

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Concordia International College v.
Takatsuki*,
2026 BCSC 692

Date: 20260417
Docket: S229145
Registry: Vancouver

Between:

Concordia International College of Asia and the Pacific Inc.

Plaintiff

And

Saki Takatsuki

Defendant

And

**Concordia International College of Asia and the Pacific Inc., and Cloud Nine
College Ltd.**

Defendants by Counterclaim

Before: The Honourable Justice Laurie

Reasons for Judgment

Counsel for Saki Takatsuki:

R. Kusahara
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Student

Representative for Cloud Nine College Ltd.,
appearing in person:

J. Castillo

Place and Date of Trial/Hearing:

Vancouver, B.C.
August 20–22, 2025
October 14 and 27, 2025

Place and Date of Judgment:

Vancouver, B.C.
April 17, 2026

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INTRODUCTION

[1] These are reasons for judgment following a trial on the counterclaim by Saki Takatsuki against Concordia International College of Asia and the Pacific Inc. (“Concordia”) and Cloud Nine College Ltd. (“Cloud Nine”). Ms. Takatsuki is a former student of these colleges. She seeks damages based on claims for breach of contract and breach of procedural fairness arising from her dismissal from Cloud Nine in September 2022, as well as claims in negligent misrepresentation.

[2] In these reasons, I refer to Ms. Takatsuki as the “plaintiff”, and to Concordia and Cloud Nine as the “defendants”.

LITIGATION HISTORY

[3] This litigation began in November 2022 when Concordia filed a notice of civil claim against Ms. Takatsuki for defamation. Ms. Takatsuki filed a response to civil claim and a counterclaim, against Concordia in December 2022. Concordia filed a response to the counterclaim in January 2023.

[4] A trial on the defamation suit was scheduled to take place on April 15, 2023. However, no one showed up on behalf of Concordia at the trial. On Ms. Takatsuki’s application, the defamation claim was dismissed, and the trial in respect of the counterclaim was adjourned.

[5] On September 3, 2024, Ms. Takatsuki filed a notice of application to amend the existing counterclaim to add Cloud Nine as a defendant. The application was granted. Cloud Nine filed its response to counterclaim on October 15, 2024.

[6] In June 2025, Cloud Nine retained counsel. However, on August 20, 2025, it filed a notice of intention to act in person, and its counsel withdrew as solicitor of record.

[7] The trial on the counterclaim commenced on August 20, 2025, but did not finish in the time allotted. It continued in October 2025 and concluded on October 27, 2025.

[8] Concordia did not participate in the trial.

THE EVIDENCE

[9] Ms. Takatsuki testified in the plaintiff’s case. She was born and raised in Japan. She graduated high school in 2017. After high school, she attended a beauty hairstylist college for two years and graduated from the program in 2019.

[10] Ms. Takatsuki testified that she first learned about Concordia and Cloud Nine around the summer of 2021 when she contacted an agent in Japan called “Vesper”. Vesper provided her with a brochure that contained information about Concordia and Cloud Nine.

[11] The brochure was in the Japanese language. A copy of the original brochure and corresponding English translation was tendered at the trial. The brochure stated in part:

What is Concordia International University?

It is an online college established domestically in the Philippines in 2002. It operates in 12 countries offering mainly online courses, with academic advancement programs to universities in the UK, New Zealand, Ireland and Switzerland...

It’s not just online...

We have an affiliation with Cloud Nine College (CNC) in Vancouver, Canada, which is a Concordia Group College, so in addition to Concordia’s online courses, you can also take classes in English that are held on the CNC campus.

[Underline in the original.]

[12] Ms. Takatsuki testified that based on the contents of the brochure and from speaking to Vesper, she understood that Concordia and Cloud Nine offered a joint program through which she could obtain a bachelor’s degree in two years, and be able to transition to a list of universities including the University of Law in the U.K. In addition, she understood that classes would be held in Canada, in person, for six hours a day, five times a week, for six months. Ms. Takatsuki testified that she wanted to study business at the University of Law.

[13] Ms. Takatsuki paid over ¥4,000,000 to Vesper to enrol in the program. She received an invoice and receipt from “Concordia Japan” dated August 27, 2021; the invoiced amount was ¥3,082,800 or US\$27,525. She also received an invoice from Cloud Nine dated November 8, 2021, showing an applied payment of \$9,375.

