

COMPETITION TRIBUNAL

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

AND IN THE MATTER of an inquiry under 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*;

BETWEEN:

THE COMMISSIONER OF COMPETITION

Applicant

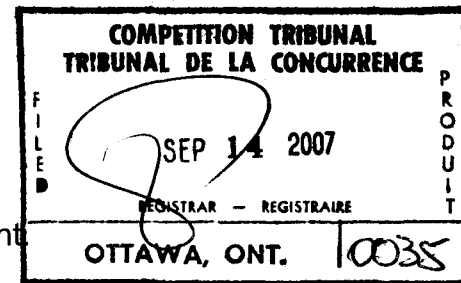
and

PREMIER CAREER MANAGEMENT GROUP CORP.

and

MINTO ROY

Respondents.



AFFIDAVIT OF WILLIAM WARREN

I, WILLIAM WARREN, 715 Robinson Street, Coquitlam, British Columbia, SOLEMNLY AFFIRM AS FOLLOWS:

- 1) My date of birth is October 4, 1957.
- 2) I hold a Masters degree in Economics from McMaster University. I previously worked as a Director of Marketing at Stentor Resource Centre Inc.

- 3) I presently work as an independent management consultant, specifically in the areas of leadership and team building for medium and large-sized companies in British Columbia.
- 4) I worked in progressively senior positions in the telecommunications industry with BC Tel and Stentor Resource Centre Inc. for over 20 years.
- 5) Although I was working as an independent consultant, I was still looking of an opportunity to get employment with a company at a senior level and would frequently review employment websites, newspapers and internet job boards.
- 6) I saw an advertisement from Premier Career Management Group ("PCMG") on the Working.Canada.com job board on December 6, 2004. (Attached as Exhibit "A" to my affidavit). PCMG indicated that they were accepting resumes in a number of professional fields at senior levels. I was under the impression that the advertisement was for available job openings.
- 7) On December 7, 2004, in response to the PCMG advertisement, I submitted a resume and cover letter electronically to careers@pcmgcanada.com. I was contacted by a PCMG employee, Leasa Walker, who wanted to arrange a meeting with Minto Roy, PCMG's Executive Director. I asked Leasa Walker whether the meeting was to discuss a specific position to be filled. She told me that the purpose of the meeting would be to discuss the correspondence that I had submitted in response to the advertisement.
- 8) On December 15, 2004, I met with Minto Roy. The meeting was not a job interview as I had expected. During the meeting:
 - a) Minto Roy asked me questions about my background, resume, career expectations, goals, and my recent career search activities and results;
 - b) Minto Roy explained that PCMG was a career management company and gestured toward the window with its view of downtown Vancouver and indicated that he was well connected in the business community in British Columbia and that PCMG had many links to top decision makers and leading employers;
 - c) Minto Roy indicated that PCMG could provide senior level contacts with many companies that he believed would lead me to secure a job within 90 days;

- d) I advised Minto Roy that, based on previous employment, my salary expectation was \$100,000 (i.e., a senior level position). Minto Roy stated that based on my background and my skills that he had “no problem” finding me a position at that level;
 - e) Minto Roy indicated that he had contacts and that he was going to provide me with those contracts. I understood that there was a PCMG program that included resume building, cover letter writing, and other similar assignment, but I was never told that I had to go through the entire program before I got the contacts; and,
 - f) After reviewing my resume, Minto Roy specifically indicated that he had a “strong relationship” with Bell Canada, a company that I was interested in, given my background in the telecommunications industry. He also mentioned that he had a contact at London Drugs. For both companies, he stated that they were “clients” of PCMG and that he had contacts for both and that he would provide them to me.
- 9) Minto Roy left me with the impression that PCMG was selective in bringing clients onboard. He stated that PCMG doesn't just take anybody and they only take high-calibre candidates that they can work with. He made me feel like someone special.
- 10) Minto Roy expressed confidence that PCMG could help me with my career search. He advised me that PCMG services would cost \$5960 plus GST. When I indicated that I wanted to consult my spouse, Minto Roy stated that I should act quickly in order to take advantage of job prospects available in the New Year.
- 11) Minto Roy was well-dressed and the meeting took place in his large corner office located in a nice building in downtown Vancouver. Overall, I felt that Minto Roy made a very good and convincing presentation.
- 12) I met with Minto Roy again on December 20, 2004. During this meeting, we discussed financing options. Minto Roy explained to me that he had an arrangement with a 3rd party financing company (i.e., Travelers). Minto Roy repeated the claim that PCMG had senior level contacts in the Vancouver business community and that the service fees would be recovered quickly as I would find a career position within the next 90 days. Minto Roy generally repeated the same presentation as from my first meeting with him. He provided me with the draft contract and the finance forms so that I could review the

documents with my wife, because she was going to be a signatory to the financing agreement.

- 13) On December 22, 2004, I entered into a contractual agreement with PCMG to engage their career services. In total, I paid \$6377.20, which was fully financed with the finance company linked with PCMG. I attach a copy of this contract and the financing forms as Exhibit "B" to my affidavit. I placed trust on Minto Roy's verbal promises that I would be provided with contacts and it was those contacts that I was really interested in.
- 14) The first meeting with my Career Advisor, Alanna Fero, was on December 24, 2004. I had subsequent meetings with her in January 2005. The majority of the time during these meetings was spent on resume building, cover letter writing, networking and other homework assignments. On several occasions I asked Alanna Fero about the contacts that I had been promised and she never provided me with any. She always provided me with vague responses and said that she would talk to Minto Roy about it.
- 15) At one point, I found an employment listing on the internet for a position at Bell Canada in Vancouver. When I asked Alanna for a contact at Bell Canada, she told me that she personally did not have a contact at Bell Canada. So I asked her to ask Minto Roy for his contact at Bell Canada. She subsequently advised me that she had spoken to Minto Roy and that he would personally hand delivery my resume package to his contact. So I provided my resume package to Alanna so that Minto Roy could hand delivery it. After that, I received an email from Minto Roy, which stated that I should contact Caroline Lafond at Bell Canada and that she was a senior decision maker. Ms. Lafond told me that she could not help me and then directed me to contact another Bell Canada employee in Calgary. The Calgary employee advised me that the position was filled and that Ms. Lafond was not a senior decision maker and that she was only a low-level employee in the Human Resources department. All that to say, the one contact that I received from Minto Roy was not a senior level contact or senior level decision maker as was promised to me.
- 16) I also attended a "Marketing Campaign Seminar" on or about January 14, 2005 with a group of other clients from PCMG. At this seminar, Minto Roy emphasized the importance of establishing contacts with senior level decision makers. Up to that time, my involvement with PCMG focused on resume building and developing personal marketing and networking techniques. When I enquired with Minto Roy and Alanna Fero as to when I would have contacts, I was told


that it was too early in the process and that I needed to concentrate on my personal networking and on my networking skills.

