

THE 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.

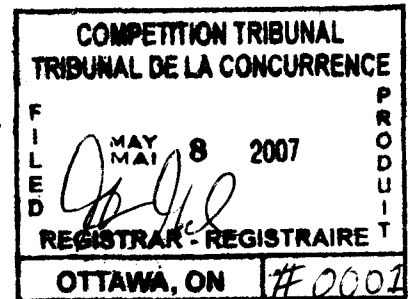
and

PREMIER CAREER MANAGEMENT GROUP CORP.

and

MINTO ROY,

Respondents.



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NOTICE OF APPLICATION  
(S.74.01(1)(a) and 74.1 of the *Competition Act*)

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IN SUPPORT OF HER NOTICE OF APPLICATION, THE APPLICANT PLEADS AS FOLLOWS:

I. APPLICABLE SECTIONS OF THE *COMPETITION ACT*

- 1) The Applicant brings this Notice of Application before the Competition Tribunal pursuant to paragraph 74.01(1)(a) and section 74.1 of the *Competition Act*<sup>1</sup>;

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<sup>1</sup> Paragraph 74.01(1)(a) and section 74.1 of the *Competition Act* are reproduced at Appendix A.

II. NAMES AND ADDRESSES OF THE RESPONDENTS

2) The Respondents' names and addresses are as follows:

- a) Premier Career Management Group Corp. (hereafter "PCMG")  
1199 West Hastings, 6<sup>th</sup> Floor  
Vancouver, BC  
V6E 3T5
- b) Mr. Minto Roy  
21575 Thornton Ave  
Maple Ridge, BC  
V4R 2G8

III. GROUNDS FOR THE APPLICATION

- 3) For the purpose of promoting business interests, the Respondents have made representations to the public that are false or misleading in a material respect;
- 4) Hence, the Applicant pleads that the Respondents have engaged in reviewable conduct contrary to paragraph 74.01(1)(a) of the *Competition Act*;
- 5) Accordingly, pursuant to section 74.1 of the *Competition Act*, the Applicant asks the Competition Tribunal to order that:
  - a) The Respondents not engage in the reviewable conduct or substantially similar reviewable conduct;
  - b) The Respondents publish a notice in accordance with paragraph 74.1(1)(b) of the *Competition Act*;
  - c) PCMG pay the amount of \$100,000 as an administrative monetary penalty; and
  - d) Minto Roy pay the amount of \$50,000 as an administrative monetary penalty;
  - e) The whole with costs against the Respondents;

## IV. MATERIAL FACTS

- 6) PCMG is incorporated under the laws of British Columbia;
- 7) PCMG has its office in Vancouver and conducts its business operations from there;
- 8) Minto Roy is the President, CEO, director and principal shareholder of PCMG;
- 9) The Respondents generally advertise PCMG's services as "career management services", and promote these services verbally in sales meetings with prospective clients, by way of advertisements and features published on the Internet and in print media and during programs broadcasted on radio;
- 10) PCMG started its business operations in or about October 2004, and has conducted them up to the present time;
- 11) PCMG enters into contracts with approximately 240 new clients each year;
- 12) Clients pay approximately between \$5,000 to \$7,000, plus taxes, for PCMG's services;
- 13) Clients are usually persons who are unemployed and who are actively looking for work;
- 14) Starting in 2004 and for the purpose of promoting their services to prospective clients, the Respondents made the following representations which were false or misleading in a material respect:
  - a) PCMG and Minto Roy made representations that conveyed the general impression that they screen prospective clients and that they accept only those whom they consider to be highly qualified and who have a lot of potential to succeed.

However, contrary to the representations made, the Respondents had no formal process for screening or selecting clients;

- b) PCMG and Minto Roy made representations that conveyed the general impression that they have an extensive network of personal contacts or "links" with senior level executives of companies that have job openings, and that they will use this network to provide contacts and/or arrange job interviews with such senior level executives for clients who enter into contract with PCMG.

