foregoing statements, including the use of the phrase “Dental Hygiene Program” itself, and other similar statements were intended to and did represent, expressly and impliedly, to the public, including the Class members, that:

- a. the Program was appropriately registered, licensed or accredited or, alternatively, that enrolling in the Program was equivalent, when compared to other programs, to enrolling in an accredited dental hygiene



program at another institution in terms of the ability and timing of the Class members to become registered dental hygienists;

- b. the Class members would have the right to write the Examination; and,
- c. there was no risk inherent in the Program, or associated with enrolling in the Program, that the Class members would not or might not be able to write the Examination or otherwise would not or might not become a registered dental hygienist.

To the knowledge of the Defendants, the purpose for the Class members and others in enrolling in the Program, or any other dental hygiene program, is to become a registered Dental Hygienist.

23. The Class members and Monckton relied upon these representations to their detriment:

- a. when they enrolled in the Program, committed to paying the significant cost of the Program and decided to forego otherwise earning income during the Program and thereafter; and/or
- b. by remaining in the Program for the period during which they in fact remained in the Program.

The Defendants' Marketing Practices & The Representative Plaintiff's Enrollment

24. Over the course of the Class Period, CBC advertised or promoted the Program in a variety of media including, but not limited to:



- a. on the internet;
- b. in print advertisements;
- c. in handbooks, course calendars and direct mailings; and,
- d. in meetings with prospective students.

25. Over the course of the Class Period, CBC ran advertisements about the Program in a number of Toronto area newspapers. The advertisements referred to, among other things, the "Dental Hygienist Program" 18 month course starting at just \$15,500 (materials extra).

26. As set out above, CBC promoted the Program to the Class in meetings with prospective students. The defendants Jaffery and Calapini made it their practice to personally meet with prospective students in order to describe the Program and its purported benefits. Prospective students would often meet with Leena Khadeeja Feroze ("Feroze"), a former employee of the CBC and employed as the director of the Program. Typically, over the course of these meetings Feroze, Jaffery or Calapini would represent to the prospective student that that there were a limited number of spaces remaining in the Program and unless the prospective student quickly registered for the Program and paid a deposit, he or she would not be able to register for the Program. These representations were false as there were many spaces remaining in the Program and individuals were allowed to register for the Program thereafter. The same misrepresentation that the Program was near capacity was repeated to other Class Members.



27. During the foregoing meetings Feroze, Jaffery, Calapini and or other CBC employees made it their practice to advise prospective students that, upon successfully completing the Program, they would receive a diploma in dental hygiene. Feroze, Jaffery, Calapini and or other CBC employees represented that students in the Program had the automatic or guaranteed right to write the Examination.
28. In or around July of 2005, Monckton read CBC's representations regarding the Program on CBC's website, cbstraining.com. Monckton completed CBC's online application for the Program and subsequently received literature describing the Program through the mail. As set out below, Monckton signed and faxed back to CBC a Registration Form on or about September 1, 2005.
29. On or about October 6, 2005, Monckton flew to Toronto from Vancouver to meet with Jaffery about enrolling in the Program. On or about October 7, 2005, Jaffery gave Monckton a tour of CBC's Toronto campus and made a number of representations promoting the benefits offered by the Program. Among other things, Jaffery advised that the Program had applied for accreditation status and would soon be accredited, and that there was effectively no difference for students between the CBC's Program and an accredited dental hygiene program at any other school. At no point over the course of their meeting did Jaffery disclose the risks particularized at paragraphs 46 and 47 below.
30. As referred to below, the CBC failed to disclose to the Class members, before they enrolled in the Program and thereafter, that the Program was not accredited.

or accreditation eligible such that there was no guarantee that the Class members would be entitled to write the Examination.

31. The Defendants Jaffrey and Calapini either made or, alternatively, designed, authorized, acquiesced in, condoned, or encouraged both the making of the oral representations referred to at herein and the failures to disclose referred to in herein.