[14] Ms. Takatsuki signed a Student Enrolment Contract dated November 13, 2021, with Cloud Nine (“Enrolment Contract”). She testified that a counsellor went through the Enrolment Contract with her during an orientation. The Enrollment Contract contained a “Statement of Student Rights”, which included the right to access the institution’s dispute resolution process and the right to make a claim to the Private Training Institutions Branch (“PTIB”) for a tuition refund in certain circumstances. A link to PTIB’s website was provided. The Enrolment Contract also contained Cloud Nine’s refund policy.

[15] Ms. Takatsuki testified that she took an English class in November 2021 in Japan as part of the program. She arrived in Canada in December 2021 and began attending both in-person and online classes at Cloud Nine. The in-person classes were held at the Cloud Nine campus in downtown Vancouver. She also received online assignments through Concordia.

[16] An incident occurred on September 19, 2022, which led to Ms. Takatsuki’s dismissal from Cloud Nine. Ms. Takatsuki testified that she accompanied her friend, Yuki Sugino, to Cloud Nine on that day. She explained that Ms. Sugino had received a probation letter and wanted an explanation about the letter. According to Ms. Takatsuki, they arrived at Cloud Nine at approximately 11:00 a.m. Ms. Sugino went into the office of the School Director, Peter Lee, while Ms. Takatsuki waited in the reception area.

[17] After Ms. Sugino returned from meeting with Mr. Lee, she told Ms. Takatsuki that she did not receive an explanation regarding the letter. Ms. Takatsuki then asked Mr. Lee to explain the letter to Ms. Sugino. Mr. Lee responded that he already did. Ms. Takatsuki asked Mr. Lee to explain it again. Mr. Lee asked them to leave

the campus and went back into his office. Ms. Takatsuki stated that she and Ms. Sugino waited because they wanted to speak to Mr. Lee.

[18] When Mr. Lee came out of his office again, he threatened to call the police if they did not leave. Ms. Takatsuki testified that they told Mr. Lee that they did nothing wrong and he could call the police if he wanted to. Mr. Lee went back into his office. Ms. Takatsuki and Ms. Sugino continued to wait. After about 30 minutes, Mr. Lee came out and shouted at them to “get out”. When asked around what time Mr. Lee said he would call the police, Ms. Takatsuki responded that they had been there for a long time. She estimated that it was around the noon or 1:00 p.m.

[19] Ms. Takatsuki stated that she observed two counsellors in the reception area and 10 to 15 students who walked by to get to class. She testified that she and Ms. Sugino left at around 2:00 p.m. When asked whether there was any physical altercation or shouting, Ms. Takatsuki responded that Mr. Lee shouted at them to “get out” a couple of times.

[20] On September 20, 2022, Ms. Takatsuki received a dismissal letter from the president of Cloud Nine, Zarah De Vera (“Dismissal Letter”). The letter contained Cloud Nine’s dismissal policy and advised that Ms. Takatsuki was dismissed from the program effective immediately. The violation was described as “conduct which included verbal abuse towards school staff, failure to comply with the Director’s direct instruction to leave the campus and caused interruption of school operations and caused emotionally damages to other students and staff members”.

[21] The Dismissal Letter also advised that Ms. Takatsuki had the right to appeal in writing to the School Director, Peter Lee, within five business days. The decision would be reviewed by the Appeals Committee and may include an in-person hearing. It also indicated that the School Director/President would provide a written response that will include the final decision of the Appeals Committee.

[22] Ms. Takatsuki denied the allegations in the Dismissal Letter. She wrote a letter to Mr. Lee on September 26, 2022, appealing her dismissal (“Appeal Letter”).

In the Appeal Letter, Ms. Takatsuki advised that she had no plans of going back to Cloud Nine. She requested a “release not a dismissal” and a refund of her tuition fees. She also advised that she may file a complaint with the PTIB and other government agencies if her certificate of completion for the first part of her co-op program, release, and refund were not processed immediately.