- 17) At the end of March 2005, seven clients of PCMG who had attended the January 14 seminar met to discuss their job search progress and dissatisfaction with PCMG services. On or about March 27, along with the other dissatisfied clients, I sent a letter to Minto Roy requesting a meeting to register my complaints and to obtain a refund.
- 18) On or about April 7, 2005, along with the other dissatisfied PCMG clients, I met with Minto Roy and our complaints were presented. Minto Roy refused to discuss or negotiate with us as a group. On May 3, 2005, I received a letter from PCMG's lawyer stating that PCMG would not provide me with a refund. I did not obtain contacts from PCMG and Minto Roy.
- 19) I filed a claim against PCMG on May 6, 2005. I subsequently amended the claim on December 6, 2005 to specifically add Minto Roy to the claim. The matter was heard on December 13-14, 2006, January 23, 2007 and February 6, 2007. On March 8, 2007, I received the decision of the Justice Pendleton in my favour (attached as Exhibit "C" to my affidavit). Based on this decision, I received two payments from PCMG. The first payment was received on March 21, 2007 for \$3000. The second payment was received on April 18, 2007 for \$2902.32.




William W. Warren

Solemnly affirmed before me in
Vancouver, British Columbia on
September 11, 2007.


Commissioner of oaths

This is Exhibit "A" of the affidavit
of William Warren
solemnly affirmed before me
in Vancouver, B.C. on
September 11, 2007.



Lori Watts

working



Where do you want to work?

The VANCOUVER SUN

The Province



Monday, December 6, 2004

canada.com

Home

Job Tools

Account Profile

Resumes

Cover Letters

Job Alerts

Employers

Back to Job Search

Post a Job
Media Kit
Employer FAQ

Apply

Save

Email to a Friend

Employer Login

Find a Job

Advanced Search
By Job Title
Now Hiring
Digital Display
Career Clips

My Working

Account Profile
Job Cart
Jobs Applied To
Resumes
Cover Letters
Job Alert
Saved Searches

Sectors

Administrative Jobs
Engineering Jobs
Executive Jobs
Finance Jobs
Healthcare Jobs
Retail Jobs
Sales Jobs
Technology Jobs
Trades Jobs

Resources

Salary Survey
Career Advisor
Career Resources
Education Resources
Career Fairs
BC Associations

Job Information

Job Title: Career Opportunities

Employer: PCMG [View All Jobs From Employer](#)

Source: CanWest - Vancouver Uner Ads

Location: Vancouver, BC Canada

Date Posted: 12-05-2004

Job Description

Description: PCMG
Premier Career Management Group
TD Tower - Suite 2920 - 700 West Georgia

Your link to the corporate world.

PCMG is now accepting resumes from quality candidates in a variety of areas:

- Executives, Managers, Sales & Marketing Professionals
- Engineers, Project Managers & Technicians
- Education, Communications & Social Service Professionals

For immediate consideration, please forward your resume to:
careers@pcmgcanada.com

* Ask us about special recruiting support programs for new university and college graduates.

00621385

DIGITAL display

[View this ad as it appears in the paper](#)

[Apply](#)

Back to Job Search



Hinto Roy, Director
604-609-6661

CDI COLLEGE

Secure your future with a new career — click here.

This is Exhibit "B" of the affidavit
of William Warren
solemnly affirmed before me
in Vancouver, B.C. on
September 11, 2007.



Lori Watts

PCMG

14

PREMIER CAREER MANAGEMENT GROUP

700 West Georgia St., Suite 2920, Vancouver, B.C. V7Y 1C6
Tel: 604-609-6661 Fax: 604-609-2638

PROFESSIONAL CAREER DEVELOPMENT SERVICES

Premier Career Management Group (PCMG) agrees to provide the following services:

Phase I – Preparation

1. Conduct Functional Self-Analysis and Objective Setting;
2. Establish realistic short-term goals and identify suitable positions;
3. Explore career options and define target markets and industries;
4. Develop resume and Proactive Profile;
5. Instruct and activate client in utilizing PCMG online services;
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;
8. Conduct advance preparation to sharpen job interviewing and negotiating techniques.

Phase II – Managing the Market Campaign

1. Provide one-on-one consultations with your career advisor to evaluate and monitor your overall marketing plan, strategy and progress;
2. Assist in reviewing and assessing job offers;
3. Advise on effectively negotiating salary and benefits.

Phase III – Plan for the Future

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

Client Satisfaction Guarantee

We at Premier Career Management Group are committed to providing quality services to our clients and mentoring them through a process reflecting the principles of our founder that will help them understand the past and grow into the future. Accordingly, we have established measures to ensure value and satisfaction to our clients.

Three-Year Commitment. In order to achieve the maximum benefit from our service, we ask our clients to report all information with integrity, act on recommendations and requirements made by the PCMG consulting staff, follow the PCMG process, and initiate contact with their career advisor at least once every two weeks until they have made an acceptable career decision. Client understands that PCMG will make its services available, without restriction as to time, until client has accepted a position. The client may also call upon PCMG for further assistance in the development of his/her career for a period of three (3) years from the date of this agreement. From time to time, you may be assigned to a new advisor. Reasons may include: a more improved client-advisor match, advisor relocations, client relocation or simply an advisor leaving the employ of Premier Career Management Group. Having other advisors can be a benefit, offering you additional professional career counseling perspectives. In each instance, however, Premier Career Management Group will take every reasonable action to assure the continuity of your search throughout this transition period.

_____ Client Initials

Client Satisfaction Reports. In its commitment to provide a world-class career management service and achieve the results clients expect, Premier Career Management Group needs your help. Periodically, you will

Client Satisfaction Reports. In its commitment to provide a world-class career management service and achieve the results clients expect, Premier Career Management Group needs your help. Periodically, you will be asked to complete Client Satisfaction Reports and provide important feedback. It is important that you be candid with your comments. Your candor enables us to monitor your progress and ensure we are meeting or, more preferably, exceeding your expectations. We further want you to feel comfortable to discuss any concerns directly with your advisor who is in the best position to immediately address a particular situation.

_____ **Client Initial**

Client Acknowledgments. 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 consulting, 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, (d) your employer or a future employer will pay or reimburse you for the fees you have paid to PCMG. Client has received a copy of the "List of Services" and PCMG online services and understands that all directions will be implemented in the search. Client also understands that the major emphasis will be on developing his or her network since the majority of positions are found through this method. The fee for services is broken down into three (3) parts as follows: 75% of fee attributed to Phase I, as outlined; 15% of fee attributed to Phase II, as outlined; 10% of fee attributed to Phase III, as outlined. Fee is not subject to adjustment or proration based on the number of meetings or hours spent with the client. _____ **Client Initials**

This instrument constitutes the sole and only Agreement of the parties hereto with respect to the matter covered by this Agreement, and correctly sets forth the rights, duties, and obligations of each to the other as of this date. I hereby acknowledge that I have read and received a copy of this Agreement.

Total Fee: 5960 + .657 = 6377.²⁰ Retainer: _____

Balance Due: _____ Payable as Follows: _____

Client Signature [Signature] Date Dec. 22nd 2004

Print Full Name Darryl - Warrington Tel.# 604-931-0761

Address 502 BALLANTYNE COURT, 1 POOR THURSDAY, B.C V3A-1A8

Start Date/Time T.S.A. Career Advisor T.B.A.