32. Monckton signed and faxed to CBC a Registration Form (dated August 29, 2005) and paid the required \$500 deposit by credit card on or about September 1, 2005. The terms described in Monckton's Registration Form are the same as those particularized at paragraph 33 above.

33. On or about November 23, 2005, Monckton received a letter dated November 14, 2005 from Calapini advising that Monckton had been selected for admission to the Program and demanding further documentation, including a further payment of \$6,857.40 to CBC, by December 2, 2005 or else Monckton would risk being disqualified from admission. Monckton paid the \$6,857.40 as demanded.

34. At all material times, CBC, Jaffery and Calapini knew or ought to have known that Monckton and the other Class members were enrolling in the Program in order to become Dental Hygienists. They knew or ought to have known that the Class members were enrolling in the Program so that they would have the automatic or guaranteed right to write the Examination, which was a necessary step in becoming a registered Dental Hygienist. They knew or should have known that the Class members were not intending to pay significant amounts of



money for the Program and to forego earning income during the Program and thereafter only to have some limited and uncertain chance of being granted individual permission to write the required Examination if the Program became accredited at some point after their enrollment and prior to their graduation. They knew or should have known that the Class members were not intending to pay significant amounts of money for the Program and to forego earning income during the Program and for a significant period of time thereafter only to have some limited chance of being granted individual permission to write the required Examination if the Program was not accredited.

35. The Registration Form was only one part of the contracts between the Class members, including Monckton and the CBC (the "Contracts"). In the circumstances, there were also fundamental terms, implied or otherwise, of the Contracts between the CBC and the Class members, as follows:

- a. there was no risk, aside from the obvious requirement that Class members would have to successfully complete the Program, that the Class members would not be entitled to write the Examination;
- b. there was no risk that the Program would not be accredited such that the Class members had the automatic or guaranteed right to write the Examination necessary to become a registered Dental Hygienist;
- c. the Program was otherwise appropriately registered, licensed or accredited such that enrolling in the Program was equivalent to enrolling in an accredited dental hygiene program at another institution in terms of the

ability and timing of the Class members to become registered Dental Hygienists;

- d. the Program and the curriculum for the Program were appropriately structured and advanced such that it was or would be eligible for accreditation by the CDAC;
- e. there was no other highly relevant information relating to the Program and its eligibility or accreditation that was not disclosed to the Class Members;
- f. there were no other undisclosed risks or deficiencies inherent in the Program, or associated with enrolling in the Program, such that the Class members would not or might not be able to write the Examination or otherwise might not become a registered dental hygienist in the same manner and at the same time as if they had enrolled in an accredited dental hygiene program at another institution.

36. At various times following the commencement of the Program, including the distribution of the handbook referred to above, the Defendants represented, expressly or impliedly, to Monckton and the other Class members that they had the right to write the Examination. They further represented that the Class members would be able to write the Examination immediately following the completion of the Program.

37. On or about January 23, 2006, Jaffery attended before the Class members, at the request of one of the Class members then attending classes at the Program. At



that time, Jaffery told the Class members that, *inter alia*, the Program had failed to become eligible for accreditation status with the CDAC. Jaffery advised the Class members that, while Program was not eligible for accreditation, he was taking steps that would allow the Program to attain accreditation eligible status. Jaffery stated that, *inter alia*, there was a “problem with the Program’s curriculum” and that he had hired someone to rectify the problem. Jaffery did not advise the Class members that, as a consequence of the Program not having accreditation eligible status and not being accredited, they would not be entitled to write the Examination. In fact, he represented to the Class members at that time that they were entitled to write the Examination.