[23] On October 6, 2022, Mr. Lee responded by email to the Appeal Letter. The email advised that the appeal was denied. Ms. Takatsuki responded to the email reiterating that she was not seeking to return to the school; rather, she was seeking a “release” and “the right amount of refund”. On October 13, 2022, Mr. Lee responded that since Ms. Takatsuki had completed more than 50% of her co-op program, based on the school’s refund policy, she was not entitled to a refund. The email also provided a link to Cloud Nine’s refund policy. In cross-examination, Ms. Takatsuki agreed that she had completed more than 50% of her program at Cloud Nine.

[24] Ms. Takatsuki testified that she did not receive a dismissal letter from Concordia; however, at some point around the beginning of October 2022, she could not access her Concordia school email which led her to believe that she had also been dismissed from Concordia.

[25] Ultimately, Ms. Takatsuki did not pursue a remedy through PTIB. She testified that upon receiving a letter from Concordia’s lawyer dated October 14, 2022, which alleged that she made defamatory statements against the school, she decided to hire a lawyer.

[26] In addition to Ms. Takatsuki’s evidence, the plaintiff also relied on the May 26, 2023, discovery evidence of David Kang, director and representative of Concordia, which was read in pursuant to R. 12-5(46) and R. 12-5(52) of the *Supreme Court Civil Rules*, B.C. Reg. 168/2009. Mr. Kang’s evidence included that:

- a) Concordia is an online educational institution in the Philippines. As such, it is not registered with PTIB.

- b) Concordia and Cloud Nine are separate entities.
- c) Concordia and Concordia Japan are also separate entities. They have an agreement pursuant to which Concordia Japan recruits students for registration with Concordia.
- d) Peter Lee was the Chief Executive Officer of Concordia in 2021 and 2022.
- e) Peter Lee was a part owner of Cloud Nine.
- f) Ms. Takatsuki was enrolled in a “diploma and higher diploma UK level 4 and 5” with Concordia.
- g) This program required the completion of 12 subjects. The program had no co-op requirement. After completing the 12 subjects, students can transfer to universities and colleges in other countries, including the U.K.
- h) The brochure that was provided to Ms. Takatsuki was prepared by Concordia Japan. It was reviewed by himself and “Mishio”, an employee of Cloud Nine. Since Mr. Kang did not understand Japanese, Mishio helped in translating the content of the brochure. Mr. Kang approved the brochure.
- i) Ms. Takatsuki’s program was not a joint program offered by Concordia and Cloud Nine. Concordia and Cloud Nine offered separate programs.
- j) Ms. Takatsuki did not complete all her subjects with Concordia.
- k) Ms. Takatsuki was not expelled from Concordia, and she could have re-enrolled.
- l) Ms. Takatsuki’s email account at Concordia was suspended only after the defamation action was commenced.

[27] Jorge Castillo, a shareholder of Cloud Nine since June 2023, testified in Cloud Nine’s defence. He testified that Cloud Nine started as an “ESL school” and

progressed into a co-op school that provides four different programs. The programs consist of a study component and a work experience component. Its clients are mainly international students who come to Canada to obtain work experience in sales, marketing, and hospitality. Cloud Nine is certified with, and regulated by, PTIB. Its policies, including for dismissal of students and tuition fee refunds, are in accordance with PTIB regulations.

[28] Mr. Castillo testified that Ms. Takatsuki was registered in Cloud Nine’s one-year sales program. The program consisted of six months of classes and six months of work experience. The fee for the program was US\$9,375, which Cloud Nine received from Concordia Japan. He testified that Concordia and Cloud Nine are separate entities.

[29] Mr. Castillo did not have personal knowledge of the events of September 19, 2022. However, he confirmed that the grounds for Ms. Takatsuki’s dismissal as stated in the Dismissal Letter would result in immediate dismissal based on Cloud Nine’s dismissal policy. He stated that once a student is dismissed, Cloud Nine has an obligation to report the dismissal to “IRCC”, referring to Immigration Refugees and Citizenship Canada.

[30] He testified that the proper procedure for a student who believes they should get a refund because they were improperly dismissed was to file a complaint with PTIB. If, after an investigation, PTIB agrees with the student, PTIB would require the institution to make a refund.

[31] Mr. Lee was no longer associated with Cloud Nine at the time of trial. Mr. Castillo took steps to serve him with a subpoena to testify at the trial, however Mr. Lee did not attend.

