



Reference: *The Commissioner of Competition v. Premier Career Management Group et al.*,
2008 Comp. Trib. 18
File No.: CT-2007-006
Registry Document No.: 0152

IN THE MATTER of the *Competition Act*, R.S.C. 1985, c. C-34, as amended;

AND IN THE MATTER of an inquiry pursuant to subparagraph 10(1)(b)(ii) of the *Competition Act* relating to certain marketing practices of Premier Career Management Group Corp. and Minto Roy;

AND IN THE MATTER of an application by the Commissioner of Competition for an order under section 74.1 of the *Competition Act*.

B E T W E E N:

The Commissioner of Competition
(applicant)

and

**Premier Career Management Group Corp. and
Minto Roy**
(respondents)



Dates of hearing: 20080414 to 20080418, 20080421 to 20080423, 20080429 and 20080501
Presiding Judicial Member: Simpson J. (Chairperson)
Date of Reasons and Order: July 15, 2008
Reasons and Order signed by: Madam Justice Sandra J. Simpson

**REASONS FOR ORDER AND ORDER DISMISSING THE APPLICATION UNDER
SECTION 74.1 OF THE COMPETITION ACT**

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I. A BRIEF SUMMARY

[1] The Commissioner of Competition (the “Commissioner”) alleges that the Respondents, Premier Career Management Group (“PCMG”) and Minto Roy have engaged in reviewable conduct pursuant to paragraph 74.01(1)(a) of the *Competition Act*, R.S.C. 1985, c. C-34 (the “Act”) by making oral representations to the public that are false or misleading in a material respect.

[2] By way of remedy, the Commissioner asks for a cease-and-desist order. She also asks the Tribunal to issue an order requiring:

- (i) PCMG and Minto Roy to pay administrative monetary penalties of \$100,000.00 and \$50,000.00 respectively;
- (ii) PCMG to publish a correction notice in both the Vancouver Sun and on the PCMG website; and
- (iii) Minto Roy to read the correction notice at the beginning of his radio show.

[3] For the reasons described below, the Tribunal has concluded that Minto Roy and PCMG have made material misrepresentations as alleged. However, because those representations were not made to the public as required by the Act, no order was made.

II. THE PROCEDURAL HISTORY

[4] See Schedule A.

III. THE PARTIES

[5] The applicant is the Commissioner of Competition. She is appointed by the Governor in Council under section 7 of the Act and is responsible for its enforcement and administration.

[6] The Respondent, PCMG, is incorporated pursuant to the laws of British Columbia and commenced operations in October of 2004. It is engaged primarily in the business of providing individuals with career management services and career counselling. PCMG was not represented by counsel at the hearing.

[7] The Respondent, Minto Roy, is the sole shareholder and only director of PCMG. He was self-represented throughout the hearing but retained counsel to assist him and later PCMG with the preparation of final written argument. They also had counsel at the time they filed their Response, made disclosure and filed their witness statements.

IV. THE REPRESENTATIONS

[8] The representations at issue were allegedly made orally by Minto Roy and certain PCMG Senior Career Consultants during meetings with prospective clients. The Commissioner says that

the representations were false or misleading in that they conveyed the general impression that:

- (1) The Respondents screened prospective clients and accepted only those whom they considered to be highly qualified (the “Screening Representation”).
- (2) The Respondents had an extensive network of personal contacts with senior executives at companies that were hiring. PCMG clients could use the contacts to arrange interviews or PCMG would arrange interviews on the clients’ behalf (the “Contacts Representation”).
- (3) Prospective PCMG clients would almost certainly find work quickly with its help, typically within 90 days, and their new positions would have salaries and benefits equal to or better than those associated with their previous positions (the “90-day/Good Job Representation”).

[9] These representations will be described collectively as the “Representations”.

V. THE EVIDENCE

[10] The parties agreed to introduce their evidence in chief in written statements. Eleven witnesses gave evidence on behalf of the Commissioner. They included nine former PCMG clients, one former PCMG Senior Career Consultant and a Senior Competition Law Officer employed by the Competition Bureau.

[11] Six witnesses testified on behalf of the Respondents including four former PCMG clients, one PCMG Senior Career Consultant (who is now a Career Coach) and the Respondent, Minto Roy.

VI. THE RESPONDENTS’ BUSINESS

[12] PCMG has three divisions. PCMG Canada is the career coaching and career management division. Its clients are provided with customized career management services. They include an analysis of the client’s skills, personality and aptitudes; assistance with the preparation of a high quality résumé focusing on the client’s achievements; preparation of a distinctive cover letter; and help with networking, preparation for interviews and negotiating compensation packages. It is alleged that the Representations were made by Senior Career Consultants who worked for this division of PCMG.

[13] PCMG also has a recruitment division called “Careers Today”. It functions as a headhunter and operates a website on which it posts job openings. The third division, “PCMG Executive”, is a human resources consulting division which provides leadership management training.

[14] Approximately 60-70% of PCMG’s revenue is earned by PCMG Canada, 25% of its revenue comes from Careers Today and 5% is generated by PCMG Executive.

[15] Minto Roy and PCMG's Senior Career Consultants were responsible for marketing PCMG Canada's services and securing contracts. Career Coaches (also described as Strategists) worked with clients after contracts were signed.

[16] The following Senior Career Consultants were mentioned in evidence:

- Ted Paxton – testified for the Respondents
- Joe Lapushinsky – did not testify
- Ravi Puri – did not testify
- Sean Hamilton – did not testify
- Steve Wills – testified for the Commissioner

[17] The following Career Coaches were mentioned in evidence:

- Ted Paxton – testified for the Respondents
- Tom Locke – did not testify
- Irene Mitchelson – did not testify
- Norma Axford-Couch – did not testify
- Alana Fero – did not testify
- Karen Cunningham – did not testify
- Karen Shankey – did not testify

[18] PCMG used a variety of techniques to recruit prospective clients. They included newspaper advertisements, articles and advertisements in the Canadian Immigrant magazine, Minto Roy's weekly radio show and postings on the Careers Today website. However, it is noteworthy that none of these media were the source of the Representations.

[19] PCMG also attracted many prospective clients by inviting unsuccessful applicants for positions posted by Careers Today to meet with a Senior Career Consultant.

[20] Once prospective clients were recruited, the marketing of PCMG's services usually involved two meetings with a Senior Career Consultant. The initial meeting (the "First Meeting") was typically an hour long discussion about the prospective client's career history, current status, current job search activities and career objectives. Clients were then provided with an overview of PCMG's career management services. Towards the end of the First Meeting, potential clients were invited to return for a second meeting (the "Second Meeting"). They were encouraged to bring their spouses or "significant others" to the Second Meeting.

[21] During that meeting, which also lasted approximately one hour, the Senior Career Consultant provided a step-by-step description of PCMG's services. The fees and payment options including financing were discussed and the prospective client was presented with PCMG's contract for signature.

[22] Both the First and the Second Meetings were held in private in the offices of Minto Roy or a Senior Career Consultant. Those offices were initially located on the 29th floor of the TD Bank Tower in downtown Vancouver. They were luxurious and had a beautiful view. PCMG

then moved to 1199 West Hastings. Those offices were described as average but they still had the beautiful view.

PCMG's Program

[23] PCMG clients were guided through the PCMG career management process (the "Program"). It involved three phases which are described as follows in PCMG's contract:

Phase I - Preparation

1. Conduct Functional Self-Analysis and Objective Setting;
2. Assess Client's personality type indicators and help Client evaluate workplace cultures where Client will best succeed;
3. Establish realistic short-term goals and identify suitable positions;
4. Explore career options and define target markets and industries;
5. Develop effective resume presentation and other collateral materials;
6. Instruct and activate Client in utilizing PCMG online database resources;
7. Develop a marketing plan between Client and Strategist to generate appropriate referral and job interviews;
8. Prepare Client to strategically interact in networking events, referral meetings, interviews and salary negotiations.

[my emphasis]

Phase II – Managing the Market Campaign

1. Provide one-on-one consultation with Client's Professional Development Strategist to evaluate and monitor the Client's overall marketing plan, strategy and progress;
2. Review and assess job offers;
3. Advise Client on effective negotiation of salary and benefits.

Phase III – Plan for the Future

1. Conduct follow-up review approximately 90 days after starting new position to develop intra-company advancement toward long-range goals;
2. Provide consultation, as needed, concerning intra-company development, promotions and salary review related to career advancement;
3. Re-activate the marketing campaign in the event of a job loss or need to change employers, career fields or industries.

[24] This description of the Program is from the most recent version of the PCMG contract. However, Ms. McClean, Ms. Threatful and Messrs. de Vaal, Nickson, Turenne and Warren, who all testified for the Commissioner, signed earlier versions of the contract in which Phase I, point 6 read:

6. Distribute your confidential profile in PCMG's Sourcebook to companies and recruiters in the local market area [Minto Roy acknowledged in his testimony that a confidential profile was a résumé.]

[25] When queried by the Chairperson as to whether or not there was an "s" missing at the end of the word referral found in Phase I, point 7 of the PCMG contract, Mr. Roy indicated that it could be read with or without the "s". This meant that Point 7 could have been understood to say that PCMG would work with a client to "generate appropriate referrals and job interviews".

VII. THE COMMISSIONER'S WITNESSES

[26] The evidence of the nine former PCMG clients who testified for the Commissioner will be described under the following headings:

- (a) Backgrounds
- (b) Encountering PCMG
- (c) The Screening Representation
- (d) The Contacts Representation
- (e) The 90-day/Good Job Representation
- (f) Signing PCMG's Contracts
- (g) The Confidential Plan and
- (h) The PCMG Program.

[27] The Commissioner also called Steve Wills, who was formerly a Senior Career Consultant with PCMG. His evidence will be considered separately. The evidence of the Senior Competition Law Officer dealt with Minto Roy's radio show transcripts and PCMG's corporate history. It is not further discussed.