However, contrary to the representations made, PCMG and Minto Roy did not provide those contacts and/or did not arrange such job interviews with senior level executives;

- c) PCMG and Minto Roy made representations that conveyed the general impression that potential clients will almost certainly find work quickly with their help, typically within 90 days, and at a position with salary and benefits equal to or better than their previous job.

However, contrary to the representations made, this was not the case;

- 15) The representations set out above at paragraph 14 were material because prospective clients were influenced by one or more of them in deciding to enter into contract with PCMG;
- 16) The Applicant pleads that Minto Roy's personal liability must be found in the present matter for the following reasons:
  - a) Minto Roy is the President, CEO, director and principal shareholder of PCMG, and he controlled all of its essential commercial operations;
  - b) Minto Roy personally engaged in making the impugned public representations to prospective clients, and was responsible for the development and implementation of PCMG's business model and the dissemination of the impugned representations;
  - c) Minto Roy directed and trained PCMG employees to make the impugned representations to prospective clients;
  - d) Minto Roy had a direct interest in persuading clients to enter into contracts with PCMG, considering his functions and personal interests as a shareholder in the company;
  - e) Minto Roy knew or should have known that these representations were false or misleading in a material respect;
  - f) When meeting with prospective clients, Minto Roy used his own name and purported network of personal contacts to convince clients to retain the services of PCMG;

- 17) Accordingly, for these reasons, the Applicant submits that PCMG and Minto Roy have engaged in reviewable conduct contrary to subsection 74.01(1)(a) of the *Competition Act*;

VI. AGGRAVATING FACTORS – SUBSECTION 74.1(5) OF THE *COMPETITION ACT*

- 18) Should the Competition Tribunal determine that PCMG and/or Minto Roy have engaged in reviewable conduct by making one or more false or misleading representations in a material respect, the Applicant submits the following elements constitute aggravating factors that the Tribunal should take into account in determining the amount of the administrative monetary penalty that should be paid by PCMG and/or Minto Roy personally, the whole in conformity with subsection 74.1(5) of the *Competition Act*;
- 19) First, PCMG and Minto Roy extensively advertised PCMG's services to the public through various means and the reach in the market area was significant;
- 20) Second, the impugned conduct continued in spite of the fact that PCMG and Minto Roy were well aware of complaints from clients concerning the representations discussed above at paragraph 14;
- 21) Third, PCMG's typical clients were persons who were unemployed and who were actively looking for work, many were economically vulnerable and were therefore more susceptible to the representations;
- 22) Fourth, the impugned representations were highly material to prospective clients because they were the main reasons why clients decided to retain the services of PCMG;
- 23) Fifth, considering the seriousness and duration of the conduct, self-correction by PCMG and Minto Roy is unlikely;
- 24) Sixth, considering the typical fees paid and the number of new clients each year, the requested administrative monetary penalty is minimal in comparison to the amount PCMG and Minto Roy would have made in revenues on a yearly basis;
- 25) Finally, the seriousness of the conduct justifies the payment by PCMG and Minto Roy of the maximum monetary penalty allowed under the *Competition Act*;

## VII. ORDER SOUGHT

26) For all these reasons, the Applicant asks the Competition Tribunal to order as follows:

- The Notice of Application is allowed;
- The Respondents and any person acting on their behalf or for their benefit, including all directors, officers, employees, agents or assigns of the Respondents, or any other person or corporation acting on behalf of any or all of the Respondents, shall for a period of ten (10) years from the date of this order, cease making, causing to be made, or permitting to be made, by any means whatsoever, false or misleading representations to the public for the purpose of promoting their services. Without limiting the generality of the foregoing, the Respondents, or any of them, shall cease making, causing to be made or permitting to be made by any means whatsoever, the following representations to the public or representations to convey the general impression that:
  - *PCMG and Minto Roy screen prospective clients and that they accept only those whom they consider to be highly qualified and who have a lot of potential to succeed;*
  - *PCMG and Minto Roy have an extensive network of personal contacts or “links” with senior level executives of companies that have job openings, and that they will use this network to provide contacts and/or arrange job interviews with such senior level executives for clients who enter into contract with PCMG;*
  - *PCMG and Minto Roy’s potential clients will almost certainly find work quickly with their help, typically within 90 days, and at a position with salary and benefits equal to or better than their previous job;*
- Starting on the first Saturday following the order, the Respondents shall publish the following notice in the “Working Section” of the Vancouver Sun for four (4) consecutive Saturdays and also publish it on the home page of PCMG’s website for a consecutive period of ninety (90) days:

*Take notice that the Competition Tribunal of Canada has determined that Premier Career Management Group*

*(“PCMG”) and Minto Roy have engaged in reviewable conduct contrary to paragraph 74.01(1)(a) of the Competition Act.*

*Specifically, starting in October 2004:*

- *PCMG and Minto Roy made false or misleading representations that they screen prospective clients and that they accept only those whom they consider to be highly qualified and who have a lot of potential to succeed;*
- *PCMG and Minto Roy made false or misleading representations that they have an extensive network of personal contacts or “links” with senior level executives of companies that have job openings, and that they will use this network to provide contacts and/or arrange job interviews with such senior level executives for clients who enter into contract with PCMG;*
- *PCMG and Minto Roy made false or misleading representations that their potential clients will almost certainly find work quickly with their help, typically within 90 days, and at a position with salary and benefits equal to or better than their previous job;*

*The Competition Tribunal further ordered PCMG to pay \$100,000 and Minto Roy to pay \$50,000 as administrative monetary penalties.*

*Copy of the Competition Tribunal order can be found on the Tribunal’s website at: <http://www.ct-tc.gc.ca>.*

- Starting on the first Saturday following the order, the Respondents shall cause the following notice to be read at the start of each "Careers Today" radio program, for four consecutive weeks:

*The following announcement is made in accordance with an order of the Competition Tribunal of Canada. On hearing an application made by the Commissioner of Competition, the Tribunal has determined that, since October 2004, Premier Career Management Group and its president, Minto Roy, have engaged in deceptive business practices. Specifically, the Tribunal has found that PCMG and Minto Roy made false or misleading representations that they screen*

*prospective clients and that they accept only those whom they consider to be highly qualified and who have a lot of potential to succeed. The Tribunal also found that PCMG and Minto Roy made false or misleading representations to prospective clients about their extensive network of personal contacts or "links" with senior level executives of companies that have job openings, and that they will use this network to provide contacts and arrange job interviews with such senior level executives for clients who enter into contract with PCMG. Furthermore, the Tribunal found that PCMG and Minto Roy made false or misleading representations that their potential clients will almost certainly find work quickly with their help, typically within 90 days, and at a position with salary and benefits equal to or better than their previous job. The Tribunal has ordered PCMG to pay an administrative monetary penalty of \$100,000 and Minto Roy, to pay an administrative monetary penalty of \$50,000. Further information about the Competition Tribunal and this order can be found on-line, at [www.ct-tc.gc.ca](http://www.ct-tc.gc.ca) .*

- PCMG shall pay the amount of \$100,000 as an administrative monetary penalty, with legal interests from the date of the judgment up to the day of final payment;
- MINTO ROY shall pay the amount of \$50,000 as an administrative monetary penalty, with legal interests from the date of the judgment up to the day of final payment;
- SUCH FURTHER and other relief as the Tribunal may allow;
- WITH COSTS;

#### VIII. LANGUAGE AND LOCATION OF PROCEEDINGS

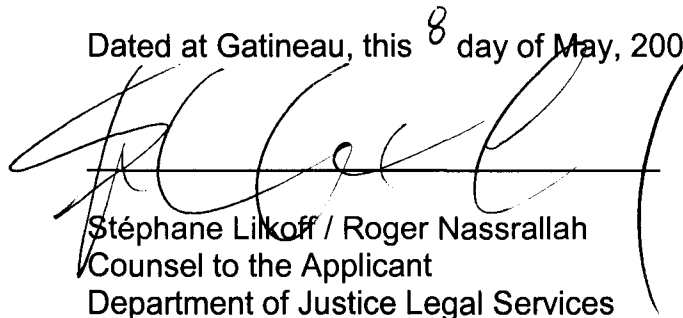
- 27) The Applicant requests that this proceeding be conducted in the English language;
- 28) The Applicant further requests that the hearing be held in the City of Vancouver, British-Columbia;