ISSUES

[32] The issues in this trial are:

- a) Is the counterclaim an impermissible collateral attack on the administrative process available through PTIB?
- b) If not, has the plaintiff established her claims for:
 - i. breach of contract;
 - ii. breach of procedural fairness; and
 - iii. negligent misrepresentation?
- c) If the plaintiff has established any of the above claims, what damages should be awarded and in what amounts?

SUMMARY OF THE PARTIES' POSITIONS

Ms. Takatsuki

[33] With respect to this Court's jurisdiction to hear her claims, the plaintiff asserts that nothing in the *Private Training Act*, S.B.C. 2015, c. 5 [PTA], or the *Private Training Regulation*, B.C. Reg. 153/2016 [PTR], prohibits a student from seeking compensation through a forum other than the PTIB. She also points to Cloud Nine's policies to say that students *may* make complaints to the PTIB, not that they must do so. As I understand the plaintiff's position, it is that there is no bar to her bringing a civil claim for damages notwithstanding the availability of an administrative appeal process.

[34] With respect to the claim for breach of contract, the plaintiff argues that the grounds for her dismissal were not substantiated and Cloud Nine failed to apply its dismissal policy.

[35] She also argues that the manner of her dismissal constitutes a breach of procedural fairness. She contends that Cloud Nine had a duty to diligently deliberate and investigate before dismissing her. In addition, it failed to provide a written decision from the Appeals Committee about her appeal within 30 days. She also

argues that the Appeals Committee was not the appropriate forum to hear her appeal because Mr. Lee was on the committee.

[36] The basis of the plaintiff's negligent misrepresentation claim are two representations contained in the brochure provided by Vesper: the first is that Ms. Takatsuki would be able to transition to an overseas university, specifically in the U.K.; the second is that her program at Cloud Nine would include six months of in-person lectures consisting of six hours of course time a day, five days per week.

[37] The plaintiff takes the position that the defendants are "related entities" such that both are liable under each claim for damages. She seeks over \$136,000 in damages consisting of her tuition refund, general damages for mental suffering, and punitive damages.

Cloud Nine

[38] Cloud Nine denies that it breached its dismissal policy or the Enrolment Contract that governed its relationship with Ms. Takatsuki. It maintains that the plaintiff's dismissal was justified.

[39] Cloud Nine submits that it afforded Ms. Takatsuki procedural fairness since she was given the opportunity to appeal her dismissal. It asserts that it was entitled to deny the appeal as the plaintiff did not seek a reversal of the dismissal; rather, she sought a full refund of her tuition. This was not a remedy that was available pursuant to Cloud Nine's refund policy.

[40] Cloud Nine also submits that it was not involved in the creation of the brochure and cannot be held liable for any representations contained in it. Further, Cloud Nine's program had nothing to do with the plaintiff's ability to study at an overseas university.

Credibility and Reliability Assessment

[41] I begin by assessing the credibility and reliability of Ms. Takatsuki's evidence. In doing so, I am guided by the well-known principles as set out in *Bradshaw v.*

Stenner, 2010 BCSC 1398, aff'd 2012 BCCA 296, leave to appeal to SCC ref'd, 35006 (7 March 2013):

[186] Credibility involves an assessment of the trustworthiness of a witness' testimony based upon the veracity or sincerity of a witness and the accuracy of the evidence that the witness provides (*Raymond v. Bosanquet (Township)* (1919), 1919 CanLII 11 (SCC), 59 S.C.R. 452, 50 D.L.R. 560 (S.C.C.)). The art of assessment involves examination of various factors such as the ability and opportunity to observe events, the firmness of his memory, the ability to resist the influence of interest to modify his recollection, whether the witness' evidence harmonizes with independent evidence that has been accepted, whether the witness changes his testimony during direct and cross-examination, whether the witness' testimony seems unreasonable, impossible, or unlikely, whether a witness has a motive to lie, and the demeanour of a witness generally (*Wallace v. Davis*, [1926] 31 O.W.N. 202 (Ont.H.C.); *Faryna v. Chorny*, 1951 CanLII 252 (BC CA), [1952] 2 D.L.R. 354 (B.C.C.A.) [*Faryna*]; *R. v. S.(R.D.)*, 1997 CanLII 324 (SCC), [1997] 3 S.C.R. 484 at para.128 (S.C.C.)). Ultimately, the validity of the evidence depends on whether the evidence is consistent with the probabilities affecting the case as a whole and shown to be in existence at the time (*Faryna* at para. 356).