By _____ for
Premier Career Management Group



Consumer Promissory Note

Date of Contract:	Contract Number:
Borrower (1): Wally Warren 3860 156 Street Surrey, B.C. V3S 0G9 Phone Number: 604.531.7271	Borrower (2): Joanne McGaughey 3860 155 Street Surrey, B.C. V3S 0G9 Phone Number: 604.531.7271
Seller: Premier Career Management Group 700 West Georgia - Suite 2920 Vancouver, BC V7Y 1C6 Phone Number: (604) 609-6661	Lender: Travelers Acceptance Corporation Suite 500, 4180 Lougheed Hwy. Burnaby, B.C. V5C 6A7 Ph: 604-293-0202 Fax 604-473-3816

Description of Goods:

Financial Terms & Payment Schedule

1. Amount Financed	\$6,377.20
2. Cost of Borrowing	\$1,020.08
3. Total of Payments (1+2)	\$7,397.28
4. Monthly Loan Payment	\$205.48
5. Term of Loan (in months)	\$36.00
6. Date of First Payment (1st or 15th of month only- use mm/dd/yyyy format)	February 01, 2005
7. Annual Percentage Rate (%)	9.9%

Automatic Payments

The Borrower(s) authorizes Travelers and its assignees to debit the bank account or credit card account for all amounts that are owing under this Note as they come due.

Debit my chequing account credit card

Name on Credit Card _____

Credit Card # _____

Expiry date _____

If chequing account is chosen, a sample cheque marked "VOID" must be attached.

Direction of pay

The Borrower(s) irrevocably authorizes and directs the Lender to pay Amount Financed to the Seller.

Fees for NSF and Late Payments

The Borrower(s) will pay a fee of \$25 for returned cheques and the greater of 5% of the any late payment and \$10 for each late payment, but in no event will the fees be charged or payable that result in the effective annual rate of interest charged exceed any limit set by law.

Acknowledgement and Execution

The Borrower(s) acknowledges receipt of a completed copy of this Note and acknowledges reading this Note in its entirety (front and back).

Executed at: Premier Career Vancouver office

Date: Dec. 24th / 2004

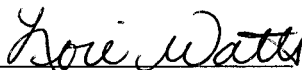
Borrower: [Signature]
borrower(1)

Borrower: [Signature]
borrower(2)

Terms and Conditions

1. For Value received, the Borrower(s) promises to pay, as set out below, to the order of Travelers, at the above address or such other addresses as the Travelers may direct, the Amount Financed and interest calculated and compounded monthly in arrears at the Annual Percentage Rate, after as well as before maturity, default and demand, with the interest on overdue interest at the Annual Percentage Rate.
2. The Amount Financed and interest shall be due and payable in monthly installments as set out in the Financial Terms & Payments Schedule starting on the Date of First Payment and continuing for the Term of Loan. Payments are blended payments and will be applied first to unpaid Fees for NSF and Late Payments, then accrued interest and then the Amount Financed.
3. It is a Default under this Note if either Borrower is insolvent, commits an act of bankruptcy, fails to make a payment when under this Note or breaches any other obligation to the Lender. In the event of a Default, upon demand by the Lender, all amounts owing under this Note will be due and payable.
4. The obligations of the Borrower(s), if more than one, are joint and several.
5. The Borrower(s) consent to the Lender obtaining from or exchanging information about the Borrower(s) from or with a credit bureau, employer or any other person and authorizes such persons to release such information to the Lender.
6. The Lender may assign this Note without notice to the Borrower(s) and such assignee will have all the rights of the Lender under this Note.
7. The Borrower(s) may repay this Note in full or in part without bonus or penalty on any scheduled payment date. The Lender will advise the Borrower(s) of the amount outstanding from time to time on request.
8. The Borrower(s) hereby authorize Travelers and any of its representatives or partners to collect, use and disclose my personal information for the purposes of investigating and providing financial services. I have been informed by Travelers or its partners or representatives, that my personal information is collected, used and disclosed for the following purposes: (1) to collect credit and related financial information from me, from credit agencies, and from any parties listed herein, (2) to use the information collected to determine my financial situation, to provide financial services I have requested and to offer additional products and services of Travelers that may be of benefit to me, (3) to share the information with assignees, bankers or funding partners of Travelers, (4) to share the information collected and any information on my commercial dealings with Travelers with credit agencies or other financial institutions. Further, I specifically acknowledge that Travelers may assign this agreement and any related agreements in whole or in part from time to time and I agree that any personal information collected in relation to this agreement may be made available to any such proposed assignee.
9. Nothing herein will require the lender to advance money.
10. This Note shall be governed and construed in accordance by the laws of the Province of British Columbia.

This is Exhibit "C" of the affidavit
of William Warren
solemnly affirmed before me
in Vancouver, B.C. on
September 11, 2007.

A handwritten signature in cursive script that reads "Lori Watts". The signature is written in black ink and is positioned above a horizontal line.

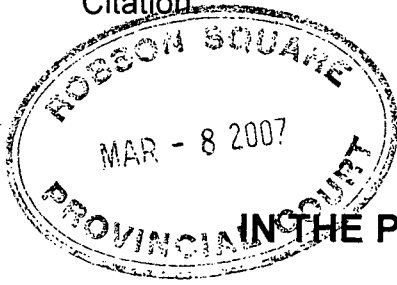
Lori Watts

Citation:

Date:

File No:
Registry:

05-07384
Vancouver



IN THE PROVINCIAL COURT OF BRITISH COLUMBIA

BETWEEN:

WILLIAM W. WARREN

CLAIMANT

AND:

**PREMIER CAREER MANAGEMENT GROUP CORP.
and MINTO ROY**

DEFENDANTS

**REASONS FOR JUDGMENT
OF THE
HONOURABLE JUDGE D. R. PENDLETON**

Appearing in person:

W. Warren

Counsel for the Defendants:

R. Beatch

Place of Hearing:

Vancouver, B.C.

Dates of Hearing:

December 13, 14, 2006; January 23 and February 6, 2007

Date of Judgment:

March 8, 2007

Introduction

[1] William Warren's claim against Premier Career Management Group Corp. (hereinafter referred to as "PCMG") and Minto Roy is for the return of money he paid PCMG pursuant to a contract signed by the parties on December 22, 2004. Warren paid PCMG \$6,377.20 for what the contract describes are professional career development services. Warren claims he hired PCMG because Roy, who is the sole director of PCMG, stated he would provide contacts with senior level employers in the business community. Warren says he was never provided the business contacts, that the statements amount to misrepresentations and that his money should be refunded.