38. On or about January 30, 2006, there was an initial meeting of all of the students who had enrolled in the session of the Program commencing on January 30, 2006. Over the course of this meeting, Jaffery advised the students that if they did not sign the form described below that they would be removed from the Program and would forfeit the money that they had paid for the Program.
39. On or about February 7, 2006, students who had enrolled in the session of the Program commencing on January 30, 2006 met with Jaffery. Over the course of this meeting, Jaffery advised us that the Program was, in his view, improving and that the students should not worry or be concerned. At that time, Jaffery specifically declined to discuss in detail any CBC refund policy.
40. Following the January 23, January 30 and February 7, 2006 meetings as aforesaid, various Class members, including Monckton, withdrew from the Program and



demanded a return of their tuition and other costs from the CBC. The demands were refused or ignored.

41. By letter dated February 23, 2006, Monckton notified CBC of her decision to withdraw from the Program and requested a refund of her tuition. By letter dated February 24, 2007, CBC refused Monckton's request and demanded that she pay the alleged outstanding balance of her tuition.
42. Upon receipt of some such requests for refunds by the other Class members who withdrew, the Defendants replied to the Class members in question by indicating that various fees were owing by the Class members, including previously undisclosed "administrative fee", "registration fee", "lab fee", "classroom fee", "various materials", "withdrawal fee", "testing fee" and "paper/copies", which exceeded the amounts paid by the Class members to the then date, such that the Defendants claimed that the Class members still owed money to the CBC. There was not any real or reasonable basis for these previously undisclosed fees or the Defendants' refusal to refund the amounts paid by the Class members. These replies by the Defendants were high-handed and designed to intimidate the Class members so that they would not seek a return of the money they had paid to the CBC or any damages.
43. Following the January 23, 2006 meeting with the Class members, the CBC continued to represent that, and Jaffery and Calapini continued to represent or, alternatively, directed, authorized acquiesced in, condoned or encouraged the making of the representation that, the Class members were entitled to write the