(a) Backgrounds

[28] **William Warren** holds a master's degree in economics from McMaster University. He testified that he was born in 1957 and that, at the time of the hearing, he worked as a management consultant.

[29] **Tanya Threatful** holds a business administration diploma from Barkel Business College in British Columbia. At the time of the hearing, she was 37 years old and was employed as a customer service representative for Speedy Glass in Burnaby, British Columbia.

[30] **Marc Turenne** has a certification in electronics from Red River Community College and has also studied business management and human resources management at the British Columbia

Institute of Technology. When he testified, he was working as a sales representative for Precision Sound.

[31] **Bruce Nickson** testified that he had studied at the University of Dalhousie for four years but had not obtained his bachelor of arts degree because he “didn’t pick it up”. When he gave evidence, he was working as a program manager and was 56 years of age.

[32] **Johan de Vaal** is a Professional Engineer. He obtained a master’s degree in engineering from the Cranfield Institute of Technology in the United Kingdom. At the time of the hearing, Mr. de Vaal was sixty-one years old and was employed as a senior project manager for Sandwell Engineering Inc.

[33] **Malia McClean** obtained a bachelor’s degree from Simon Fraser University with a major in psychology. At the time of the hearing, she was 31 years old and worked as a residential support worker with the Children’s Foundation of British Columbia.

[34] **René Navarro-Gonzalez** was born in Bolivia in 1951 and immigrated to Canada in 2004. He has an MBA from the University of Santiago de Chile, a post graduate degree in human resources management from Yale University and a juris doctorate degree in international labour law from the University of San Andres in La Paz, Bolivia. At the time of the hearing, he was working in Iceland for a B.C. company which manufactured airport equipment.

[35] **Christopher Graham** holds a two-year golf management diploma from the Professional Golfers Career College in Murrieta, California and a business diploma from Lethbridge Community College. At the time of the hearing, Mr. Graham was 37 years old and was employed as a special events coordinator for a children’s charity. He had previously worked as a golf professional.

[36] **Raffaele Rocca** is Irish and came to Canada in November of 2006. At the time of the hearing, he was 28 years old and unemployed. He has a degree in marketing from the University of Limerick, and diplomas in business studies, computer applications and communications from HSI College in Ireland.

(b) **Encountering PCMG**

[37] **William Warren** submitted his cover letter and résumé in response to a PCMG internet advertisement. He was then contacted by PCMG to schedule a meeting to discuss the material he had submitted. At that time, he was working as an independent consultant. He had a First Meeting with Mr. Roy on December 15, 2004.

[38] **Tanya Threatful** was told in November 2004 that the cosmetic clinic where she was employed would be downsized and that she would be terminated at the end of the year. After she posted her résumé on several websites, she received a phone call from Joe Lapushinsky asking whether she was interested in PCMG’s services. She had a First Meeting with him in late November 2004.

[39] **Marc Turenne** was contacted by PCMG in October of 2004 after he had posted his résumé on a website. Mr. Turenne indicated that he was unemployed and that his funds were running out.

[40] **Bruce Nickson** testified that he received a call from PCMG after having submitted his résumé and had a First Meeting with Sean Hamilton on December 13, 2004. At the time, he was unemployed. He stated that finding a job was an urgent matter.

[41] **Johan de Vaal** submitted his résumé to PCMG in response to a PCMG advertisement in the Vancouver Sun. He was subsequently called by PCMG to set up a First Meeting. Although he had been unemployed for approximately 7 months, he did not start his job search until September because he had received a severance payment from his former employer.

[42] **Malia McClean** submitted her résumé in response to an internet job posting on Monster in early June 2005. Thereafter, a PCMG employee contacted her and advised her that she had not made the short list for the position and indicated that PCMG was interested in speaking with her regarding other opportunities. At that time, Ms. McClean urgently needed employment.

[43] **René Navarro-Gonzalez** became interested in PCMG after he read an advertisement in the December 2005 issue of The Canadian Immigrant magazine. He called PCMG at a time when he was anxious to secure a position. The entries in PCMG's client file show that Mr. Navarro-Gonzalez sent his résumé to PCMG before his First Meeting.

[44] **Christopher Graham** contacted PCMG at the end of May 2007 in response to a job posting on the PCMG website. Mr. Graham submitted his résumé and was contacted by PCMG several days later. By then, his employment insurance payments were about to stop and he needed a job.

[45] **Raffaele Rocca** submitted his résumé to PCMG after seeing its website on the internet. Thereafter, he was contacted by Ravi Puri to schedule a First Meeting. At that time, Mr. Rocca was looking for assistance because he had found that, without previous employment in Canada, it was difficult to find a position. His First Meeting with Ravi Puri took place in December 2006.

(c) **The Screening Representation**

[46] **William Warren** testified that Minto Roy said during their First Meeting that "PCMG doesn't just take anybody and they only take high-calibre candidates that they can work with."

[47] **Tanya Threatful** testified that during her First Meeting, Mr. Lapushinsky told her that "PCMG doesn't take on just anyone as a client" and that "they look for people with certain credentials and a certain level of professionalism and accomplishment". She also testified that Mr. Lapushinsky indicated that he had seen her résumé on the Monster website and felt that she might be a good candidate for the Program. According to Ms. Threatful, the First Meeting was all about whether or not she qualified for PCMG's Program. Her background, skills and education were all discussed.

[48] Ms. Threatful and her boyfriend then attended a Second Meeting with Minto Roy in his office. She was impressed with his corner suite which she described as “huge” and “glamorous” and decorated with pictures of Mr. Roy and well-known people in the city. During the Second Meeting, Mr. Roy told her that she “had been carefully selected and screened” and that this was why she was meeting with him.

[49] **Marc Turenne** indicated that Minto Roy told him that part of the reason for the First Meeting was to “see how presentable he was”. Mr. Roy said that, if he did not feel that he could get him a job in 8 to 10 weeks, he would not accept him as a client.

[50] **Bruce Nickson** indicated that after the First Meeting, Minto Roy called him to congratulate him about being selected to enter the Program. Mr. Nickson’s impression was that not everyone was eligible to become a PCMG client.

[51] **Johan de Vaal** said that Minto Roy told him that PCMG personnel were “selective about who they took on as clients”. Mr. Roy also indicated that he was well qualified for the types of positions PCMG was “looking to fill”. Mr. de Vaal testified that he was flattered by Mr. Roy’s comments.

[52] **Malia McClean** - The Commissioner does not allege that the Respondents made the Screening Representation to Ms. McClean.

[53] **René Navarro-Gonzalez** indicated that Minto Roy told him that PCMG was very selective about its clients and that PCMG was accepting him because of his qualifications. Mr. Navarro-Gonzalez further testified that Mr. Roy stated that PCMG only allowed professional and serious people to become clients.

[54] **Christopher Graham** – The Commissioner does not allege that the Respondents made the Screening Representation to Mr. Graham.

[55] **Raffaele Rocca** stated that, during the First Meeting, Ravi Puri told him that PCMG only selected people it found suitable as to do otherwise would reflect poorly on PCMG. Mr. Rocca further indicated that he felt that he was going through some sort of screening process, given the nature of the questions asked by Mr. Puri.

(d) **The Contacts Representation**

[56] **William Warren** stated that, during his Second Meeting on December 20, 2004, Minto Roy used his arm to gesture toward his office window with its view of downtown Vancouver (the “Sweeping Gesture”) and said that he was well connected to the business community in British Columbia and that PCMG had “many links to top decision makers and leading employers”. Mr. Roy specifically indicated he had a strong relationship with Bell Canada and a contact at London Drugs.

[57] **Tanya Threatful** testified that she was informed of Minto Roy’s contacts during her Second Meeting with him on November 26, 2004. He told her that PCMG was unlike other

career management businesses because of his personal ties and contacts in the corporate world. He stated that he had relationships with people in the city who didn't advertise job openings and who relied on his recommendations.

[58] She also testified that Minto Roy made the Sweeping Gesture and said: "Do you ever wonder how anyone – there's so many places in all these buildings – how any of these people get their positions? All of those types of places come through people like me and my hard work in building relationships with a lot of these people."

[59] **Marc Turenne** said that Minto Roy told him that he "could pick up the phone and call any number of companies around the city and speak to decision – key decision makers" and that "those were the people that [they] had to get me in front of". He also testified that Mr. Roy told him that he would set up interviews for him with those decision makers.

[60] **Bruce Nickson** testified that Minto Roy assured him that PCMG had many contacts and that they would lead to job interviews.

[61] **Johan de Vaal** stated that during his First Meeting on December 15, 2004, Minto Roy indicated that PCMG had "links to the business community" and that PCMG's services would include providing him with "contact to senior officials in companies looking for key people" just like him. Mr. de Vaal expected recommendations. He further testified that in the Second Meeting, Mr. Roy repeated that PCMG had links with senior level contacts in companies that were hiring.

[62] **Malia McClean** stated that Ted Paxton indicated that PCMG had a purchased database. He said that it listed thousands of jobs to which she would have access as a PCMG client. Mr. Paxton also told Ms. McClean that he could set up so many interviews in her field of interest that she would be in a position to pick and choose the jobs she wanted. It was Ms. McClean's understanding that the database was the main source of PCMG's contacts.

[63] **René Navarro-Gonzalez** testified that during the First Meeting he was told by Minto Roy that PCMG had an extensive network of contacts with profitable companies across Canada. He was also told that PCMG would arrange interviews for him. He further stated that, during the First Meeting, Mr. Roy picked up the phone and called the Vice President of Bombardier to set up a date for an interview. Mr. Navarro-Gonzalez said that Mr. Roy made similar representations about his contacts during the Second Meeting.

[64] **Christopher Graham** stated that, during the First Meeting, Minto Roy told him that PCMG "talked, knew and worked with a lot of high ranking executives". He understood that PCMG would market his name to these high-ranking executives and that he would be provided with their names so that he could arrange interviews.