Positions of the Parties

[2] In 2004, the claimant was a self employed consultant looking for a new career. His own efforts to find employment had been unsuccessful. In December 2004, he saw PCMG's online advertisement. He sent his resume and a meeting was set up with Roy. Warren, who has had a variety of senior management positions in industry, testified he needed senior level contacts with potential employers in the business community. He says this is what Roy agreed to provide and it was the reason he hired PCMG. The claimant testified the programs and services the defendants provided in January, February and March 2005, consisting of advice regarding drafting resumes, writing letters and developing networking techniques were of no use. In March 2005, he attended a marketing seminar where he met other PCMG clients. The clients stayed in touch after the seminar and it was apparent they shared the view that Roy had made similar statements to each of them to provide senior level contacts in industries that

were hiring individuals with their backgrounds and skills. The group sent a letter dated March 27, 2005, to Roy requesting a meeting to discuss their dissatisfaction with the services of PCMG and asking for a full refund of the fees paid to PCMG. The meeting occurred on April 7. The defendants refused to refund any fees and maintained the career development services offered to Warren and the other clients were satisfactory.

[3] Subsequent to this meeting, Warren and six other clients of PCMG sued the defendants in Provincial Court seeking refunds. The issues in each case are similar and have as their central focus whether the defendants misrepresented their services. This Court adjourned a number of these cases which are set for trial pending judgment on Warren's claim. The parties agreed that having the opportunity to consider their positions in light of the Court's decision on Warren made sense.

[4] A significant feature of Warren's claim which will be discussed later is what, if anything, Roy said that may have persuaded Warren to hire the defendants and whether the evidence of what Roy may have said to two of the other claimants, Turenne and De Vaal is admissible similar fact evidence.

[5] The defendant's position is that they are required to provide the career development services specified in the contract. They say they have provided those services. Roy denies making any promises or representations to Warren to provide senior level contacts with employers. The defendants argued they have not breached their contract with the claimant and that the contract provisions make it clear there were no verbal representations outside of the terms of the contract. Roy testified he did not make any promises or representations to Turenne or De Vaal. The defendant's position

is that the testimony of Turenne and De Vaal is not similar fact evidence or, if it is, it shouldn't be admitted because of the danger of collusion.

Discussion of the Evidence

[6] Warren's educational background and business and work experiences are set out in the resume (see Exhibit 2) he sent to PCMG after seeing its online advertisement. Warren has held senior level management positions and has a Masters degree in Economics. He testified he first met Roy on December 15, 2004. He had been contacted by Lisa Walker, an employee of PCMG who called on behalf of Roy to arrange a meeting. Warren testified he asked Ms. Walker whether they would be discussing a specific job and her response was that the meeting was to discuss his resume. Warren expected the meeting would be a job interview but instead he and Roy discussed his background, his resume and his search goals. He said Roy explained that PCMG was a career management company and they discussed the services to be provided which included help with resumes, covering letters and networking techniques.

[7] Warren said that Roy said PCMG was well connected in the Vancouver business community and could provide Warren contacts with senior level employers in the B.C. business community. He said Roy emphasized these points with him and mentioned that PCMG worked with companies such as Bell Canada and London Drugs. Roy said that he believed Warren could secure a senior level position within 90 days. They discussed the \$5,960 fee and Warren told Roy he wanted to discuss it with his spouse. Roy said that would be fine but he would need to act quickly because of the job prospects that were available in the New Year. Warren and Roy discussed the option of

financing the cost of PCMG's services. Warren said Roy told him again that the defendants had senior level contacts in British Columbia and that he could expect to recover PCMG's fees within 90 days. Warren and Roy arranged a second meeting which took place on December 22. Warren had discussed the matter with his wife and they had agreed to retain the defendants' services and had signed the financing documents.

[8] Warren and Roy signed PCMG's two page service agreement (hereinafter referred to as "the contract") on December 22, 2004. The contract has a clause that reads as follows:

Client Acknowledgments. 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 consulting, 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, (d) your employer or a future employer will pay or reimburse you for the fees you have paid to PCMG. Client has received a copy of the "List of Services" and PCMG online services and understands that all directions will be implemented in the search. Client also understands that the major emphasis will be on developing his or her network since the majority of positions are found through this method. The fee for services is broken down into three (3) parts as follows: 75% of fee attributed to Phase I, as outlined; 15% of fee attributed to Phase II, as outlined; 10% of fee attributed to Phase III, as outlined. Fee is not subject to adjustment or proration based on the number of meetings or hours spent with the client. _____ **Client Initials**

This instrument constitutes the sole and only Agreement of the parties hereto with respect to the matter covered by this Agreement, and correctly sets forth the

rights, duties, and obligations of each to the other as of this date. I hereby acknowledge that I have read and received a copy of this Agreement.

[9] Warren agreed he read the contract but did not think the client acknowledgments were significant. Warren said he had met with Roy twice, took Roy for his word that the defendants were well established, had many contacts, and could provide those contacts to Warren. Warren said "I paid for the inside contacts to these companies". Warren said he hired the defendants based on the verbal assurances he would be provided these contacts.

[10] Warren testified that throughout January and February he had ten meetings with his career supervisor, Alana Fero. They reviewed his progress as he worked through the various phases of the program. I gather Ms. Fero provided some advice and she reviewed what Warren described as his homework. Warren testified that on January 14, 2005, he attended a marketing seminar with eight other PCMG clients. The participants were encouraged by the defendants to stay in touch and to provide each other with any contacts or potential employment leads.

[11] Warren saw a job posting for Bell Canada in late January 2005. He asked Ms. Fero and Roy to help arrange a meeting or an interview with Bell Canada. He expressed frustration that this meeting never occurred and that the defendants did not assist him. He said he was confused and realized, there was a "huge disconnect" between what PCMG and Roy had agreed to provide him and what was happening. He said at the end of February 2005 he was questioning the value of the defendants' services. He was frustrated with the lack of success with making contact with Bell Canada and the lack of any contacts given the representations of Roy.

[12] Warren explained that the clients who attended the marketing seminar had contacted each other and were expressing similar frustrations. The group met at the end of March 2005 and sent a letter dated March 27, 2005 (see Exhibit 5), to Roy asking for a meeting and for a refund. That meeting took place on April 7, and the defendants refused to refund Warren's money. Warren met with Roy on April 20, and they discussed his concerns regarding the inability of the defendants to provide contacts with potential employers. Roy suggested Warren come back to the program. Warren had no confidence in the program and did not attend any further sessions.

[13] Warren was asked about various documents (see Exhibit 6) he completed while enrolled in the program. Warren acknowledges in those reports that no verbal promises were made to him. Warren agreed that Roy never promised or guaranteed any particular job or position or salary. What Warren kept saying was that Roy represented he could provide senior level contacts in the B.C. business community who were looking to hire people with his background. He said his responses reflect his initial impressions of the program. He added, "I hadn't yet concluded whether I was going to get what I paid for." The claimant agreed he received some limited services from the defendant but he said those services were available at no cost from Human Resources Development Corporation, a Federal Government program.

[14] In cross-examination, Warren testified he understood the defendants wouldn't be guaranteeing him a job with a particular company. He agreed he had an opportunity to ask questions of Roy during their two meetings. It was suggested to Warren that Roy did not tell him that the defendants would provide senior level contacts but rather that PCMG would assist the claimant in developing a network of his own contacts. Warren

denied this and again said that Roy said he could provide contacts with senior level decision makers in the business community. It was suggested to Warren that no time frames were mentioned by the defendants. Warren denied this and said Roy expressed confidence that he would find a job within 90 days. Warren was asked about the client acknowledgement clause of the contract and the client satisfaction forms. He agreed the defendant did not use the words promise or guarantee. Warren said that Roy represented that the defendants could and would provide the senior level contacts. He said he took Roy at his word. His evidence was "I signed the contract because I needed to get from Roy what he said he could provide".