IX. MEDIUM TO BE USED FOR FILING OF PLEADINGS AND CORRESPONDENCE

- 29) The Applicant requests that all pleadings and correspondence be filed electronically with the Competition Tribunal, the whole in conformity with the *Practice Direction of the Competition Tribunal Regarding Electronic Filing of Documents*.

Dated at Gatineau, this 8 day of May, 2007.



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Appendix A

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;

(...)

(6) In proceedings under this section, the general impression conveyed by a representation as well as its literal meaning shall be taken into account in determining whether or not the representation is false or misleading in a material respect.

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;

(...)

(6) Dans toute poursuite intentée en vertu du présent article, pour déterminer si les indications sont fausses ou trompeuses sur un point important, il est tenu compte de l'impression générale qu'elles donnent ainsi que de leur sens littéral.

74.1 (1) Where, on application by the Commissioner, a court determines that a person is engaging in or has engaged in reviewable conduct under this Part, the court may order the person

(a) not to engage in the conduct or substantially similar reviewable conduct;

(b) to publish or otherwise disseminate a notice, in such manner and at such times as the court may specify, to bring to the

74.1 (1) Le tribunal qui conclut, à la demande du commissaire, qu'une personne a ou a eu un comportement susceptible d'examen en application de la présente partie peut ordonner à celle-ci:

a) de ne pas se comporter ainsi ou d'une manière essentiellement semblable;

b) de diffuser, notamment par publication, un avis, selon les modalités de forme et de temps qu'il détermine, visant à informer les personnes d'une catégorie donnée, susceptibles d'avoir été touchées par le comportement, du nom de

attention of the class of persons likely to have been reached or affected by the conduct, the name under which the person carries on business and the determination made under this section, including

- (i) a description of the reviewable conduct,
- (ii) the time period and geographical area to which the conduct relates, and
- (iii) a description of the manner in which any representation or advertisement was disseminated, including, where applicable, the name of the publication or other medium employed; and

(c) to pay an administrative monetary penalty, in such manner as the court may specify, in an amount not exceeding

- (i) in the case of an individual, \$50,000 and, for each subsequent order, \$100,000, or
- (ii) in the case of a corporation, \$100,000 and, for each subsequent order, \$200,000.

(2) An order made under paragraph (1)(a) applies for a period of ten years unless the court specifies a shorter period.

(3) No order may be made against a person under paragraph (1)(b) or (c) where the person establishes that the person exercised due diligence to prevent the reviewable conduct from occurring.

*l'entreprise que le contrevenant exploite et de la décision prise en vertu du présent article, notamment:*

- (i) l'énoncé des éléments du comportement susceptible d'examen,*
- (ii) la période et le secteur géographique auxquels le comportement est afférent,*
- (iii) l'énoncé des modalités de diffusion utilisées pour donner les indications ou faire la publicité, notamment, le cas échéant, le nom des médias — notamment de la publication — utilisés;*

*c) de payer, selon les modalités que le tribunal peut préciser, une sanction administrative pécuniaire maximale :*

- (i) dans le cas d'une personne physique, de 50 000 \$ pour la première ordonnance et de 100 000 \$ pour toute ordonnance subséquente,*
- (ii) dans le cas d'une personne morale, de 100 000 \$ pour la première ordonnance et de 200 000\$ pour toute ordonnance subséquente.*

*(2) Les ordonnances rendues en vertu de l'alinéa (1)a s'appliquent pendant une période de dix ans, ou pendant la période plus courte fixée par le tribunal.*

*(3) L'ordonnance prévue aux alinéas (1)b ou c) ne peut être rendue si la personne visée établit qu'elle a fait preuve de toute la diligence voulue pour empêcher un tel comportement.*

(4) The terms of an order made against a person under paragraph (1)(b) or (c) shall be determined with a view to promoting conduct by that person that is in conformity with the purposes of this Part and not with a view to punishment.