[65] **Raffaele Rocca** indicated that during the First Meeting, Ravi Puri told him that jobs advertised on the internet and in print media actually represented only 20% of the jobs available in Canada. He also said that PCMG had access to the remaining 80% unadvertised job market through its network of contacts in industries in B.C. and Canada. Mr. Puri used the expression

“hidden job market” to describe the unadvertised market. He said that PCMG would put him in contact with the decision makers in hiring companies and would set up interviews.

(e) The 90-day/Good Job Representation

[66] **William Warren** testified that Minto Roy said that he believed that PCMG’s senior level contacts would lead Mr. Warren to a new job within 90 days. Mr. Roy also told Mr. Warren that he would have no problem finding a position for him with a salary of approximately \$100,000.00.

[67] **Tanya Threatful** stated that Minto Roy advised her that “he felt that there would be no problem finding [her] a position paying \$20,000 to \$30,000 more than any of [her] previous jobs, with benefits and stock options, within 90 days”. He also indicated that, in the past, she had been underpaid.

[68] **Marc Turenne** said that Minto Roy told him that he should have no problem finding a position that paid as much or more than his previous job within 8 to 10 weeks from the start of the Program.

[69] **Bruce Nickson** testified that, during the Second Meeting, Minto Roy told him that “he would have no problem finding [him] a job within 6-10 weeks” and that “the new position would offer a salary of at least \$60,000 per year”.

[70] **Johan de Vaal** stated that, during the First Meeting, Minto Roy told him that through PCMG contacts, he could expect to find a senior position, at a competitive salary, within 90 days. Mr. Roy also indicated that it would not be difficult for Mr. de Vaal to find a position at his previous salary.

[71] **Malia McClean** said that, during the First Meeting, Ted Paxton assured her that she would have a job within three months. During the Second Meeting, he repeated that she would have no problem getting a job within three months and added that she could expect to earn between \$35,000 and \$40,000 annually.

[72] **René Navarro-Gonzalez** stated that, during both the First and the Second Meetings, Minto Roy guaranteed that he would have a job within 90 days with a minimum salary of \$75,000.

[73] **Christopher Graham** testified that Minto Roy said that “most of their clients were successful in finding work after 60 to 90 days into [the] program”. Mr. Graham further testified that he expected to be such a client.

[74] **Raffaele Rocca** indicated that Ravi Puri advised him that the Program was a 60 to 90 day process and that he could expect to find a job in that period that paid \$60,000 per year.

(f) Signing PCMG's Contracts

[75] **William Warren** was provided with a copy of PCMG's contract at the Second Meeting. He indicated that he wanted to discuss it with his wife and Mr. Roy gave it to him to take home. Mr. Warren signed the contract on December 22, 2004 and paid \$6,377.20.

[76] **Tanya Threatful** testified that during the Second Meeting she told Minto Roy that she could not afford the Program. He therefore suggested that she pay a retainer of \$2,160.00 and the balance when she became employed. He estimated that she would have a new position in 30-60 days.

[77] Mr. Roy then presented her with a contract to read and sign. She read the contract but understood it to be only an outline of the structure of the Program.

[78] **Marc Turenne** stated that Minto Roy insisted that he sign the contract immediately following the First Meeting because the job market was going to wind down after Christmas. Mr. Turenne said that, although he felt Mr. Roy was creating a sense of urgency to motivate him to act quickly, he was deterred by the cost. However, after searching for a job on his own, he returned to PCMG, paid \$5,200.00 and signed a contract on December 7, 2004.

[79] During his cross-examination, Mr. Turenne said the following about Mr. Roy's marketing approach "[...] your presentation is full of vagaries; you talk about the companies out there, the contacts out there, the salary similar or higher than what you are earning. Everything that you presented to me was vagaries but very tempting vagaries [...]".

[80] **Bruce Nickson** entered into an agreement with PCMG on December 15, 2004. He had an opportunity to review the contract before signing it. He was charged \$5,300.00.

[81] **Johan de Vaal** was presented with the contract during the Second Meeting on December 20, 2004. Mr. de Vaal felt pushed to enter into an agreement with PCMG. He advised Mr. Roy that he would like to think about it over the Christmas break but Mr. Roy insisted that time was of the essence since many companies were interviewing over the holiday period.

[82] Mr. de Vaal read the contract and signed it at the end of the Second Meeting. He paid \$6,377.20.

[83] When asked during the hearing if there was anything in the contract that could be interpreted as meaning that PCMG would provide him with referrals to people who were hiring, Mr. de Vaal stated that points 6 and 7 in Phase I of his contract could be interpreted in that manner. They read:

6. Distribute your confidential profile in PCMG's Sourcebook to companies and recruiters in the local market area;
7. Develop a marketing plan between you and the advisor to generate appropriate referral and job interviews;

[84] **Malia McClean** testified that she told Mr. Paxton at her Second Meeting that she wanted to think about PCMG's services before signing a contract. Mr. Paxton responded that the deal would be off if she left the office without signing. Ms. McClean and her mother then read the contract. Ms. McClean recalled telling Ted Paxton that the contract was "fairly skeleton" in that it did not embrace all the things they had talked about during the First and Second Meetings. Ms. McClean said that Ted Paxton described the contract as merely a "basic understanding" of the services offered.

[85] **René Navarro-Gonzalez** was presented with the contract at the end of his Second Meeting on January 12, 2006. He read the contract before signing it and was concerned with the following terms:

Client acknowledges and agrees that neither PCMG, nor any representative of PCMG, has represented or implied to Client that PCMG is an employment or placement agency.

Further, Client acknowledges and agrees that PCMG has not, nor has any representative of PCMG, induced Client to enter into this engagement by implication, representation or guaranteeing to Client:

[...]

(b) any verbal promises that are not part of the written agreement.

[86] Mr. Navarro-Gonzalez asked Minto Roy why these provisions were in the contract and was told they were there to protect PCMG from tax liability. Mr. Navarro-Gonzalez also stated that Mr. Roy advised him that PCMG normally charged between \$15,000 and \$20,000 for its services but was willing to charge him less because of his financial situation. Mr. Navarro-Gonzalez paid PCMG \$6,377.20.

[87] **Christopher Graham** signed a contract with PCMG during his Second Meeting on May 31, 2007. He felt pressured to enter into an agreement because Minto Roy indicated to him that senior level executives would be away for the months of July and August and that, if he did not sign immediately, it would take him longer to find a suitable position.

[88] Mr. Graham did not read the contract. He signed it based on what he was told during the First and Second Meetings. Minto Roy handed the contract to Mr. Graham with the first page flipped back. This meant that the second page was open to sign. The fee was \$5,151.20.

[89] **Raffaele Rocca** did not sign the contract at the end of the Second Meeting in December of 2006 because he could not pay the fee. Ravi Puri said that he could come back to PCMG at a later date. Mr. Rocca returned and signed a contract on June 18, 2007.

(g) The Confidential Plan

[90] Shortly after signing PCMG contracts, clients were asked to answer questions posed in a PCMG document entitled “Confidential Plan for Achievement” (the “Confidential Plan”). Of the ten questions listed, only two are relevant for present purposes. They are:

Question 8

Were you guaranteed any specific interviews with specific companies, salary, or time frame to obtain a new position or promotion?

Question 10

Were any verbal promises made to you that are not part of the written agreement?

[91] **William Warren** answered Question 8 and Question 10 in the negative. In cross-examination, he stated that he had not been promised specific interviews.

[92] **Tanya Threatful** answered “No” to Question 8. In cross-examination, she stated that she had answered no because she had completed this form after meeting with Ms. Axford-Couch and her answers meant that Ms. Axford-Couch had never made promises to her about specific interviews, salaries or timeframes to obtain a new position.

[93] Ms. Threatful also testified that, after she complained about PCMG’s services, she received a letter from Mr. Roy’s lawyer pointing to the Confidential Plan to justify PCMG’s rejection of her complaints.

[94] **Marc Turenne** gave no evidence on this issue.

[95] **Bruce Nickson** answered “No” to Questions 8 and 10. He admitted that no promises were made regarding specific companies or specific interviews.

[96] **Johan de Vaal** completed his Confidential Plan and answered “No” to Questions 8 and 10. He was of the opinion that there were no inconsistencies between the verbal promises and PCMG’s contract.

[97] **Malia McClean** answered both Question 8 and Question 10 in the negative. However, in her comments on the Confidential Plan, Ms. McClean stated as follows:

No guarantees were made about specific interviews or salaries, but I was assured that job interviews in a salary range of \$38,000 to \$45,000 could be expected within the timeframe of 1-100 days.

[98] When queried as to why she answered Question 10 in the negative, Ms. McClean testified that she did not recall answering no and that if she were asked at this point, she would change her answer.

[99] **René Navarro-Gonzalez** answered “Yes” to Question 8 and “No” to Question 10. Mr. Navarro-Gonzalez further testified that Mr. Roy guaranteed him a job within 90 days.

[100] **Raffaele Rocca** answered Question 10 in the negative and provided the following answer for Question 8:

I was made no guarantees but I was advised that with my qualifications and experience that I should be successful in getting a suitable position to best reflect my talents and experience.

[101] **Christopher Graham** answered “no” to Question 8 because no *specific* company names, names of executives, salary or timeframes were provided to him. He also answered “no” to Question 10.

[102] **Steve Wills** testified that PCMG’s clients were routinely encouraged to answer questions 8 and 10 in the negative because, if problems later arose, the answers on the Confidential Plan would be used as a basis for rejecting clients’ complaints. PCMG would question how a client could be dissatisfied with its services if he or she had provided positive feedback.

(h) **The PCMG Program**

[103] **William Warren** worked with Ms. Fero as his Career Coach. He met with her in December 2004 and January 2005. These meetings were devoted to strengthening his résumé, writing cover letters, networking and homework assignments. When Mr. Warren asked Ms. Fero about the promised contacts, she provided only vague responses and said that she would talk about them with Mr. Roy.