[42] The burden of proof in civil cases is a balance of probabilities. The trial judge must scrutinize the relevant evidence with care to determine whether it is more likely than not that an alleged event occurred: *F.H. v. McDougall*, 2008 SCC 53 at para. 49.

[43] My assessment of Ms. Takatsuki's evidence is mixed. While I accept parts of her evidence, I do not accept all of it. Specifically, I have significant difficulty with her evidence surrounding the incident at Cloud Nine on September 19, 2022, that formed the basis of her dismissal.

[44] While Ms. Takatsuki testified that she and Ms. Sugino were at Cloud Nine for approximately three hours, she provided little detail about what they did. I do not accept that they merely "waited" during that time, as Ms. Takatsuki claimed. I say this for the following reasons.

[45] Based on Ms. Takatsuki's own evidence, Ms. Sugino already met with Mr. Lee in his office for about 30 minutes when they first arrived. Although Ms. Takatsuki testified that during the meeting, Ms. Sugino did not receive an

explanation from Mr. Lee regarding the probation letter, this hearsay evidence is not admissible for its truth.

[46] The evidence, in my view, suggests that Ms. Takatsuki was arguing with Mr. Lee. In cross-examination, she admitted that she confronted Mr. Lee. Although she denied yelling, she agreed that she raised her voice. Further, she testified that after Mr. Lee told her that he had already explained the probation letter to Ms. Sugino, Ms. Takatsuki insisted that he do it again.

[47] Based on Ms. Takatsuki's Appeal Letter, it also appears that an "explanation" was not the extent of what Ms. Takatsuki and Ms. Sugino sought from Mr. Lee on that day. They were also there to seek a reconsideration of a failing mark. The Appeal Letter states:

Why would even a school director call the police on students who were only there asking for an explanation about the dismissal letter and wanted to ask for a reconsideration of a failing mark with only a 4.37% lacking out of 60% passing mark especially that we found out that someone got only 38% but marked passed?

[48] The tone and language of the Appeal Letter also provide some insight into Ms. Takatsuki's manner of communication with Mr. Lee, which, in my view, is not inconsistent with the allegations in the Dismissal Letter. For example, Ms. Takatsuki questioned the positions of Mr. Lee and Ms. De Vera as School Director and School President respectively, based on their lack of daily attendance on campus, the way that Mr. Lee dressed, and that he had a dog with him on occasion. The Appeal Letter states:

By the way, if you are the school director and Zarah is the president, why are you not in school every day and almost no one knew about you? If there were only very rare sightings of both of you, that is only actually after classes, and you in your casual clothes and sometimes with your dog on your side. That's not the image of a school director for us.

[49] Considering the totality of the evidence, I do not find Ms. Takatsuki's denials of the allegations in the Dismissal Letter credible, and I do not accept her evidence in this respect. Given my concerns regarding her credibility and reliability, I also do

not give weight to parts of her evidence that are inconsistent with other evidence that I accept.

Is the counterclaim an impermissible collateral attack on the administrative process available through PTIB?

[50] This issue of whether Ms. Takatsuki's claim is a collateral attack arises because Cloud Nine is a designated private training institution governed by the PTA and its regulations. The legislative scheme provides for an administrative procedure through which Ms. Takatsuki could have pursued her claims. Beyond that, a judicial review was available. Instead, Ms. Takatsuki chose to initiate a civil action.

Legal Principles

[51] Collateral attack is a common law doctrine, based on general considerations related to the administration of justice: *Canada (Attorney General) v. TeleZone Inc.*, 2010 SCC 62 at para. 61 [*TeleZone*]. As explained in *Garland v. Consumers' Gas Co.*, 2004 SCC 25:

72. ... The fundamental policy behind the rule against collateral attack is to "maintain the rule of law and to preserve the repute of the administration of justice" (*R. v. Litchfield*, 1993 CanLII 44 (SCC), [1993] 4 S.C.R. 333, at p. 349). The idea is that if a party could avoid the consequences of an order issued against it by going to another forum, this would undermine the integrity of the justice system. Consequently, the doctrine is intended to prevent a party from circumventing the effect of a decision rendered against it.