[15] Warren was an articulate, intelligent and well prepared witness. He had a good recollection of his discussions with Roy and with the details of his relationship with the defendants. Warren was a credible and reliable witness who was not shaken on cross-examination.

[16] Warren concluded his evidence and indicated that he wished to call two witnesses, Turenne and De Vaal. The defence objected as the witnesses have their own claims against the defendants. The Court thought Warren wished to call the two witnesses to give evidence regarding what Roy said to them that may have induced them to hire the defendants. In fact, Warren wanted to call these witnesses to give evidence regarding comments that Roy made to the clients at the January 14, 2005, marketing seminar. I concluded that whatever evidence Turenne and De Vaal might have given regarding events surrounding the January 14, 2005, meeting would not assist the Court in determining whether any pre-contractual representations were made

and whether, if this was similar fact evidence, it might be admissible. The Court declined to allow Warren to call these witnesses and he closed his case.

[17] Roy testified on behalf of the defendants. Roy is a 40 year old graduate of York University and has spent 11 years in the career management field, coaching, advising and counselling thousands of people. He described PCMG's services, its business plan and how the clients are helped. He said PCMG's statistics show 96% of its clients accept new jobs. PCMG gets its clients through advertising in the print media, from the audience of a radio show Roy participates in, from talking with people and referrals as well as posting advertisements in various publications. With regard to Warren's claim, he acknowledged having approved the contents of an advertisement (see Exhibit 1), that PCMG placed on WorkingCanada.com. He recalled meeting Warren on December 15 and discussing Warren's career frustrations, his inconsistent income and his unsuccessful job search. He said Warren was interested and would get back to him after he had spoken to his wife. He denied they discussed in any detail what PCMG could do in terms of networking and providing contacts. He was clear that he did not represent to the claimant he or PCMG could provide senior level contacts in the B.C. business community. He did agree that at their second meeting, he said PCMG would teach Warren how to network and develop his own contacts. He said Warren asked how long it would take for him to get a job and he said his response always is "on average one to a hundred days but we can't guarantee this".

[18] Roy said Warren did not ask any questions about the contract. Roy did not have any significant dealings with Warren after that because Alana Fero was Warren's career advisor. Roy said he attempted to help Warren approach Bell Canada. In answer to a

question from the Court as to whether he had made any representations to other clients of PCMG and specifically Turenne and De Vaal to provide senior level contacts, he said no.

[19] In cross-examination, Roy testified he believed that Warren and the other clients colluded in bringing the claims against him and PCMG because the group discussed the matter, exchanged information and emails, and sent the group letter. He denied the suggestion he tells clients that PCMG is well connected in the local business community. He did acknowledge PCMG tries to assist its clients and he said "We network, we know people in companies, we try to facilitate introductions". He was asked to explain what the defendants advertisement "Your link to the corporate world" means. Roy explained the defendants train people to locate employment but he denied any suggestion the advertisement says the defendants have links to B.C. companies. Roy said the advertisement was not misleading. He said PCMG is not a recruiter or job placement agency. He said PCMG places advertisements on WorkingCanada.com because the company is in the career industry. He explained PCMG requests resumes to see if the company can help individuals given their skill set. In chief, Roy testified that the defendants' statistics show that 96% of their clients find new jobs. In cross-examination he denied the suggestion he told the claimant that 96% of the defendants' clients obtained new employment in one to one hundred days. He did say, "We have a high success rate because we are good". When asked again in cross-examination he admitted he has and does tell clients that the defendant has a 96% success rate in placing clients in new jobs within one to one hundred days.

[20] The Court listened carefully to the evidence of Roy. Part of his duties at PCMG are to market the defendants' services. PCMG advertises its services online and in the print media. Roy also hosts a radio program dealing with career development. In the course of his marketing and promoting the defendants services and obtaining clients like Warren, I have no doubt, after listening to Roy, that his presentation to potential clients would be very polished and very persuasive. Roy used phrases such as, "career coaching", "networking", "understanding skill sets", "career transition services" and "target companies" in describing some of the defendants' services. His use of what might be described as career industry jargon left the Court wondering from time to time, what he was talking about. Roy had a tendency to go on at some length in answering straight forward questions. He contradicted himself regarding the company's success rate in placing clients in a new job within a specific time frame.

Similar Fact Evidence

[21] In discussions with the parties it was clear that the issue of whether other claimants would be permitted to give evidence needed to be dealt with. The Court permitted Warren to re-open his case and call Turenne and De Vaal subject to cross-examination and Roy testifying, and the parties making submission on whether the evidence was admissible similar fact evidence.

[22] The evidence of De Vaal and Turenne briefly summarized as is as follows. De Vaal testified that in April 2004, he was an unemployed professional engineer. In December 2004 he saw PCMG's advertisement in the Vancouver Sun newspaper. That advertisement (see Exhibit 10), requested a resume be sent to PCMG which he did. A

few days later Lisa Walker, a representative of the defendant, called and set up a meeting with Roy. That meeting occurred on December 15. De Vaal said he and Roy went over his resume and Roy said he was imminently qualified and there would be no problem finding him another position. De Vaal went on to say that Roy said the defendants had many contacts in the business community in Vancouver and "he knew guys at the top". Roy mentioned that within 90 days De Vaal should have no problem finding a position at a salary that was close to his previous six figure income. De Vaal acknowledged Roy did not make any guarantees but he was clear that Roy represented 90% of the defendants' clients found positions within 90 days. Roy told De Vaal he wanted to meet again and suggested De Vaal bring his wife. De Vaal spoke with his wife who was sceptical but the two agreed to meet Roy and she came along to a second meeting on December 20.

[23] De Vaal described the hour and a half meeting. Roy again repeated the defendants had contacts with senior companies and mentioned Finning and Terasen Gas. At one point he and his wife left the room to discuss the \$6,000 fee. De Vaal told Roy that he and his wife wanted a few weeks to consider the matter. Roy was adamant his clients are looking for people right now, that there was a demand for people with De Vaal's experience and that the parties needed to go ahead with the defendant's program. De Vaal said PCMG's newspaper advertisement suggested immediate positions. De Vaal testified Roy said he had connections with Finning and Terasen, that these people were hiring all the time and that if he made a recommendation to one of these companies to hire a PCMG client, that the company paid attention to his recommendation.

[24] De Vaal said he hired the defendants because Roy claimed he had contacts with senior level people in the corporate community. His words were "He offered a way into see people I needed to see". De Vaal explained he had been through two previous job search programs involving resume writing and didn't need this type of service again. De Vaal acknowledged Roy did not guarantee any specific job with any specific company but he was clear Roy said he had contacts with senior people in the business community and 90% of defendants' clients got jobs within 90 days.