[104] At one point, Mr. Warren asked Ms. Fero about PCMG’s contacts at Bell Canada because he wished to apply for a position with that company. After some discussion, he received an email from Minto Roy providing him with a name of a Bell Canada employee and an indication that she was a senior decision maker. However, when contacted, the employee advised Mr. Warren that she could not help him and he was later referred to another Bell employee. That individual, a manager, advised Mr. Warren that his initial contact had been a low-level employee in the Human Resources Department and that the position he sought had been filled.

[105] In January 2005, Mr. Warren attended a group networking meeting with several other PCMG clients (the “Networking Seminar”). Clients were encouraged to exchange contact information and share leads. Mr. Warren stated that the clients who attended the Networking Seminar later met to discuss their job search progress and eventually their dissatisfaction with PCMG’s services.

[106] On March 27, 2005, in a letter to Minto Roy, several PCMG clients asked for a meeting to discuss their dissatisfaction (the “March Letter”). William Warren, Tanya Threatful, Marc Turenne, Bruce Nickson, and Johan de Vaal were among the signatories to the letter. It

read, in part, as follows:

We, the undersigned, request a meeting to discuss our dissatisfaction with the services of PCMG. When each of us initially met with you to set up career counselling, you indicated very strongly that PCMG had extensive 'links to the corporate world', and could provide inside contacts at senior levels to most of the key companies in Vancouver. We recognize that you made no promises of actually securing positions for us, but for every one of us, it was your claim to these 'corporate links' that was the key factor in our decision to hand over several thousand dollars. PCMG has completely failed to deliver on these claims, thereby negating any benefit to us as clients.

[107] A meeting between the signatories and Minto Roy took place on April 7, 2005 (the "April Meeting"). However, Mr. Roy refused to negotiate with them collectively and said that he would respond to each client individually.

[108] Mr. Warren filed a claim against PCMG in the Small Claims Court of British Columbia ("Small Claims Court") and a complaint with the Better Business Bureau. The Small Claims Court decision in *William Warren v. Premier Career Management Group Corp. and Minto Roy* was issued on March 8, 2007 (the "Warren Decision"). Justice Pendleton ordered PCMG to pay Mr. Warren \$5,377.20 plus certain fees. The Court held that Mr. Warren was not entitled to a full refund because he had received a benefit worth \$1,000.00 from PCMG's Program.

[109] **Tanya Threatful** started the Program in December 2004. She met with her Career Coach, Norma Axford-Couch, five times in December 2004 and early January 2005. Each time she was asked to complete a personality test.

[110] In December 2004, Ms. Threatful was approached about a position as regional manager of a company called Mega Hair. She said that Ms. Axford-Couch and Minto Roy told her not to respond to the offer until she had completed the Program. Mr. Roy told her that "he knew the owner and his daughter and that he could call on [her] behalf at a later stage to negotiate on [her] behalf". He also said that he knew that the salary would be in the range they had discussed.

[111] Later in January 2005, Ms. Threatful contacted Mega Hair directly and accepted the position. By that time, no introductions or interviews had been arranged through PCMG.

[112] Ms. Threatful attended the Networking Seminar and the April Meeting.

[113] Ms. Threatful later filed a claim against PCMG in Small Claims Court. The claim was settled out of court based on the Warren Decision.

[114] **Marc Turenne** began working with Alana Fero and was given assignments which consisted of profile and personality assessments. A résumé was then created and submitted to a variety of companies. Mr. Turenne stated that Ms. Fero provided little help and that he felt that

she was not working on his behalf. He also said that the meetings were often short and totally unproductive.

[115] PCMG provided Mr. Turenne with only one contact and, after 10 weeks, he was still not employed. Mr. Turenne testified that he eventually became frustrated with the Program because of the lack of contacts. However, Ms. Fero would not address his concerns. Mr. Turenne signed the March Letter.

[116] In November of 2005, Mr. Turenne filed a claim in Small Claims Court. In April of 2007, he received an out-of-court settlement based on the Warren Decision.

[117] **Bruce Nickson** said that he and Alana Fero worked to improve his résumé. However, after two or three meetings, Ms. Fero apparently became disinterested. He was not provided with a single contact and, after approximately 6 weeks, he abandoned the Program.

[118] Mr. Nickson signed the March Letter and attended the April Meeting. In November of 2005, Mr. Nickson filed a claim in Small Claims Court. In April of 2007, he received a settlement based on the Warren Decision.

[119] **Johan de Vaal** had seven or eight meetings with Alana Fero. He acknowledged that she had a gift for writing and admitted that he did see some value in the Program.

[120] On January 14, 2005, Mr. de Vaal attended the Networking Seminar. He described the event as upbeat and said that the clients in attendance were not unhappy with PCMG.

[121] However, towards the end of February 2005, approximately 2 months after signing PCMG's contract, Mr. de Vaal became dissatisfied with the Program because no contacts had been made on his behalf.

[122] Mr. de Vaal also signed the March Letter and attended the April Meeting. On May 6, 2005, he filed a claim in Small Claims Court. Based on the Warren Decision, he received an out-of-court settlement of \$5,900.00.

[123] **Malia McClean** became somewhat dissatisfied with PCMG's services after several meetings with Alana Fero. She stated that the meetings lasted about 20 minutes and that they basically consisted of taking in the previous week's homework and assigning new homework.

[124] Ms. McClean became completely dissatisfied with PCMG 5 or 6 weeks into the Program when she discovered that the database, which had been described by Ted Paxton, did not list employment opportunities.

[125] Ted Paxton and Alana Fero met with her to discuss her concerns but they were not resolved. Thereafter, Ms. McClean left the Program.

[126] **René Navarro-Gonzalez**'s first Career Coach was Irene Mitchelson. He enjoyed working with her. However, after five or six meetings, he was assigned to Alana Fero and meetings with her lasted no more than 15 minutes.

[127] Mr. Navarro-Gonzalez was concerned about the work assigned to him by Ms. Fero. He was asked to send letters to companies asking them for information. He was instructed to write that he was not looking for a job but that he was simply doing research on an industry. Mr. Navarro-Gonzalez refused to write such letters because he was of the opinion that it was dishonest to pretend that he was not seeking employment.

[128] Mr. Navarro-Gonzalez stated that he became more and more concerned about the services provided by PCMG as time passed. After 90 days he had not been provided with any contacts or interviews so he asked for a refund. When he told Minto Roy that he had misrepresented his services to him, Mr. Roy responded that he should read his contract more carefully.

[129] **Christopher Graham** began attending weekly meetings with Ted Paxton shortly after signing a contract. During the initial meetings, Mr. Graham worked on setting personal goals and providing background information. He then began developing a new résumé and cover letter. He said that he started asking for contacts approximately one month into the Program.

[130] Mr. Graham testified that PCMG gave him names of contacts at Big Brothers of Greater Vancouver, Tourism British Columbia, Junior Achievement, Canadian Tourism Corporation and the B.C. Sports Hall of Fame. However, after meeting with all the contacts, he discovered that only Junior Achievement was hiring and that he was overqualified for the position.

[131] Mr. Graham said that in early September of 2007 Minto Roy told him that the Chilliwack Golf and Country Club (the "Club") was looking for a general manager. Mr. Graham indicated that he was interested and Mr. Roy advised him that he would send his résumé to the Club. However, Mr. Graham testified that his résumé never arrived.

[132] Mr. Graham stated that on October 25, 2007, he met with Ted Paxton and Minto Roy to discuss PCMG's failure to provide the Club with his résumé and its failure to provide him with referrals to employers who were hiring. During the meeting, Mr. Graham asked what PCMG had done to market his name. Neither Mr. Paxton nor Mr. Roy answered his question. Mr. Graham asked for a refund and was refused.

[133] **Raffaele Rocca** worked with Karen Cunningham on his résumé for approximately one month. He also prepared cover letters, discussed interview skills and participated in mock interviews.

[134] Mr. Rocca stated that he was provided with two contacts during the Program. The first failed to reply to his overture and the second was his Career Coach's niece. Neither of these contacts led to employment. He became frustrated approximately 6 weeks into the Program and quit.

(i) **Steve Wills' Testimony**

[135] **Steve Wills** worked as a Senior Career Consultant with PCMG from September 2005 to December 2005. He explained that PCMG's typical prospective clients were individuals who had sent in résumés in response to job openings posted on the Careers Today website but had not been hired. After being advised that they had been unsuccessful, they would then be asked whether they would like an opportunity to meet with a Senior Career Consultant at PCMG.

[136] With respect to PCMG's sales strategy, Mr. Wills stated that Minto Roy "stressed that [one of] the key objectives of the first meeting was first to find the money, i.e. to determine the prospect's ability to pay and, if they did not have the money, where they could turn to get it." Mr. Wills testified that another objective of the First Meeting was to ensure that the prospective client would bring their spouse to the Second Meeting. He stated that the spouse's presence was required to facilitate closing the deal. The concern was that, if the client was told the price of the Program and had a chance to discuss it with a spouse who had not been exposed to the sales pitch, there would be little likelihood that a contract would be signed. Mr. Wills stated that it was part of the script to instill a sense of urgency.

[137] Regarding the Screening Representation, Mr. Wills said that he had not seen any assessment criteria used to qualify prospects for a Second Meeting. He noted, however, that during the First Meeting, the Senior Career Consultant would tell the prospective client that PCMG worked only with highly qualified candidates and that the purpose of that meeting was to enable PCMG to get to know the person a little better in order to decide if they were the type of person PCMG would want to "partner" with. In cross-examination, Mr. Wills stated that it "was very, very rare that [Mr. Roy] didn't offer a prospect the second meeting" and that "pretty much everybody got offered the second meeting".