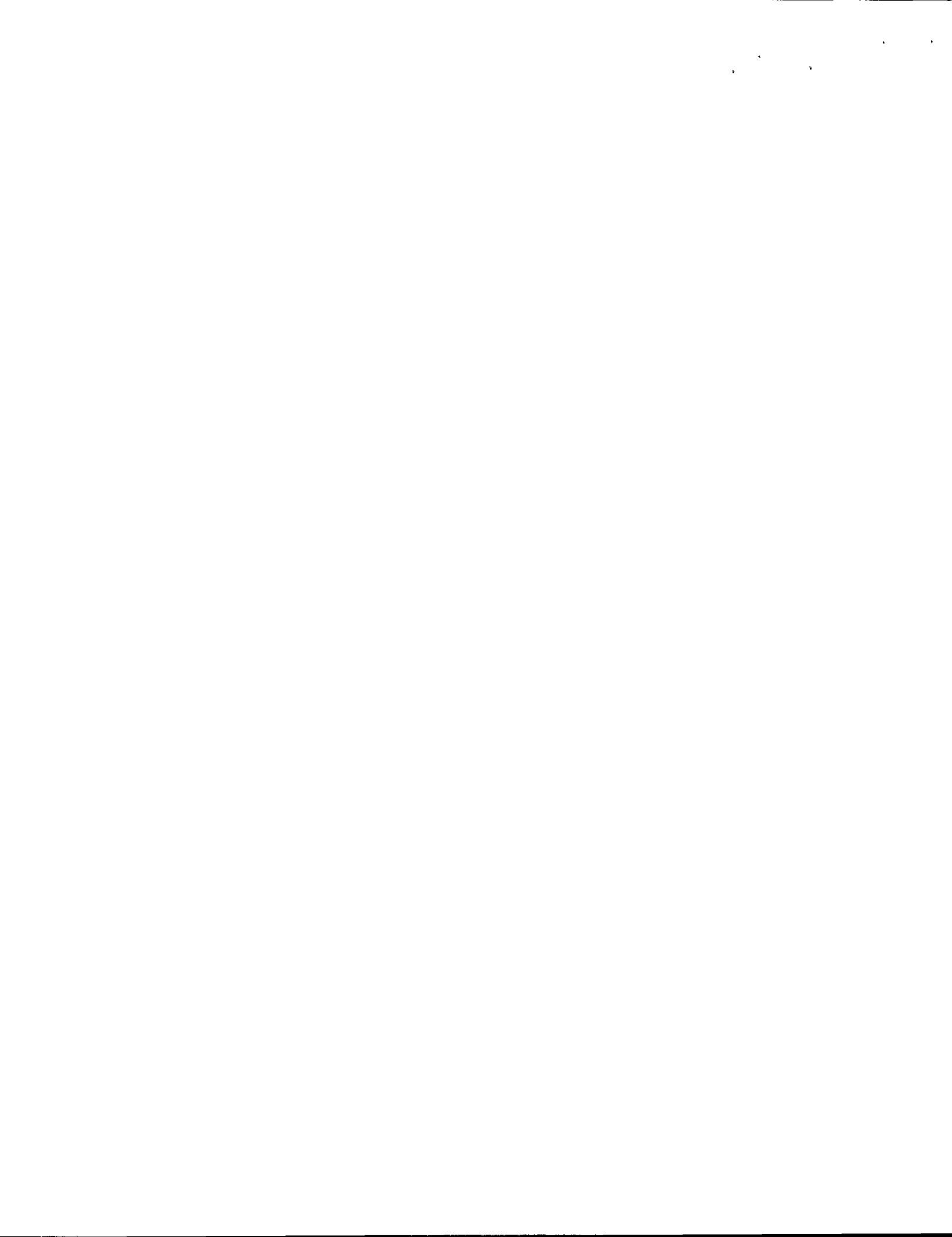


Examination. In particular, but without limiting the generality of the foregoing, the CBC wrote to one Class member who had decided to withdraw (namely Natasha Naveed) by letter dated February 28, 2006, which represented in part that, "should you pass your exams with good marks you should not have any issues with writing the Dental Hygiene exam as your curriculum is provincially approved by the authorized assessment body."

44. Sometime after students enrolled in, entered into contracts with CBC for, and made payments for the session of the Program commencing on January 30, 2006, the CBC, for the first time, may have begun providing prospective or current Program students in the January 2006 session of the Program with a covering letter from Calapini and an attached form. The attached form read in part:

"The Dental Hygiene Program offered at the Canadian Business College is not accredited by the Commission on Dental Accreditation of Canada. Graduates from this program are not guaranteed to write the National Dental Hygiene Certification Examination (NDHCE). Graduates are also required to take a provincial clinical competency assessment in addition to the NDHCE. Students are responsible to contact the National Dental Hygiene Certification Board and College of Dental Hygienists of Ontario (CDHO) to find out details with respect to writing the NDHCE and registering with the CDHO."

The foregoing form, information and warning was not provided to all Class members throughout the Class Period. At most, it was provided to some of the students who had enrolled in the session of the Program commencing on January 30, 2006 and, to the extent that it was provided to some of those students, it was provided to them after they had entered into contracts with the CBC and paid money toward the Program. Monckton and the other Class members would not have enrolled in the Program or remained in the Program had they had been



provided with this form, information or warning at the time they entered into contracts with the CBC and otherwise enrolled in the Program.

45. The covering letter to which the form was attached advised the students that, if students declined to sign the waiver before January 20, 2006, they would take the risk of being removed from the Program and forfeit any money that they had paid for the Program.

46. The foregoing covering letter and form were provided to Monckton in or about January of 2006, long after she had enrolled in the Program, had entered into a contract with CBC and had made payments to CBC for the Program. As stated above at her first day of classes on January 30, 2006, Monckton was advised that, if she did not sign the waiver, she may be removed from the Program by CBC and she may forfeit any funds paid to CBC. Monckton signed the form that day because she felt practically pressured or compelled to do so and did not have adequate opportunity to consider her options or seek appropriate advice. If she didn't sign the form, she understood that she would lose the money that she had paid to CBC, she would be removed from the Program and, accordingly, she would have quit her steady job in British Columbia for nothing and would have wasted the significant money she had spent moving with her partner from British Columbia to Toronto for the purpose of attending the Program.