[52] The court's authority to find that a claim is a collateral attack stems from the same inherent jurisdiction to find that a claim is an abuse of process, or that it is barred by *res judicata* or issue estoppel: *Toronto (City) v. C.U.P.E., Local 79*, 2003 SCC 63 at paras. 22–23, 33, 35–37; *British Columbia (Workers' Compensation Board) v. Figliola*, 2011 SCC 52 at paras. 27–34.

[53] When a party seeks a remedy statutorily provided by a judicial review process through a civil proceeding, the party makes a collateral attack: *Berscheid v. Ensign*, 88 A.C.W.S. (3d) 580 at para. 51, 1999 CanLII 6494 (B.C.S.C.). Where the legislature clearly intends to confer jurisdiction on an appeal tribunal to hear and determine certain matters, the court lacks the jurisdiction to do so: *R. v.*

Consolidated Maybrun Mines Ltd., [1998] 1 S.C.R. 706 at paras. 57–58, 60–62, 1998 CanLII 820. It is only after the complainant has completed the statutorily imposed administrative process that the avenue of judicial review becomes available, and it should be noted that such judicial review is only available in limited circumstances: *Berscheid* at para. 51; *Cimaco International Sales, Inc. v. British Columbia (Attorney General)*, 2010 BCCA 342 at para. 42, leave to appeal to SCC ref'd, 33904 (10 February 2011).

[54] In *Willow v. Chong*, 2013 BCSC 1083, Justice Fisher (then of this Court) held that the plaintiffs' claim for damages against the Private Career Training Institutions Agency of British Columbia ("Agency") and its Registrar (collectively, "Agency defendants") was, in essence, a complaint against decisions made by the Agency, including its decision to require the plaintiff, Shanghai TCM College (the "College"), to pay a student's tuition fees: at paras. 29, 32, 40–48.

[55] The litigation in *Willow* arose from a complaint submitted by a former student of the College, to the Agency, alleging that he was misled by the College. The former student sought a refund of his tuition fees: at para. 6. The College was a registered private training institution under the *Private Career Training Institutions Act*, S.B.C. 2003, c.79 [*PCTIA*] (now the *PTA*). The Agency was the regulatory agency for private training institutions, acting under the authority of the *PCTIA*.

[56] After an investigation, the Agency refunded the amount of tuition fees from a fund established under the *PCTIA*. The Agency then demanded that the College pay it the amount of fees refunded. In addition, the Agency searched the College's premises, seized documents, and cancelled the College's registration and accreditation under the *PCTIA*: *Willow* at para. 6.

[57] The plaintiffs, including the College, filed a civil claim against the Agency defendants, seeking damages and losses arising from the College's closure: *Willow* at paras. 4, 11–12. The Agency defendants applied to strike portions of the notice of civil claim as it related to them, pursuant to R. 9-5(1), primarily arguing that the claim

was an impermissible collateral attack on the decisions of the Agency: *Willow* at paras. 28–29. In striking the claim, Justice Fisher stated:

[40] Neither Shanghai College nor the other plaintiffs pursued this matter by launching an appeal to the board or seeking judicial review [Footnote omitted]. To the extent that the plaintiffs' claims relate to the fairness of the process and the basis for the decisions and actions taken by the registrar and PCTIA, they ought to have pursued the remedies available to them under the legislation. In my opinion, it is improper to pursue such claims in an action for damages. This issue had been the subject of several decisions in this court and the Court of Appeal that have many similarities with this case.

[58] The Court acknowledged that damages were not available in applications for judicial review. However, that principle alone was not sufficient to ground an action for damages where the essential complaint stems from dissatisfaction with the conduct and decisions of an administrative agency. The plaintiffs must have viable causes of action in and of themselves: *Willow* at paras. 46–47. See also *TeleZone* at para. 78.

Legislative Framework

[59] The Private Training Institutions Regulatory Unit ("PTIRU"), formerly the PTIB, within the Ministry of Post-Secondary Education and Future Skills regulates private training institutions in British Columbia and provides consumer protection to students.

[60] There is no dispute that Cloud Nine is a designated private training institution pursuant to the *PTA*. The Professional Sales Co-Op Certificate, which is the Cloud Nine program that Ms. Takatsuki was enrolled in, is approved by PTIRU. As a designated private training institution, Cloud Nine is subject to the *PTA*, the *PTR*, the *Fees and Student Tuition Protection Fund Regulation*, B.C. Reg. 140/2016 [*Fund Regulation*], and the Regulatory Standards set by the PTIRU.