[138] Mr. Wills gave the following evidence about the Contacts Representation:

Minto Roy, PCMG's director, was very insistent that myself and other consultants follow the script provided by PCMG [...] In this script, PCMG was to be characterized as the prospective client's friend and a powerful potential partner in helping them to find a new job. The script included statements to the effect that because every PCMG client becomes part of the PCMG network, PCMG has therefore built a vast network of contacts at the management and supervisory level, in every industry. The script indicated that upon signing on with PCMG, each new client gets access to PCMG's network of decision-makers. I was never shown any document that listed or described that network. The script did not promise that PCMG would put the client in touch with specific individuals or specific companies, but implied that PCMG had contacts and would arrange introductions to executives who could put the client in touch with decision-makers, people who could help the client get ahead.

[139] He added the following in response to the Tribunal's questions:

The Chairperson: ...You've told me that the script doesn't say that PCMG was offering to put them in touch with people who were hiring. And you said the script doesn't say that PCMG said they would set up interviews with those people who were hiring, and yet you say those promises were routinely made?

Mr. Wills: Yeah. I think there's a disconnect between what's on paper and what's said. I mean in the same way as the contract that people sign spells out in legalese what their expectations are and puts in a statement that PCMG never promised you this, never promised you that and were offering you this. In the same way that's in the contract, well the legalese and the appropriate claims are, on the written materials, script and otherwise. But in effect, you are there to say what you need to say to move that prospect towards signing that contract, and I ...

The Chairperson: And if that includes making promises, you make them?

Mr. Wills: That's correct.

The Chairperson: And was that a direction from Mr. Roy?

Mr. Wills: Well that was an example set by Mr. Roy.

VIII. THE RESPONDENTS' EVIDENCE

[140] **Neil Belenkie** was self-employed as an occupation consultant at the time of the hearing. However, when he met PCMG, he was a manager in the marketing department of a pharmaceutical company. He has a diploma from Mount Royal College in Calgary and an arts degree from the University of Calgary. Mr. Belenkie signed a contract with PCMG on January 19, 2007. He stated that he was given an opportunity to read the contract and that it was consistent with the services he received from PCMG. He testified that Minto Roy did not promise him access to his network of contacts or a new job within 90 days.

[141] Mr. Belenkie testified that it took him three months to complete the Program and that he had approximately 12 meetings with his Career Coach. Mr. Belenkie stated that using his own contacts, he found a job approximately seven weeks after completing the Program.

[142] **Jagdish Ruprell** is an operations manager. He has a bachelor's degree in business administration, a diploma in computer systems management and, he is currently pursuing his Facilities Management Administrator Designation. Mr. Ruprell immigrated to Canada from India in February of 2006 and met with Minto Roy in March 2006 after submitting his résumé to PCMG. At that time, Mr. Ruprell was employed as a customer service representative for a janitorial service. Mr. Ruprell stated that Mr. Roy advised him that PCMG only partnered with clients who were prepared to work very hard. He signed a contract with PCMG on March 17, 2006. Mr. Ruprell stated that Mr. Roy did not put pressure on him to sign and that PCMG worked out a payment structure that accommodated his financial situation. He further stated that Mr. Roy and the staff of PCMG did not make any misleading promises or guarantees. The services he was promised were those described in his contract. However, Mr. Ruprell did not provide the Tribunal with a copy of his contract.

[143] **Douglas Wicks** is an engineering technologist and is employed as a project manager. He graduated from the Saskatchewan Technical Institute in Moose Jaw, Saskatchewan. Mr. Wicks stated that Minto Roy did not promise him a job within 90 days and he did not promise to provide him with referrals or interviews. Mr. Wicks was employed when he signed a PCMG contract on September 7, 2007, but was looking for a career change. Mr. Wicks stated that he would highly recommend PCMG to anyone in his position.

[144] **Loretta James** is a project manager for an asset management software company. She testified that, after her education, she stayed home with her children for many years. She said that Mr. Roy did not promise her a job within 90 days and did not say that he would provide her with senior level contacts.

[145] **Minto Roy** testified that he is the sole shareholder and director of PCMG and described himself as an entrepreneur. His duties at PCMG include the marketing of PCMG's services. He also testified that he coaches the Senior Career Consultants and that he attends several networking events per week.

[146] Mr. Roy described PCMG's network of contacts as being comprised mainly of former clients who worked at all levels in many types of businesses.

[147] Mr. Roy denied making the Representations and denied the existence of a written script for the First and Second Meetings. However, he did acknowledge that a certain "protocol" was to be followed by the Senior Career Consultants.

[148] Mr. Roy explained that the Better Business Bureau of British Columbia falsely affiliated PCMG with a company known as Bernard Haldane Associates and that this was a major reason why PCMG clients lost faith in the Program. He also stated that the nine former PCMG clients who testified on behalf of the Commissioner were not representative of PCMG's 501 clients.

[149] Mr. Roy pointed out that he has taped over 200 radio shows, that the show is not scripted, that the host, Mannie Buzunis, is not paid by PCMG and that he has no control over the editing before the show is broadcast.

[150] **Ted Paxton** stated that he joined PCMG in March of 2005. He first worked as a Senior Career Consultant and then became a Career Coach. He is a certified professional coach and received his designation from the Coaching Technical Institute in California, in 2003. Mr. Paxton testified that he sat in on approximately 100 sales meetings and that he never witnessed anyone guarantee a client a job within 90 days or promise interviews with senior level contacts. He said, however, that clients typically do find jobs within 90 days. He further stated that PCMG does select clients who are committed to their careers and prepared for hard work.

[151] Mr. Paxton denied pressuring Malia McClean to sign a contract and denied telling her that PCMG had a database showing job openings that were not advertised to the public. However, Mr. Paxton admitted telling Ms. McClean that a salary between \$38,000.00 and \$42,000.00 was an appropriate target for her.

IX. THE RELEVANT PROVISIONS OF THE ACT

[152]

74.01 (1) A person engages in reviewable conduct who, for the purpose of promoting, directly or indirectly, the supply or use of a product or for the purpose of promoting, directly or indirectly, any business interest, by any means whatever,

(a) makes a representation to the public that is false or misleading in a material respect;

(b) makes a representation to the public in the form of a statement, warranty or guarantee of the performance, efficacy or length of life of a product that is not based on an adequate and proper test thereof, the proof of which lies on the person making the representation; or

(c) makes a representation to the public in a form that purports to be

(i) a warranty or guarantee of a product, or

(ii) a promise to replace, maintain or repair an article or any part thereof or to repeat or continue a service until it has achieved a specified result,

if the form of purported warranty or guarantee or promise is materially misleading or if there is no reasonable prospect that it will be carried out.

[...]

74.03 (1) For the purposes of sections 74.01 and 74.02, a representation that is

(a) expressed on an article offered or displayed for sale or its wrapper or container,

74.01 (1) Est susceptible d'examen le comportement de quiconque donne au public, de quelque manière que ce soit, aux fins de promouvoir directement ou indirectement soit la fourniture ou l'usage d'un produit, soit des intérêts commerciaux quelconques :

a) ou bien des indications fausses ou trompeuses sur un point important;

b) ou bien, sous la forme d'une déclaration ou d'une garantie visant le rendement, l'efficacité ou la durée utile d'un produit, des indications qui ne se fondent pas sur une épreuve suffisante et appropriée, dont la preuve incombe à la personne qui donne les indications;

c) ou bien des indications sous une forme qui fait croire qu'il s'agit :

(i) soit d'une garantie de produit,

(ii) soit d'une promesse de remplacer, entretenir ou réparer tout ou partie d'un article ou de fournir de nouveau ou continuer à fournir un service jusqu'à l'obtention du résultat spécifié,

si cette forme de prétendue garantie ou promesse est trompeuse d'une façon importante ou s'il n'y a aucun espoir raisonnable qu'elle sera respectée.

[...]

74.03 (1) Pour l'application des articles 74.01 et 74.02, sous réserve du paragraphe (2), sont réputées n'être données au public que par la personne de qui elles proviennent les indications qui, selon le cas :

a) apparaissent sur un article mis en vente ou exposé pour la vente, ou sur son

(b) expressed on anything attached to, inserted in or accompanying an article offered or displayed for sale, its wrapper or container, or anything on which the article is mounted for display or sale,

(c) expressed on an in-store or other point-of-purchase display,

(d) made in the course of in-store, door-to-door or telephone selling to a person as ultimate user, or

(e) contained in or on anything that is sold, sent, delivered, transmitted or made available in any other manner to a member of the public,

is deemed to be made to the public by and only by the person who causes the representation to be so expressed, made or contained, subject to subsection (2).

[...]

emballage;

b) apparaissent soit sur quelque chose qui est fixé à un article mis en vente ou exposé pour la vente ou à son emballage ou qui y est inséré ou joint, soit sur quelque chose qui sert de support à l'article pour l'étalage ou la vente;

c) apparaissent à un étalage d'un magasin ou d'un autre point de vente;

d) sont données, au cours d'opérations de vente en magasin, par démarchage ou par téléphone, à un usager éventuel;

e) se trouvent dans ou sur quelque chose qui est vendu, envoyé, livré ou transmis au public ou mis à sa disposition de quelque manière que ce soit.

[...]

[153] Subsection 74.03(1) and its predecessor subsection 36(2) of the *Combines Investigation Act*, R.S.C. 1970, c. C-23, as amended by *An Act to amend the Combines Investigation Act*, S.C. 1974-75-76, c. 76 will be referred to as the Deeming Provision.

X. THE LEGISLATIVE HISTORY

[154] In 1914, a provision was added to the *Criminal Code* which prohibited the publication of misleading advertisements (See: *An Act to amend the Criminal Code*, S.C. 1914, c. 24). It was amended several times and, in 1969, it was transferred from the *Criminal Code* to the *Combines Investigation Act*, R.S.C. 1952, c. 314.