47. The representations referred to above were made by the Defendants before the Plaintiff entered into the Contracts in order to induce the Plaintiffs and the Class members to enter into the Contracts. The aforesaid representations constitute or

amount to a collateral warranty, which warranted and affirmed the representations or terms set out above. The Plaintiffs and the Defendants intended that the aforesaid representations to form part of the contractual relationship between them. The Plaintiffs relied on the aforesaid collateral warranty when entering into their Contracts with the CBC.

Duty to Disclose

48. The Defendants were in a special relationship with Monckton and the other Class members. The Defendants held themselves out as having special knowledge of, and in fact did or should have had such special knowledge of, the licensing, accreditation, processes, testing and examinations associated with the dental hygiene profession and registration requirements. The Defendants were in the position of knowing whether or not the Program conformed to any relevant registration, accreditation or eligibility standards or requirements. Only the Defendants were in a position to know the status of any application by the CBC for accreditation or accreditation eligible status of the Program. The CDAC has a policy of not discussing with the general public any application received from any specific institution.

49. In the circumstances, the CBC, Jaffery and Calapini were under a duty to disclose to the Class members, prior to their enrollment in the Program and thereafter, that the Program was not accredited as well as the significance of, and risks and consequences associated with, the lack of accreditation or any delay in accreditation on the Class members' ability to write the Examination and



otherwise become a registered Dental Hygienist. At the time of their enrollment in the Program and thereafter, the Defendants had a duty to disclose in a timely manner all material risks and otherwise make full and plain disclosure to the Class members of all highly relevant information relating to the foregoing and the likelihood of the Program's eligibility for accreditation and the status of the application for eligibility. The Class members reasonably expected that the Defendants would disclose such information and risks given that, *inter alia*, the very reason for enrolling in the Program was, to the knowledge of the Defendants, to become a Dental Hygienist. The Defendants breached this duty.

50. CBC, Jaffery and Calapini failed to Monckton and the other Class members that:

- a. the Program was not accredited, may not be accredited as at the commencement of their session of the Program, and may not be accredited prior to their completion of the Program;
- b. the graduates of the Program would not have the guaranteed or automatic right to write the Examination;
- c. the Program was not yet even eligible to apply for accredited status and that there was no guarantee that the Program would be granted eligibility or accreditation;
- d. the curriculum of the Program and the application for eligibility by the CBC were so deficient that the CDAC would not grant the Program accreditation eligible status in 2005 or thereafter;

- e. that the Program had applied for and been denied accreditation status;
- f. even if the Program were eventually accredited, the Program may not be accredited prior to the Class members' graduation from the Program and thus they would not have the right to write the Examination;
- g. if the Program was not accredited or at least not accredited prior to their graduation, the Class members would not have the right to write the Examination and that they would have to make an individual application for permission to write the Examination, with a serious risk that such permission would not be granted;
- h. even if such permission were granted, there would be a significant delay in the Class members' becoming a registered Dental Hygienist; and,
- i. there were any risks associated with their ability to become registered Dental Hygienists based on the fact that the Program was not then, and may not thereafter become, accredited.

51. The foregoing failures to disclose also amount to negligent misrepresentations by omission.

52. The representations as particularized above were made by the Defendants or permitted to be made by the Defendants to the public for the purpose of promoting, directly or indirectly, the business interests of the Defendants. The representations were made knowingly or recklessly by the Defendants. The



representations were false, misleading in a material respect, deceptive and unconscionable in breach of Part III of the *Consumer Protection Act*.

53. The Defendant intended that Monckton and the Class members would rely, and in fact they did rely, on the misrepresentations (express, implied, by omission or otherwise) as aforesaid when they enrolled and remained in the Program.