[61] The Student Tuition Protection Fund ("Fund") is established under s. 20 of the *PTA*. The Fund is intended to protect student tuition. The Minister appoints a trustee to adjudicate claims against the Fund. Among other things, the trustee may require a

person to give evidence relevant to the claim, inspect or examine a record, and make necessary inquiries: *PTA*, s. 24.

[62] Students can submit complaints to the PTIRU about their institutions, including with respect to alleged non-compliance with statutory obligations. In such cases, PTIRU will review and decide whether to proceed with a compliance order or administrative penalty against the institution.

[63] Students can also submit complaints in which they seek a tuition refund. Students can seek tuition refund where it is alleged that the institution misled them regarding a significant aspect of their approved program: *PTA*, s. 23(1)(b). A student making a complaint for a tuition refund must first utilize the internal dispute resolution process of their institution: *PTA*, s. 23(4).

[64] Cloud Nine is required to have a written dispute resolution policy which includes providing a final written decision within 30 days of the student initiating a dispute resolution process: *PTA*, s. 19; *PTR*, s. 62. Section 62 of the *PTR* sets out the requirements for dispute resolution processes. If Cloud Nine fails to provide a written decision within 30 days, the PTIRU website instructs students to contact the PTIRU for additional guidance.

[65] After exhausting an institution's internal dispute resolution process, students may submit complaints to the PTIRU using the online forms: *PTA*, s. 23(4). Students must file their complaint for tuition refund with the PTIRU within one year after: the student completes their program, the student is dismissed from their program, or the institution ceases to provide the certification: *PTA*, s. 23(3). The information that students are required to provide in their complaint for tuition refund is set out in s. 21 of the *Fund Regulation*.

[66] Complaints for tuition refund are sent to the trustee for review. The trustee will provide the student complaint to the institution and offer them the opportunity to respond. The student then gets the opportunity to reply. The trustee will then adjudicate the complaint and provide written reasons: *Fund Regulation*, s. 23.

[67] If the trustee approves the student complaint and grants a refund, the student will receive a full or partial tuition refund to be paid out from the Fund. The trustee will then seek indemnification from the institution to reimburse the Fund: *PTA*, s. 27; *Fund Regulation*, s. 26.

[68] Cloud Nine is also required to have a written student dismissal policy. The policy must be fair and reasonable, set out what constitutes reasonable grounds for dismissal, and set out the process by which students may be dismissed: *PTR*, s. 47.

The Plaintiff's Claims

[69] The Court must determine the essential nature of Ms. Takatsuki's claim to decide whether her claims constitute an impermissible collateral attack: *Weisenburger v. College of Naturopathic Physicians of British Columbia*, 2024 BCSC 1047 at para. 44, aff'd 2025 BCCA 460 at para. 75, citing *Canada (Attorney General) v. Scow*, 2022 BCCA 275 at para. 75.

[70] In my view, the essence of Ms. Takatsuki's claims, is a complaint that her dismissal from Cloud Nine and the denial of her tuition fee refund were unfair.

[71] While she alleges a breach of contract, Ms. Takatsuki's argument is essentially that Cloud Nine failed to comply with s. 47 of the *PTR*. Ms. Takatsuki relies on Cloud Nine's statutory obligation to have a student dismissal policy that was fair and reasonable, pursuant to that provision. She alleges that her dismissal was contrary to Cloud Nine's dismissal policy. Further, that Cloud Nine owed her a duty of fairness which it failed to meet.

[72] Her claim for procedural fairness is based on a similar argument.

[73] The *PTA* provides an administrative process for the determination of these issues. Specifically, Part 4 of the *PTA* governs the enforcement of the *PTA* and its regulations, against designated institutions. It provides a process for inspection, making compliance orders and administrative penalties, as well as suspending and cancelling certifications. The PTIRU (formerly, PTIB) website explains the

mechanism for students to submit complaints against their institutions for failing to comply with statutory duties.