[155] After the transfer, a number of unsuccessful attempts were made to substantially alter the provision by removing its limited focus on the publication of advertisements and expanding it to deal with false and misleading representations made "to the public" by any means. The Bills implementing this change included language proposed for a new section 36 of the *Combines Investigation Act* which, although a criminal provision, was almost identical to the present paragraph 74.01(1)(a) and subsection 74.03(1) of the Act. The only material difference was that the proposed Deeming Provision (paragraphs 36(2)(d) and (e)) initially referred in the plural to "persons" and "members" of the public. The proposals, in this form, first appeared in Bill C-256 (on June 29, 1971; *An Act to promote competition, to provide for the general regulation of trade and commerce, to promote honest and fair dealing, to establish a Competitive Practices Tribunal and the Office of Commissioner, to repeal the Combines Investigation Act and to make*

consequential amendments to the Bank Act, 3rd Sess., 28th Parl.) but the Bill did not proceed past first reading.

[156] The next attempt at reform came with Bill C-227 (*An Act to amend the Combines Investigation Act and the Bank Act and to repeal an Act to amend an Act to amend the Combines Investigation Act and the Criminal Code*, 1st Sess., 29th Parl.) which was introduced on November 5, 1973. Again, it was identical to the present subsections 74.01(1) and 74.03(1) except that the plural was used in paragraphs (d) and (e) of the proposed Deeming Provision. This Bill also failed to proceed beyond first reading.

[157] Bill C-7 (*An Act to amend the Combines Investigation and the Bank Act and to repeal an Act to amend an Act to amend the Combines Investigation Act and the Criminal Code*, 2nd Sess., 29th Parl.) followed with similar provisions. The Bill passed second reading and was sent to the House of Commons Committee on Finance, Trade and Economic Affairs (the “Committee”) for a clause-by-clause examination. The Consumers’ Association of Canada submitted to the Committee that the words “to the public” in what is now paragraph 74.01(1)(a) (then paragraph 36(1)(a)) should be deleted. Such a deletion would have allowed the provision to cover representations which were not made to the public. However, the suggested change was not made. In my view, this indicates that Parliament did not intend the Act to apply to all deceptions. See: Canada, House of Commons, Minutes of Proceedings and Evidence of the Standing Committee on Finance, Trade and Economic Affairs, Issue no. 30, March 21, 1975, 1st Sess., 30th Parl., p. 30:44. The Committee’s deliberations were terminated on May 8, 1974 when Parliament was dissolved.

[158] On October 2, 1974, Bill C-7 was re-introduced as Bill C-2 (*An Act to amend the Combines Investigation Act and the Bank Act and to repeal an Act to amend an Act to amend the Combines Investigation Act and the Criminal Code*, 1st Sess., 30th Parl.). Bill C-2 was ultimately enacted and came into force on January 1, 1976. As in the earlier Bills, Bill C-2 initially used the plural in the proposed Deeming Provision. However, amendments made during Committee deliberations resulted in the use of the singular so “persons” became “person” in 36(2)(d) and “members” of the public became “a member” of the public in 36(2)(e) (the “Amendments”).

[159] André Ouellet, then Minister of Consumer and Corporate Affairs, introduced the Amendments before the Committee. At that time, he presented a document which set out the proposed amendments and his comments thereon. See Appendix J – Amendments and Comments to Bill C-2, an Act to Amend the Combines Investigation Act in Canada, House of Commons, Minutes of Proceedings and Evidence of the Committee, Issue no. 15, December 3, 1974, 1st Session, 30th Parl. pp. 15:70-71.

[160] Below, with my emphasis, I have reproduced paragraphs 36(2)(d) and (e) of the Deeming Provision as first proposed in which the plural was used:

36(2) For the purpose of this section and section 36.1, a representation that is

[...]

(d) made in the course of in-store, door-to-door or telephone selling to persons as ultimate users, or

(e) contained in or on anything that is sold, sent, delivered, transmitted or made available to members of the public,

shall be deemed to be made to the public by the person who caused the representation to be made [...]

[161] Next I have reproduced 36(2)(d) and (e) of the Deeming Provision as amended after second reading to change the plural to the singular. Again I have added emphasis.

36(2) For the purpose of this section and section 36.1, a representation that is

[...]

(d) made in the course of in-store, door-to-door or telephone selling to a person as ultimate user, or

(e) contained in or on anything that is sold, sent, delivered, transmitted or in any other manner whatever made available to a member of the public.

shall be deemed to be made to the public only by the person who caused the representation to be so expressed, made or contained [...]

[162] Finally, I have reproduced the Minister's comment on the amendment of the proposed Deeming Provision which shows that a misrepresentation to an individual is sufficient to bring the situations described in paragraphs 36(2)(d) and (e) within the ambit of subsection 36(1).

The words in 36(2)(d) are changed from "to persons as ultimate users" to "a person as ultimate user" because concern has been expressed that the plural words "persons", "users" and "members" used in sub-paragraphs (d) and (e) as they now stand in Bill C-2 might be construed to mean a plurality of persons, whereas a misrepresentation to a single person should be enough to attract the application of the section.

[163] However, despite these Amendments shifting from the plural to the singular, no change was made to "to the public" in 36(1)(a). In other words, the section was not amended to read to "a member of the public". This suggests that Parliament intended that "to the public" was and would remain plural.

XI. THE ISSUES

[164] Based on the Act, it is necessary to address the following questions to determine whether the Respondents have engaged in reviewable conduct under paragraph 74.01(1)(a) of the Act:

1. Were the Representations made?
2. If so, what was the purpose for which the Representations were made?
3. Were the Representations made to the public?
4. Were the Representations false or misleading?
5. If they were misrepresentations, were they material?

XII. DISCUSSION AND CONCLUSIONS

Issue 1 Were the Representations Made?

[165] I find that the evidence given by the Commissioner's witnesses was both credible and compelling. I am satisfied, on a balance of probabilities, that a significant number of prospective PCMG clients heard the Representations during their First and Second Meetings with Minto Roy and PCMG's Senior Career Consultants.

[166] I reached this conclusion despite Mr. Roy's submissions. Mr. Roy argued that based (i) on the answers given by the Commissioner's witnesses to Questions 8 and 10 of the Confidential Plan and (ii) on the disclaimer in PCMG's contracts and (iii) on the evidence of his witnesses, I should have concluded that the Representations were not made. I will deal with his submissions in turn.

(i) The Confidential Plan – Questions 8 and 10

[167] In my view, the negative answers to Question 8 given by the Commissioner's witnesses do not assist the Respondents because the question includes the word "specific". The witnesses acknowledged that they were not guaranteed specific interviews with specific companies, specific salaries or specific timeframes for obtaining a new position or a promotion so it is understandable that they answered "no" to Question 8. However, that answer does not mean that the Contacts and 90-day/Good Job Representations were not made in the First and Second Meetings. In most cases, the language used when those representations were made was not specific. Indeed, in my view, it was intentionally vague. The people who were to serve as contacts were not named and the 90-day period was often described as "typical" and was sometimes expressed in weeks rather than days. Most of the witnesses agreed that there were no guarantees, just timeframes and salary ranges.

[168] The negative answers to Question 10 are also understandable because, as Mr. de Vaal testified, there was no inconsistency between PCMG's contracts and the Contacts Representation. In Phase I point 7, PCMG undertook to work with the client to "Develop a marketing plan between client and strategist [i.e. career coach] to generate appropriate referral and job interviews." Mr. Roy acknowledged in his evidence that "referral" could reasonably be read as referrals.

[169] In my view, this provision, which appeared in the contracts signed by all the Commissioner's witnesses, could reasonably be read as a promise by PCMG to use its contacts both to refer clients to those who were hiring and to arrange job interviews.

[170] Further, the six witnesses who signed the older version of PCMG's contract also received the benefit of Phase I point 6 which bound PCMG to distribute clients' résumés to companies and recruiters in the local market. This provision could also reasonably be interpreted to include a responsibility on the part of PCMG to follow up on the contacts by booking or assisting with the booking of interviews. For these reasons, the answers to Question 10 cannot be used to suggest that the Contacts Representation was not made.

(ii) *The Disclaimer*

[171] The disclaimer appeared in all versions of the contract signed by the Commissioner's witnesses. It read:

Client acknowledges and agrees that neither PCMG, nor any representative of PCMG has represented or implied to Client that PCMG is an employment or placement agency. Client understands that PCMG provides a full program of career counselling, career development, and contact development, which the client implements. Further, Client acknowledges and agrees that PCMG has not, nor has any representative of PCMG, induced Client to enter into this engagement by implication, representation or guaranteeing to Client (a) specific interviews with specific companies or individuals, salary or time frame to obtain a new position or promotion, (b) any verbal promises that are not part of the written agreement (c) salary or wages increase, bonus programs or other increased remuneration.

[my emphasis]

[172] In my view, the disclaimer does not support Mr. Roy's argument that by signing PCMG's contract, the Commissioner's witnesses acknowledged that the Contacts and 90-day/Good Job Representations were not made.

[173] My reasoning is similar to that dealing with the answers to the questions in the Confidential Plan. The disclaimer does not apply because the Commissioner's witnesses were not guaranteed specific interviews, salaries or timeframes and because the Contacts Representation, as discussed above, is in the PCMG contract.

[174] The Screening Representation deserves separate attention because it was neither a promise nor a specific commitment. In my view, it was flattery used to make clients feel that they were special because they met PCMG's high standards. Neither the answers to Questions 8 and 10 in the Confidential Plan nor the disclaimer address whether flattery was used to market PCMG's services so the Respondents' arguments do not impact the Screening Representation.

(iii) *The Respondents' Witnesses*

[175] As noted earlier, Minto Roy called four former clients who appeared voluntarily. Three denied that they heard the Contacts and 90-day/Good Job Representations and the fourth denied being misled. However, even if I accept their evidence, it does not mean that the Commissioner's witnesses lied when they said they heard the Representations. It only means that the Representations were not made to all prospective clients. I have therefore accepted the Commissioner's evidence in spite of the testimony offered on behalf of the Respondents.