[25] De Vaal said he came to the conclusion in March that the defendants were not helping him. He said that in the course of exchanging emails with other PCMG clients who attended the January marketing seminar it was apparent that they had received the same representations and were dissatisfied with the defendants' failure to make good on those representations. He acknowledged being part of the group which sent the letter to the defendants. He denied the suggestion that group members helped each other file their notices of claim.

[26] Turenne was the Operations Manager for CBC Radio in British Columbia prior to losing his job. He was sending out resumes on the internet and was contacted by PCMG. He did not know why the defendant contacted him. The representative who called said the company vice president wanted to meet him to determine if he was a suitable client for PCMG. Turenne testified he asked the caller why and she said he should discuss the matter with Roy. Turenne met with Roy in early October 2004. Turenne said Roy talked about the hidden job market and said there were thousands of jobs out there but that most were unknown. Turenne testified Roy said he could pick up the phone and contact any number of people in the industry. The key was to get in front

of these people and that Turenne shouldn't answer job postings or deal with human resources departments. Turenne said he had no idea whether he was being assessed for a job that the defendant had. He said Roy never told him whether PCMG was a recruiting or job placement company.

[27] Turenne said that at their first meeting the two discussed his job at CBC and his salary range. Roy told Turenne it shouldn't be difficult getting him a job in a similar salary range within eight to 10 weeks. Turenne told Roy he wished to speak to his wife before hiring the defendants. Turenne discussed it with his wife who was adamantly against spending the money because they had mortgage payments. Turenne called Roy the next day to say he would not be hiring PCMG. Turenne testified that later that fall he was discussing with his sister his unsuccessful efforts to find a job. His sister offered to provide him the money to hire PCMG. In December, Turenne met with Roy. Turenne was concerned about the job market because at their first meeting in October, Roy had explained to him that he should hire the defendant then because the market would be winding down at year's end. When he met with Roy in December, he raised that issue and Roy said that the market was surprisingly buoyant and it shouldn't be a problem getting Turenne a new job in eight to 10 weeks. He said that Roy again emphasized the contacts the defendants' had with senior people. Turenne signed a contract with PCMG on December 7, 2004. When asked why, he said he hired PCMG because of Roy's representations regarding contacts in the industry and finding a job at an equivalent salary range within an eight to 10 week period.

[28] Turenne testified by February 2005, he was disgruntled because he wasn't getting any contacts or help from the defendants. He exchanged emails with his advisor

and in those emails requested a refund. He acknowledged signing the group letter sent to the defendants demanding a refund.

[29] Roy was recalled and testified he never told De Vaal or Turenne that PCMG would provide contacts to senior level employers or that PCMG could guarantee employment within a certain time or that the defendants could guarantee them a certain salary.

[30] The Court listened carefully to the evidence of De Vaal and Turenne. Both were very good witnesses who had good recollections of their meetings with Roy. I found them to be careful, consistent, reliable and credible witnesses. Both agreed that Roy did not guarantee them a job with any particular company, at a particular salary, but I accept that he told them they should have no trouble finding a new job within a matter of weeks and at a salary similar to what they had been earning and that this could be accomplished because the defendants had contacts with senior level employers who were looking for individuals with their backgrounds and skills. Roy denied making these representations but he was not credible.

[31] In MacDonald et al v. Canada Kelp Co. Ltd. et al, (1973) 5 W.W.R. 689 (B.C.C.A.) at 669, Bull, J.A., discussed similar fact evidence and its admissibility.

When there is a real and substantial nexus or connection between the act or allegation made, whether it be a crime or a fraud (but not, of course, limited to those), and facts relating to previous or subsequent transactions are sought to be given in evidence, then those facts have relevancy and are admissible not only to rebut a defence, such as lack of intent, accident, mens rea or the like, but to prove the fact of the act or allegation made.

[32] This test was approved of in Contini v. Canarim Investment Corp. Ltd. et al. (1974) 49 D.L.R. (3d) 262, and further discussed in Johnson v. Bugera, (1999) B.C.J. No. 621, Alexander J. Holdings Ltd. v. Delta Play Ltd. (1999) B.C.J. No. 1304 and Christie v. Suburban Motors Ltd. (2000) B.C.C.A. 46.

[33] The claimant submits the evidence of De Vaal and Turenne is evidence of similar representations and dealings they had with Roy which are relevant to the question of whether Roy made similar representations to him. The question is whether the evidence sought to be admitted possesses a sufficient nexus with or displays the requisite relevance or materiality. In Contini v. Canarim Investment Corp. (supra), Bull, J.A. at page 711 said:

There (in MacDonald) a plan or scheme was asserted that for the purpose and in the course of privately selling shares in a venture to members of the public the same alleged fraudulent misrepresentations sued upon were, during the same general period, allegedly made to other potential purchasers in the like position as the plaintiffs. On that basis the evidence of the other statements was held relevant and material to the issue of whether or not the like statements were in fact made to the plaintiffs.

[34] While there were differences in the versions related by De Vaal and Turenne, the substantive portion was strikingly similar to the evidence related by Warren before me. De Vaal and Turenne dealt with Roy during the same general time period as did Warren and their evidence is relevant and material to the issue of whether or not like statements were made to Warren.

[35] The defence argues there is the possibility of collusion and therefore the similar fact evidence should not be admitted. In J.R.I.G. v. Tyhurst, (2003) B.C.J. No. 846, the

B.C. Court of Appeal discusses the possibility of collusion precluding the admission of proffered similar fact evidence. At paragraph 20, the Court states:

However, the probative value of similar fact evidence will always be weakened by evidence of the risk of collusion. Similar fact evidence is cogent only if it is independent, because only then is an inference available from the unlikelihood of coincidence of similar facts.

[36] In *Tyhurst* the Court considers two Supreme Court of Canada cases, *R. v. Handy* and *R. v. Shearing*, both of which dealt with the admissibility of similar fact evidence in a criminal case. The Court in *Tyhurst* at paragraph 28 refers to the rule developed by the Supreme Court of Canada:

Where there is an air of reality to the allegation of collusion, the trial judge, in assessing the admissibility of the similar fact evidence, must be satisfied on a balance of probabilities that the evidence is not a product of concoction.

[37] It is clear from the Court of Appeal's comments in *Tyhurst* at paragraph 38 that it is necessary for trial judges in civil cases to deal with collusion.

[38] In the present case there is an air of reality to the allegation of collusion given that De Vaal and Turenne are among a number of claimants who have sued the defendants, after meeting as a group and as a group demanding a refund. In civil matters where there is the prospect of financial gain, in this case a refund of money, collusion is a concern. However, I am satisfied on a balance of probabilities that the evidence of De Vaal and Turenne is not the product of concoction. I accept their evidence that they independently came to their own conclusions and prior to the joint letter send to the defendants that they were dissatisfied with the services of PCMG and

Roy. Both felt representations made to them had not been kept. As De Vaal said, "We filed our claims and haven't discussed the claims since because nothing has changed the facts".

[39] I am of the view that the evidence of De Vaal and Turenne is properly admissible similar fact evidence. Their evidence is relevant and material to the issue of whether similar statements were in fact made to the claimant. I accept Warren's assertions that Roy represented that PCMG would provide him contacts with senior level employers and that he could expect to secure employment within 90 days. Roy said he didn't make these statements but I don't believe him.