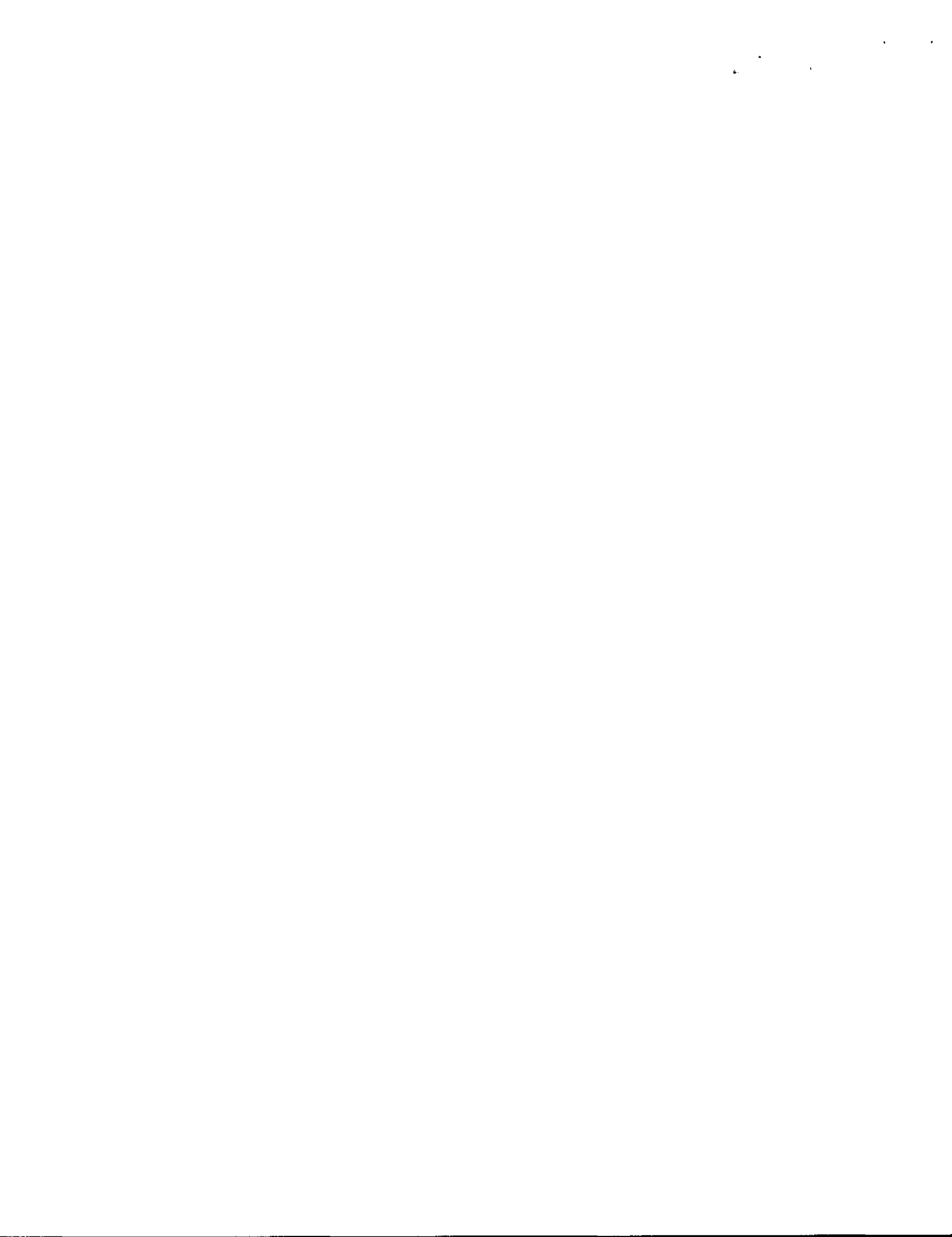
54. The Defendant breached the fundamental terms of the Contract referred to above.