[176] Further, neither Minto Roy nor Ted Paxton were credible witnesses. I am satisfied, on the balance of probabilities, that Minto Roy encouraged PCMG's Senior Career Consultants to make the Representations and say whatever else they thought would convince prospective clients to sign a PCMG contract. In my view, Mr. Roy behaved in this manner because he believed that the answers to Questions 8 and 10 in the Confidential Plan and the disclaimer in the PCMG contracts would make it impossible for clients to complain when the Program failed to meet their expectations.

[177] This dishonest approach to marketing was reinforced by the fact that Senior Career Consultants received no salary from PCMG. Their remuneration was based entirely on commission. This meant that they had a huge incentive to say whatever was required to persuade clients to purchase PCMG's services.

Issue 2 What was the Purpose of the Representations?

[178] The Representations were made for the purpose of persuading prospective clients to purchase PCMG's services. All the Representations were made during the First and Second Meetings which were conducted by Mr. Roy and PCMG's Senior Career Consultants. They were the PCMG personnel who were responsible for marketing.

Issue 3 Were the Representations made "to the public"?

[179] Counsel for the Commissioner acknowledged that there is no precedent in the case law for the application of paragraph 74.01(1)(a) when oral representations are made during private discussions of personal matters.

[180] The Commissioner submitted that because there is no definition of "public" or "to the public" in the Act and because the evidence shows that the Representations were repeated to a number of prospective clients, I should conclude that they became Representations "to the public" within the meaning of 74.01(1)(a) of the Act.

[181] This submission was based, in part, on the Supreme Court of Canada's decision in *CCH Canadian Ltd. v. Law Society of Upper Canada*, 2004 SCC 13, [2004] 1 S.C.R. 339. It was a case of alleged copyright infringement under paragraph 3(1)(f) of the *Copyright Act*, R.S.C. 1985, c. C-42 which protects communications of works "to the public" by telecommunication. One aspect of the decision concerned the Law Society's custom photocopying service which, on

request, faxed copies of judicial decisions and other published works to members of the legal profession and researchers.

[182] Although the Court concluded that single faxes were not communications to the public, the Commissioner relied on a statement made by the Chief Justice in *obiter* when she said that a series of fax transmissions of the same work to different recipients might constitute communication to the public (paragraph 78).

[183] The Commissioner argued that over time, as different prospective clients heard the Representations, they become the Respondents' "public". However, I have not been persuaded by this submission. In my view there is an important distinction between the facts in CCH and those in this case. In CCH, the Law Society's service was available to the public in the sense that members of the Law Society, the judiciary and authorized researchers were entitled to request the service and receive copies of the works. Further, each user understood that others had similar access and there was no personal content in the exchange of information between the Law Society and its customers. In contrast, in the present case no one had access to the discussions of personal matters which occurred during the First and Second Meetings.

[184] The Commissioner also relied on *Canadian Wireless Telecommunications Association et al v. Society of Composers, Authors and Music Publishers of Canada*, 2008 FCA 6, 290 D.L.R. (4th) 753. It concerned the transmission of a selection of ring tones to mobile phone customers of Bell and Telus. The transmissions went directly from company to customer whenever customers requested access for the purpose of selecting a tone. The Federal Court of Appeal held that such transmissions were made "to the public" within the meaning of 3(1)(f) of the *Copyright Act*.

[185] Again, however I distinguish this decision from the case before me because the ring tone transmissions were accessible to the public and intended for public use. All that was required was a subscription to a mobile phone service. Further, the recipients were aware that others had the same choice of tones and there was no personal content in the communication. In contrast, in this case, there was no access on any basis to the Respondents' First and Second Meetings with prospective clients in which private matters were discussed.

[186] The Commissioner also says that the Tribunal should conclude that the Respondents' prospective customers to whom the Representations were made were a segment of the public because the Act is for the protection of the public.

[187] However, section 74.01 has been more precisely described as being for the protection of the marketplace composed of both consumers and merchants. False or misleading representations distort the information available in the market and lead to decisions by purchasers and competitors which are based on inaccurate information. This injures competition.

[188] This fact is acknowledged in a quotation taken from the Department of Consumer and Corporate Affairs Stage 1, Competition Policy, Background Paper of April 1976 at p. 38 (the “Background Paper”):

...where there is a lack of complete information or where distorted information in relation to a product is fed into the marketplace, its functioning will be seriously affected and the distortion will be injurious to honest competitors.

[my emphasis]

[189] In my view, the fact that paragraph 74.01(1)(a) is for the protection of consumers and competitors in the marketplace is consistent with a finding in this case that, because the alleged misrepresentations were not accessible to the marketplace, the Act does not apply.

[190] I have also had regard for the purpose of the Act as a whole. Its purpose clause reads as follows:

Purpose

Objet

1.1 The purpose of this Act is to maintain and encourage competition in Canada in order to promote the efficiency and adaptability of the Canadian economy, in order to expand opportunities for Canadian participation in world markets while at the same time recognizing the role of foreign competition in Canada, in order to ensure that small and medium-sized enterprises have an equitable opportunity to participate in the Canadian economy and in order to provide consumers with competitive prices and product choices.

1.1 La présente loi a pour objet de préserver et de favoriser la concurrence au Canada dans le but de stimuler l’adaptabilité et l’efficience de l’économie canadienne, d’améliorer les chances de participation canadienne aux marchés mondiaux tout en tenant simultanément compte du rôle de la concurrence étrangère au Canada, d’assurer à la petite et à la moyenne entreprise une chance honnête de participer à l’économie canadienne, de même que dans le but d’assurer aux consommateurs des prix compétitifs et un choix dans les produits.

[191] In my view, there is nothing in this provision which suggests that paragraph 74.01(1)(a) should apply in a situation in which the alleged misrepresentations could have had no impact on competition because they were not fed into the marketplace.

[192] Finally, in dealing with this aspect of the Commissioner’s submissions, I have considered section 12 of the *Interpretation Act*, R.S.C. 1985, c. I-21 which provides as follows:

12. Every enactment is deemed remedial, and shall be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects.

12. Tout texte est censé apporter une solution de droit et s’interprète de la manière la plus équitable et la plus large qui soit compatible avec la réalisation de son objet.

[193] Again, there is nothing in this section which requires me to give “to the public” in paragraph 74.01(1)(a) a meaning other than the one that makes sense in the context of both the

section and the Act. They indicate that Parliament intended “to the public” to mean “to the marketplace”.

[194] I have applied the current approach to statutory interpretation which provides that the words of an act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the act, the object of the act, and the intention of Parliament. (See: *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27 at para. 21, and *AstraZeneca Canada Inc. v. Canada (Minister of Health)*, 2006 SCC 49, [2006] 2 S.C.R. 560, at para. 26.)

[195] With this approach in mind, I have concluded that there is no reason to suppose that the Act was intended to apply to all deceptions including misrepresentations made to individuals in private during discussions of personal matters. There is other relief available in such cases under tort or criminal law. Indeed, as a result of the Warren Decision, many of the Commissioner’s witnesses have received refunds of part of the money they paid to PCMG.

[196] I have also accepted the Respondents’ submission that because paragraphs 74.03(1)(d) and (e) of the Deeming Provision contain language which clearly describes an individual, it is reasonable to read “to the public” in paragraph 74.01(1)(a) as having a broader meaning which describes more than one person. Paragraphs 74.01(d) and (e) read as follows:

74.03 (1) For the purposes of sections 74.01 and 74.02, a representation that is

[...]

(d) made in the course of in-store, door-to-door or telephone selling to a person as ultimate user, or

(e) contained in or on anything that is sold, sent, delivered, transmitted or made available in any other manner to a member of the public,

is deemed to be made to the public by and only by the person who causes the representation to be so expressed, made or contained, subject to subsection (2).

[my emphasis]

74.03 (1) Pour l’application des articles 74.01 et 74.02, sous réserve du paragraphe (2), sont réputées n’être données au public que par la personne de qui elles proviennent les indications qui, selon le cas :

[...]

d) sont données, au cours d’opérations de vente en magasin, par démarchage ou par téléphone, à un usager éventuel;

e) se trouvent dans ou sur quelque chose qui est vendu, envoyé, livré ou transmis au public ou mis à sa disposition de quelque manière que ce soit.

[je souligne]

[197] In my view, if Parliament had meant to use the singular in 74.01(1)(a), it would have used descriptions in the singular similar to those in the Deeming Provision. In reaching this conclusion, I have rejected the Commissioner’s submission that the Deeming Provision is a “stand alone” provision which should not be relied on to assist in the interpretation of “to the public” in paragraph 74.01(1)(a).

[198] In the alternative, the Commissioner suggests that if the Deeming Provision is relevant to the interpretation of 74.01(1)(a) then, because “to the public” in 74.01(1)(a) is written as “au public” in the French language version of 74.01(1)(a) and because “au public” appears again in paragraph (e) of the Deeming Provision which is in the singular in English, it is possible that “to the public” in 74.01(1)(a) is capable of referring to one person. This would mean that paragraph 74.01(1)(a) would apply to the Representations if made to only one prospective PCMG client.

[199] However, because of the legislative history which shows a clear intention to use the singular in the Deeming Provision, I have determined that it is not safe to base any conclusions on the use of “au public” in paragraph (e) of the Deeming Provision.

[200] The Commissioner also relies on the Deeming Provision in paragraph 74.03(1)(d) of the Act to submit that a single individual can constitute the “public” in this case.

[201] I accept that under paragraph 74.03(1)(d), one person could constitute the public for the purposes of 74.01(1)(a). The legislative history of the subsection makes it clear that that was Parliament’s intent when it made the Amendments. The next question is whether the Deeming Provision is operative in this case.

[202] The Commissioner says that I should extend the meaning of paragraph (d) of the Deeming Provision to include the Representations made at PCMG. However, I can see no language such as the word “includes” which indicates that paragraph (d) was intended to be illustrative and applied in situations analogous to those listed.