Decision

[40] Counsel for the defendants submits that if the claimant is to succeed he must establish the defendants either breached the contract or committed the tort of negligent misrepresentation. The claimant, who represented himself, seeks a refund of his money based on the misrepresentations of Roy. The English House of Lords in, *Hedley Byrne & Co. v. Heller & Partners Ltd.*, [1964] A.C. 465, discusses negligent misrepresentation. More recently the issue was dealt with by the Supreme Court of Canada in, *Queen v. Cognos Inc.*, [1993] 1 S.C.J. No. 3.

[41] In *Cognos* the alleged negligent misrepresentations were made in a pre-contractual setting. The Court's discussion regarding whether the contract barred an action in tort is summarized in the headnote:

An action in tort for negligent misrepresentation may lie even though the relevant parties to the action are in a contractual relationship. The fact

that the alleged negligent misrepresentations are made in a pre-contractual setting, such as during negotiations or in the course of an employment hiring interview, and the fact that a contract is subsequently entered into by the parties do not, in themselves, bar an action in tort for damages caused by the misrepresentations. Depending on the circumstances, however, the subsequent contract may play a very important role in determining whether or not, and to what extent, a claim for negligent misrepresentation will succeed. Such a contract can have the effect of negating the action in tort and of confining the plaintiff to whatever remedies are available under the law of contract. Moreover, even if the tort claim is not barred altogether by the contract, the duty or liability of the defendant with respect to negligent misrepresentations may be limited or excluded by a term of the subsequent contract so as to diminish or extinguish the plaintiff's remedy in tort. Equally, however, there are cases where the subsequent contract will have no effect whatsoever on the plaintiff's claim for damages in tort.

The first and foremost question should be whether there is a specific contractual duty created by an express term of the contract which is co-extensive with the common law duty of care which the representee alleges the representor has breached. If the pre-contractual representation relied on by the plaintiff became an express term of the subsequent contract then absent any overriding consideration arising from the context in which the transaction occurred, the plaintiff cannot bring a concurrent action in tort for negligent misrepresentations and is confined to whatever remedies are available under the law of contract. Here, there is no concurrency. The employment agreement signed by the appellant does not contain any express contractual obligation co-extensive with the duty of care Cognos is alleged to have breached. The appellant's claim was not that the manager negligently misrepresented the amount of time he would be working on the project in question or the conditions under which his employment could be terminated. Rather, the appellant argued that the manager negligently misrepresented the nature and existence of the employment opportunity being offered. It is the existence, or reality, of the job being interviewed for, not the extent of the appellant's involvement therein, which is at the heart of this tort action, and the employment agreement contains no express provisions dealing with Cognos' obligations with respect to the nature and existence of the project.

[42] In Warren's case I am satisfied the contract does not contain any express contractual obligation regarding the supply of business contacts coextensive with the duty of care the defendant's are alleged to have breached. The contract signed by

Warren does not bar his action in tort. In *Cognos*, The Honourable Mr. Justice

Iacobucci sets out the five elements required to prove negligent misrepresentation:

(1) there must be a duty of care based on a "special relationship" between the representor and the representee; (2) the representation in question must be untrue, inaccurate, or misleading; (3) the representor must have acted negligently in making the misrepresentation; (4) the representee must have relied, in a reasonable manner, on the negligent misrepresentation; and (5) the reliance must have been detrimental to the representee in the sense that damages resulted.

[43] In applying those principles to the facts in this case I am satisfied on a balance of probabilities of the following:

1. The defendants, PCMG and Roy did owe a duty of care to Warren. In *Hercules Managements Ltd. v. Ernst & Young*, [1997] S.C.J. No. 165 the Court concludes that the issue of whether a duty of care is owed is to be decided on the basis of the *Anns/Kamloops* two-part test: (a) whether a *prima facie* duty of care is owed; and (b) whether that duty, if it exists, is negated or limited by policy considerations. A *prima facie* duty of case is established where there is a special relationship of "proximity". A special relationship occurs where; (a) the representor ought reasonably to foresee that the representee will rely on his representation, and (b) reliance by the representee would, in the particular circumstances of the case, be reasonable. I am satisfied there was a relationship of proximity between the parties at all material times. There existed between the parties a "special relationship" at the time of their two meetings prior to Warren hiring PCMG.

PCMG and Roy were under a duty of care during the meetings to exercise reasonable care and diligence in making representations as to the services being offered. The defendants ought reasonably to have foreseen that Warren would rely on the representation made by Roy that he would provide contacts with senior level employers.

The defendants argue that if Roy, on behalf of PCMG made a representation, Warren's reliance on that advice was not reasonable. The defendants submit Warren reviewed, read, and understood the contract which documented the exact services he would receive from PCMG; that the contract expressly acknowledged that PCMG made no guarantees of employment, job interviews, time frames to obtain a job, or verbal promises outside the written contract; that the contract also clearly stated that "Client also understands that the major emphasis will be on developing his or her network since the majority of positions are found through this method"; and that Warren's mistaken understanding of the services that PCMG could provide in the circumstances of this case does not give rise to a duty of care.

I do not find this submission persuasive nor do I find that the duty of care here is negated by the disclaimer contained in the contract signed by the parties. The defendants represented they would provide contacts with senior level employers. Warren understood the services PCMG would provide which are set out in the contract and include those services mentioned in the various phases. In Queen v. Cognos, Justice Iacobucci at paragraphs 40 and 41

writes:

There lies, in my view, the fundamental difference between the present appeal and *BG Checo*, supra. In the latter case, the alleged pre-contractual misrepresentation had been incorporated verbatim as an express term of the subsequent contract. As such, the common law duty of care relied on by the plaintiff in its tort action was co-extensive with a duty imposed on the defendant in contract by an express term of their agreement. Thus, it was my view that the plaintiff was barred from exercising a concurrent action in tort for the alleged breach of said duty, and this view was reinforced by the commercial context in which the transaction occurred. In the case at bar, however, there is no such concurrency. The employment agreement signed by the appellant in March of 1983 does not contain any express contractual obligation co-extensive with the duty of care the respondent is alleged to have breached. The provisions most relevant to this appeal (clauses 13 and 14) contain contractual duties clearly different from, not co-extensive with, the common law duty invoked by the appellant in his tort action.

Had the appellant's action been based on pre-contractual representations concerning the length of his involvement on the Multiview project or his "job security", as characterized by the Court of Appeal, the concurrency question might be resolved differently in light of the termination and reassignment provisions of the contract. However, it is clear that the appellant's claim was not that Johnston negligently misrepresented the amount of time he would be working on Multiview or the conditions under which his employment could be terminated. In other words, he did not argue that the respondent, through its representative, breached a common law duty of care by negligently misrepresenting his security of employment with Cognos. Rather, the appellant argued that Johnston negligently misrepresented the nature and existence of the employment opportunity being offered. It is the existence, or reality, of the job being interviewed for, not the extent of the appellant's involvement therein, which is at the heart of this tort action. A close reading of the employment agreement reveals that it contains no express provisions dealing with the respondent's obligations with respect to the nature and existence of the Multiview project. Accordingly, the ratio decidendi of my reasons in *BG Checo* is inapplicable to the present appeal. While both cases involve pre-contractual negligent misrepresentations, only *BG Checo* involved an impermissible concurrent liability in tort and contract, and exception to the general rule of concurrency set out in *Central Trust v. Rafuse*, supra. The case at bar does

not involve concurrency at all, let alone an exception thereto.