(4) Les conditions de l'ordonnance rendue en vertu des alinéas (1)b ou c) sont fixées de façon à encourager le contrevenant à adopter un comportement compatible avec les objectifs de la présente partie et non à le punir.

(5) Any evidence of the following shall be taken into account in determining the amount of an administrative monetary penalty under paragraph (1)(c):

(5) Pour la détermination du montant de la sanction administrative pécuniaire prévue à l'alinéa (1)c), il est tenu compte des éléments suivants:

- (a) the reach of the conduct within the relevant geographic market;
- (b) the frequency and duration of the conduct;
- (c) the vulnerability of the class of persons likely to be adversely affected by the conduct;
- (d) the materiality of any representation;
- (e) the likelihood of self-correction in the relevant geographic market;
- (f) injury to competition in the relevant geographic market;
- (g) the history of compliance with this Act by the person who engaged in the reviewable conduct; and
- (h) any other relevant factor.

- a) la portée du comportement sur le marché géographique pertinent;
- b) la fréquence et la durée du comportement;
- c) la vulnérabilité des catégories de personnes susceptibles de souffrir du comportement;
- d) l'importance des indications;
- e) la possibilité d'un redressement de la situation sur le marché géographique pertinent;
- f) le tort causé à la concurrence sur le marché géographique pertinent;
- g) le comportement antérieur, dans le cadre de la présente loi, de la personne qui a eu un comportement susceptible d'examen;
- h) toute autre circonstance pertinente.

(6) For the purposes of paragraph (1)(c), an order made against a person in respect of conduct that is reviewable under paragraph 74.01(1)(a), (b) or (c), subsection 74.01(2) or (3) or section 74.02, 74.04, 74.05 or 74.06 is a subsequent order if

(6) Pour l'application de l'alinéa (1)c), l'ordonnance rendue contre une personne à l'égard d'un comportement susceptible d'examen en application des alinéas 74.01(1)a), b) ou c), des paragraphes 74.01(2) ou (3) ou des articles 74.02, 74.04, 74.05 ou 74.06 constitue une ordonnance subséquente dans les cas suivants:

*(a) an order was previously made against the person under this section in respect of conduct reviewable under the same provision;*

*(b) the person was previously convicted of an offence under the provision of Part VI, as that Part read immediately before the coming into force of this Part, that corresponded to the provision of this Part;*

*(c) in the case of an order in respect of conduct reviewable under paragraph 74.01(1)(a), the person was previously convicted of an offence under section 52, or under paragraph 52(1)(a) as it read immediately before the coming into force of this Part; or*

*(d) in the case of an order in respect of conduct reviewable under subsection 74.01(2) or (3), the person was previously convicted of an offence under paragraph 52(1)(d) as it read immediately before the coming into force of this Part.*

*a) une ordonnance a été rendue antérieurement en vertu du présent article contre la personne à l'égard d'un comportement susceptible d'examen visé par la même disposition;*

*b) la personne a déjà été déclarée coupable d'une infraction prévue par une disposition de la partie VI, dans sa version antérieure à l'entrée en vigueur de la présente partie, qui correspond à la disposition de la présente partie;*

*c) dans le cas d'une ordonnance rendue à l'égard du comportement susceptible d'examen visé à l'alinéa 74.01(1)a), la personne a déjà été déclarée coupable d'une infraction à l'article 52, ou à l'alinéa 52(1)a) dans sa version antérieure à l'entrée en vigueur de la présente partie;*

*d) dans le cas d'une ordonnance rendue à l'égard du comportement susceptible d'examen visé aux paragraphes 74.01(2) ou (3), la personne a déjà été déclarée coupable d'une infraction à l'alinéa 52(1)d) dans sa version antérieure à l'entrée en vigueur de la présente partie.*