Damages

55. As a consequence of the above-referenced wrongful conduct by the Defendants Monckton suffered damages that included the following without limitation:

- a. her tuition and the other costs associated with the Program which she paid;
- b. loss of employment income and benefits while she was enrolled in the Program and thereafter;
- c. the costs associated with moving from British Columbia to Toronto in order to attend the Program; and,
- d. further and other damages and special damages, particulars of which will be provided prior to trial.

56. As a result of the breaches of contract, breaches of collateral warranty, misrepresentations and wrongful conduct as set out above, the Class members have suffered damages, including, but without limitation, the tuition and other expenses associated with the Program and the loss of income while they were



enrolled in the Program. Without limiting the claim for the full tuition and other expenses, the Class members or those Class Members who remain in the Program have overpaid for a Program, which does not provide a guaranteed right to write the Examination. By enrolling in the Program, the Class members have also been delayed in becoming registered Dental Hygienists and been delayed in receiving the higher wages associated with that profession. The Class members have suffered further and other losses and special damages, particulars of which we will provide prior to trial.

57. The Plaintiff pleads that the Defendants' conduct was reckless, high-handed and an abuse of the special relationship and knowledge of the Defendants for their own financial gain. The Defendants have resisted, refused or ignored repeated demands by Monckton and the other Class members for repayment of their tuition and other costs. The Defendants' aforesaid conduct entitles the Class to an award of punitive damages in the amount of \$2,500,000.00. Without limiting the generality of the foregoing, the plaintiff pleads and relies upon section 18(11) of the *Consumer Protection Act*.

Relevant Statutes

58. The Plaintiff pleads and relies upon the following statutes:

- a. The *Class Proceedings Act* 1992 S.O. 1992, c. 6;
- b. The *Consumer Protection Act* 2002, S.O 2002, c. 30, sections 5, 9(1) and Part III.

Place of Trial

59. The Plaintiff proposes that the trial of this action be conducted in Toronto

Date: "May 1, 2006"

ROY ELLIOTT O'CONNOR LLP
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Suite 2300
Toronto, Ontario
M5V 3K2

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J. Adam Dewar #46591J

Tel: (416) 362-1989

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Solicitors for the Plaintiff



SCHEDULE "A" TO THE FRESH AS AMENDED STATEMENT OF CLAIM



CANADIAN BUSINESS COLLEGE

HEAD OFFICE: 2 BLOOR ST WEST, TORONTO, ON, M4W 3E2
TELEPHONE: 416-928-9929 FAX: 416-925-9220

DEPARTMENT OF DENTAL HYGIENE

I _____ on the date of _____

Have been made aware that in order to register for the Dental Hygiene Program I must deposit in full, a non-refundable fee of \$500.00 in order to reserve my seat within the program.

If for any chance I am unable to pay the remaining tuition fees I will have the option of registering for the following start date but, must pay the program fees as they are at the time of the new starting date.

The Dental Hygiene program offered at Canadian Business College is not accredited by the Commission on Dental Accreditation of Canada. Graduates from this program are not guaranteed to write the National Dental Hygiene Certification Examination (NDHCE). Graduates are also required to take a provincial clinical competency assessment in addition to the NDCE. Students are responsible to contact the National Dental Hygiene Certification Board and College of Dental Hygienists of Ontario (CDHO) to find out about details with respect to writing the NDHCE and registering with the CDHO.

I acknowledge that I have read the above notice and understand how this pertains to my employment as a graduate of a non-accredited Dental Hygiene Program. Further, with this knowledge, I request admission to the Dental Hygiene Program at Canadian Business College.

I fully understand the terms of the agreement and the cost that I may incur.

.....
PRINT NAME

.....
STUDENT SIGNATURE

.....
REGISTRATION NUMBER

.....
DATE

.....
ADMINISTRATOR

.....
DATE



THE ADOSHIA MONCKTON et al.

Plaintiffs

-and-

C.B.S. INTERACTIVE MULTIMEDIA INC. et al.

Defendants

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

**FRESH AS AMENDED STATEMENT
OF CLAIM**

ROY ELLIOTT O'CONNOR LLP

Barristers

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