It is important, in my view, to appreciate that Warren's claim is not that Roy negligently misrepresented the services being offered to him which included resume writing, developing interviewing skills and networking techniques. His claim is not that Roy guaranteed specific interviews with specific companies. Rather, he argued that Roy negligently misrepresented the defendants would provide him contacts with senior level employers in companies looking for his particular skills. I am satisfied that the client acknowledgement clause ("client acknowledges that PCMG has not induced client to enter into this engagement by implication, representation or guaranteeing to client specific interviews with specific companies") does not limit or exclude misrepresentations about providing contacts with employers so as to diminish or extinguish the plaintiff's remedy in tort. Had Warren's action been based on pre-contractual representations concerning specific interviews with specific companies then, as the Court in *Cognos* states, "the concurrency question might be resolved differently" in light of the client acknowledgement clause he signed.

2. The representation in question was inaccurate or misleading. I have found that Roy did make the representation and I am satisfied he didn't have the contacts. It is clear he misled the claimant into believing he had access to people in senior positions with British Columbia companies, some of which he mentioned to Warren. The clear impression he left Warren with was that he

had access to these people and that this access should result in Warren finding new employment at a salary similar to what he previously earned. The defence argues that PCMG put Warren in touch with a representative of Bell Canada. Warren was given an email address but this falls far short of providing contacts with senior level employees.

3. PCMG and Roy acted negligently in making the misrepresentation. The Court in Queen v. Cognos at paragraph 55 writes:

The applicable standard of care should be the one used in every negligence case, namely the universally accepted, albeit hypothetical, "reasonable person". The standard of care required by a person making representations is an objective one. It is a duty to exercise such reasonable care as the circumstances require to ensure that representations made are accurate and not misleading: see *Hedley Byrne*, supra, at p. 486, per Lord Reid; *Hodgins v. Hydro-Electric Commission*, supra, at pp. 506-9, per Ritchie J. for the majority of this Court; *H.B. Nickerson & Sons v. Wooldridge*, supra, at pp. 135-36; J. G. Fleming, *The Law of Torts* (7th ed. 1987), at pp. 96-104 and 614; *Linden*, supra, at pp. 105-19; and *Klar*, supra, at pp. 159-60. Professor Klar provides some useful insight on this issue (at p. 160):

An advisor does not guarantee the accuracy of the statement made, but is only required to exercise reasonable care with respect to it. As with the issue of standard of care in negligence in general, this is a question of fact which must be determined according to the circumstances of the case. Taking into account the nature of the occasion, the purpose for which the statement was made, the foreseeable use of the statement, the probable damage which will result from an inaccurate statement, the status of the advisor and the level of competence generally observed by others similarly placed, the trier of fact will determine whether the advisor was negligent.

At paragraph 62, Justice Iacobucci states:

A duty of care with respect to representations made during pre-contractual negotiations is over and above a duty to be honest in making those representations. It requires not just that the representor be truthful and honest in his or her representations. It also requires that the representor exercise such reasonable care as the circumstances require to ensure that the representations made are accurate and not misleading.

The duty of care imposed on Roy required him to be truthful and honest and to ensure he was accurate and not misleading Warren regarding the contacts he could provide the claimant. In this case I find he breached this duty of care by negligently misrepresenting he would provide contact with senior level employers.

4. Warren relied, in a reasonable manner, on the negligent misrepresentation. I accept the claimant's evidence that he hired the defendants because Roy said that he would provide senior level contacts. As Warren stated, "I paid for the inside contacts to these companies". Warren hadn't found a new career for a year and felt he needed contacts to senior level decision makers. When Roy said he could provide these, it is reasonable in all the circumstances that Warren believed him and relied on Roy's assurance he had these contacts.

The defendants point to the answers Warren provided on the quality assurance forms, and client comment forms which they say proves the claimant did not rely on any statements made by Roy. I find these statements which were made shortly after the contract was signed, simply confirmed what Warren testified to, that he had not received any guarantees or promises

of a new job with a specific company and, further, his comments were made early on in the relationship between the parties at a time when he was anxious to make the relationship a positive one.

I am satisfied that his reliance was reasonable. The defendants rely on the authority of McLeod v. Sullivan 2002 BCPC 264, which involved a claim for negligent misrepresentation that was disallowed where claimants had other sources of information that showed deferred sales charges were applicable. I accept Warren is an experienced businessman who is familiar with contracts, and he was given ample opportunity to review the contract and ask questions. The defence submits Warren cannot now claim that he reasonably relied on the defendants' representations regarding access to senior level contacts when he fully understood the terms of the contract.

In my view there is nothing in the language of the contract that precludes the claimant from successfully suing for damages based on negligent misrepresentations stemming from pre-contractual dealings with the defendants. There were no other sources of information that Warren could avail himself of to confirm whether Roy's representations were accurate and not misleading.

5. Warren relied on the representations of the defendants and paid for contacts he didn't get. He has suffered damages. The defence argues he received ten 1 to 1 training sessions with his personal advisor, attended an all day marketing seminar on January 14, 2005, had access to PCMG's information

databases and received the full gamut of services offered by PCMG. Warren paid the defendants \$6,377.20 to obtain access to senior level contacts in the business community which he didn't get. He asks for a full refund but I am satisfied he received some benefit from the defendants' program and as best as I am able to I assess that benefit to be \$1,000 and I award damages to the claimant in the amount of \$5,377.20.

Is Minto Roy Personally Liable?

[44] In Strata Plan LMS 2262 v. Stoneman Developments Ltd., 2004 BCSC 828, the Court discusses the two conflicting lines of authority dealing with when the corporate veil may be lifted to allow personal liability against an employee of a company. I agree with the defendants' submission that both lines of authority require that to lift the corporate veil, the director's actions must have exhibited a separate identity or interest from that of the company. In this case, Roy made representations on behalf of PGMG and was acting within the scope of his duties. The claimant was aware from the outset he was dealing with PCMG. He responded to PCMG's advertisement, he attended PCMG's offices and he signed a contract with PCMG. Roy was engaged in carrying out PCMG's business by interviewing perspective clients and advising them regarding PCMG's services. The claimant has failed to establish that Roy's actions exhibit a separate identity or interest from that of PCMG. (Rafiki Properties Ltd. v. Integrated Housing Development Ltd., [1999] B.C.J. No. 243 (S.C.) and Better Off Dead Productions Inc. v. Pendulum Pictures Inc., 2002 B.C.J. No. 626.) The claimant's action against Roy is dismissed.

[45] The claimant will have judgment against the defendant PCMG for \$5,377.20 plus filing fees of \$156.00, service fees of \$60.00 and Court ordered interest from May 1, 2005.



D. R. Pendleton
Provincial Court Judge