[203] Further even if an analogy were appropriate, I do not see one that is apt. PCMG is nothing like a shop – which is a public place. Rather, it is a private place where people attend by invitation or under contract. It also seems to me that misrepresentations or false statements made during door to door and telephone sales were deemed to be “to the public” under paragraph (d) because both were seen as methods of mass marketing. PCMG did not function as a mass marketer.

[204] The Commissioner relied on *R. v. Simpsons Ltd.* (1988), 25 C.P.R. (3d) 34 (Ont. Dist. Ct.). Part of the case involved a criminal charge against Simpsons Ltd. under paragraph 36(1)(a) of the *Competition Act*, R.S.C. 1970, c. C-23. Simpsons ran a promotion in which it distributed 1,031,000 cards by mail and by hand in its stores. The cards falsely represented that cardholders could save 10% to 25% on practically everything in the store. In reality, 90% of the cardholders had no chance of obtaining anything more than the 10% discount.

In paragraph 10, the Judge said:

To make out the offence, it would be sufficient if a false or misleading representation had been made to one member of the public. Here, on the acknowledged facts, the misleading representation was made to 927,000 people, or 90 % of the recipients. Of those, most were among the 750,000 Simpsons credit card holders who were the addresses of the mailing.

[my emphasis]

[205] This statement does not assist the Commissioner for two reasons. First it is *obiter dicta*. Second, it is probably based on the Deeming Provision in 36(2)(e) which would have made Simpsons' conduct an offence if only one person saw the card. As discussed above, the Deeming Provision does not apply in this case.

[206] In conclusion on this issue, I find that the Commissioner has not met the onus of showing that the Representations were made to the public for the following reasons:

- Based on the Background Paper "to the public" means to the marketplace.
- The Deeming Provision in paragraph 74.03(1)(d) of the Act does not apply on the facts of this case.
- Personal matters were discussed: at the First Meeting, prospective clients reviewed personal matters including their employment histories, their expectations and their ability to pay PCMG's fees. In some situations, a partner or relative was invited to the Second Meeting in which similar personal topics were addressed.
- There was an expectation of privacy: both prospective clients and PCMG's Senior Career Consultants intended their discussions to be private. This mutual expectation of privacy was evidenced by the fact that the First and Second Meetings were held in offices behind closed doors.
- There was no public access: Mr. Wills confirmed that PCMG's practice was to invite candidates to First Meetings. They would usually be individuals who had not obtained positions after they had made their résumés available to PCMG via the internet. The First and Second Meetings were not accessible to the public. No one could pay a fee to receive, subscribe to overhear or in any way listen in on the conversations between the prospective clients and PCMG's Senior Career Consultants. In my view without accessibility, it cannot be said that misinformation was "fed into the marketplace".

[207] In view of this conclusion, the application will be dismissed. However, to provide a complete analysis, I will consider the remaining issues.

Issue 4 Were the Representations False or Misleading?

[208] The Commissioner's allegation is that the Representations were false and misleading. In considering this issue, I have focussed on what could reasonably have been understood by the average prospective PCMG client who heard the Representations during the First and Second Meetings. See: *Canada (Commissioner of Competition) v. P.V.I. International Inc.*, 2002 Comp. Trib. 24, 9 C.P.R. (4th) 129; aff'd (2004), 31 C.P.R. (4th) 331 (F.C.A.), at para. 24. The attributes of the intended audience are an important aspect of this consideration.

[209] The evidence from several of the Commissioner's witnesses discloses that prospective PCMG clients may urgently require employment. On the other hand, the Respondents' witnesses were all working when they approached PCMG. It therefore appears that PCMG has two categories of prospective clients – those who are unemployed and in need of work and those who are employed and want a change.

[210] In my view, it is reasonable to assume that urgency could exist in either situation.

[211] The evidence suggests that the prospective clients are likely to have some post-secondary education, some work experience and access to the funds necessary to pay PCMG's fees. Often, they will have experienced unsuccessful job searches before they encounter PCMG.

[212] Accordingly, although average members of the intended audience in this case were not normally gullible they were likely to accept what was reasonably implied without critical analysis because, to varying degrees, they were needy.

[213] In my view, against this background, the Contacts Representation was misleading. The references to contacts during the First and Second Meetings created the misleading impression that they would be used for the benefit of PCMG's clients in practical ways. In other words, PCMG's clients would be told about relevant positions and recommended for job interviews with senior decision-makers who were hiring.

[214] The 90-day/Good Job Representation was also misleading. Clients were flattered about their excellent qualifications during the First and Second Meetings and in those circumstances when they were told that PCMG clients "typically" secured comparable or improved positions in approximately 90 days they were led to believe that they were typical and would have the same experience as the typical client.

[215] The Screening Representation was also misleading in that it gave the prospective clients the impression that they had been measured against high standards. However, Mr. Wills' evidence showed that there were no such standards and that if you were presentable and could pay, you were encouraged to sign a contract.

Issue 5 Were the Misrepresentations Material?

[216] Misrepresentations are material if they are so pertinent, germane or essential that they could affect the prospective customer's decision to purchase PCMG's services (See: *Apotex Inc. v. Hoffman La-Roche Ltd.* (2000), 195 D.L.R. (4th) 244 (Ont. C.A.) at para. 16).

[217] All the Commissioner's witnesses who were former PCMG clients testified that the Contacts Representation was an important factor in their decision to retain PCMG. For example:

- **Marc Turenne** stated that he signed the PCMG contract to obtain access to key decision-makers.
- **Johan de Vaal** stated that he signed with PCMG on the understanding that Minto Roy would provide him with contacts which would give him a "foot in the door" and put him on shortlists for job interviews.

[218] As well, the March Letter emphasized that the signatories had relied on the Contacts Representation.

[219] This evidence suggests and I conclude that the Contacts Representation would be material for the average person who was looking for employment.

[220] The 90-day/Good Job Representation was also important for some of the Commissioner's witnesses. For example:

- **Tanya Threatful** indicated that she was both excited and relieved when she was approved for a Second Meeting. She further indicated that she "was impressed with the promises that [she] would be getting another job within 90 days, at a higher salary, with stock options and benefits."

[221] Again, based on this evidence and my assessment of the impact of this representation on an average person seeking employment, I have concluded that it is material.

[222] Lastly, in my view, the Screening Representation is not material because, on the evidence, it did not motivate any of the Commissioner's witnesses to engage the services of PCMG. I therefore find that it would be unlikely to motivate an average prospective client.

XIII. ORDER DISMISSING THE APPLICATION

[223] Upon reviewing the material filed and hearing the testimony of the witnesses and the submissions of counsel for the Commissioner and of Minto Roy on his own behalf, no one appearing for PCMG, in a 10 day hearing in Vancouver, B.C. in April and May 2008;

[224] Now this Tribunal orders that, for the reasons given above, this application is hereby dismissed.

[225] The issue of costs remains under reserve in the hope that a settlement can be achieved.

DATED at Ottawa, this 15th day of July 2008.

SIGNED on behalf of the Tribunal by the Chairperson

(s) Sandra J. Simpson

COUNSEL:

For the applicant:

The Commissioner of Competition

Stéphane Lilkoff
Stéphane Lamoureux

For the respondents:

Premier Career Management Group Corp.

Not represented

Minto Roy

Self-represented

[226] SCHEDULE A: THE PROCEDURAL HISTORY

1. On May 8, 2007, the Commissioner filed her Notice of Application with the Tribunal. Shortly thereafter, the Tribunal granted the Commissioner's Motion for Alternative Service of the Notice.
2. PCMG and Mr. Roy failed to respond within the time period set out in the *Competition Tribunal Rules*, SOR/94-290, and, on July 23, 2007, the Commissioner moved for an *ex parte* order in default of response. The Commissioner sought, in particular, directions about what evidence the Tribunal wanted to hear concerning the merits of her application.
3. On July 31, 2007, the Tribunal ordered the Commissioner to prepare a revised motion record containing submissions and affidavit evidence. The Tribunal ordered that the revised motion record be served. The Respondents were given 20 days to respond failing which the motion would proceed without further notice.
4. On September 14, 2007, the Commissioner filed her revised motion record. One day before the expiry of the 20-day period, newly retained counsel for PCMG and Mr. Roy wrote to the Tribunal seeking an extension of the time to serve a responding motion record.
5. The request was granted and after some discussion, the Commissioner agreed to abandon her Motion for an Order in Default of Response. Counsel for the Respondents served and filed a response and attended case management conferences on behalf of the Respondents in the fall of 2007.
6. However, on February 14, 2008, the solicitors for the Respondents moved to be removed as solicitors of record. It is not disputed that the solicitors had advised Mr. Roy in December 2007 of the fact that they would withdraw unless their fees were paid.
7. Since the Respondents' witness statements were due on February 25, 2008, Respondents' counsel was ordered to stay on the record until the statements were prepared. Mr. Roy was informed that he could not represent the corporate respondent without leave from the Tribunal and that he could retain counsel to act on behalf of PCMG and himself.
8. Seven days before the commencement of the hearing, Mr. Michael Osborne of Affleck, Greene, McMurtry wrote to the Tribunal indicating that he had been asked to represent PCMG and Mr. Roy at the hearing. He asked that it be rescheduled because he was not available in April.
9. The Tribunal denied the request the same day and noted, in particular, that Mr. Roy had known for many months that the hearing had been scheduled for the month of April 2008.
10. The Respondents did not retain counsel who could attend the hearing so Mr. Roy was self-represented and PCMG was unrepresented.

11. Minto Roy's final written argument, which was filed on May 1, 2008, showed that, although Mr. Osborne did not appear at the hearing, he reviewed the transcripts and assisted Mr. Roy with the preparation of his initial final argument. Mr. Osborne then acted for both Respondents when he prepared Minto Roy's Supplementary Argument dated May 9, 2008.