[74] Similarly, with respect to Ms. Takatsuki's claim for negligent misrepresentation, the *PTA* sets out an administrative mechanism for students to make complaints that their institution misled them about a significant aspect of their approved program: s. 23(1)(b). Students are to seek a tuition refund from the trustee of the Fund.

[75] In my view, the legislature has intended to confer jurisdiction regarding the investigation and determination of Ms. Takatsuki's claims on statutory actors authorized by the *PTA* and its regulations. This administrative avenue was available to Ms. Takatsuki, and, as in *Willow*, she ought to have pursued the remedies available to her under the legislation. It is improper to pursue these claims in an action for damages. I find that Ms. Takatsuki's claims are an impermissible collateral attack on the governing administrative process and are an abuse of the Court's process. I would dismiss her claims on this basis alone.

[76] However, in the event that I am wrong, and some or all of her claims are not an impermissible collateral attack, I would also dismiss Ms. Takatsuki's claims on the merits, as discussed below.

Has the plaintiff established a claim for breach of contract?

[77] To prove a claim in contract, the plaintiff must show: (1) the existence of a contract; and (2) the breach of a term of that contract: *Clex Solutions Ltd. v. Gust*, 2025 BCSC 1092 at para. 129, citing *Atlantic Lottery Corp. Inc. v. Babstock*, 2020 SCC 19 at para. 91.

[78] As mentioned, Ms. Takatsuki's breach of contract argument is based on her allegation that in dismissing her, Cloud Nine failed to comply with its dismissal policy.

[79] Assuming that Cloud Nine’s dismissal policy could be treated as an implied contractual term between Ms. Takatsuki and Cloud Nine to ground a claim for breach of contract, I find that Ms. Takatsuki has not established, on a balance of probabilities, that Cloud Nine breached its dismissal policy.

[80] The dismissal policy states:

Any of the following, if substantiated, will result in immediate dismissal without a warning letter or probationary period, and police will be summoned, as required:

- sexual assault
- physical assault or other violent acts committed on or off campus against nay student or staff members
- possession or use of dangerous substance, material, or weapons
- cheating or dishonest academic conduct
- forgery, alteration or unauthorized use of any College documents or records
- verbal abuse, assault, or threats
- vandalism, damage to or loss of property
- theft of school property
- any conduct which is determined to be detrimental or damaging to other students, staff members or the college

Concerns related to a student’s conduct shall be referred to the School Director to process in accordance with this policy.

[81] The Dismissal Letter advised that the grounds for dismissal were verbal abuse, failure to comply with the Director’s instruction to leave the campus, causing interruption of school operations, and causing emotional damage to other students and staff members.

[82] In submissions, Ms. Takatsuki treats verbal abuse as the sole basis for her dismissal. She denied being verbally abusive. However, as discussed earlier, I do not give weight to her denial.

[83] Ms. Takatsuki also argues that failure to comply with the Director’s instruction to leave the campus was not a specified policy ground for dismissal. I do not agree with such a narrow interpretation. Notably, the grounds for dismissal include any

conduct considered to be detrimental or damaging to other students and staff members. In my view, failure to comply with direction may fall under this ground.

[84] Ms. Takatsuki asserts that Cloud Nine has not substantiated the grounds for her dismissal. However, the burden of proof is on her, as the claimant, to prove her claim. Based on the trial evidence, I find that Ms. Takatsuki has not met her onus of establishing a breach of contract on a balance of probabilities.

Has the plaintiff established a claim for breach of procedural fairness?

[85] With respect to her claim regarding procedural fairness, Ms. Takatsuki argues that Cloud Nine had a duty to thoroughly investigate and diligently deliberate before dismissing her. In addition, Cloud Nine failed to apply its dispute resolution policy, by not providing her with a written final decision by the Appeals Committee within 30 days of receiving her appeal. She also argues that the appeal process was unfair because the School Director, who was involved in the incident, took part in deciding the appeal.

[86] Ms. Takatsuki has not established an actionable claim for breach of procedural fairness. There is no action in law for breaches of natural justice or duties of procedural fairness: *Roeder v. Lang Michener Lawrence & Shaw*, 2007 BCCA 152 at paras. 18–20; *McGregor v. Holyrood*, 2014 BCSC 679 at para. 103, appeal dismissed as abandoned in 2015 BCCA 157, leave to appeal to SCC ref'd, 41795 (27 November 2025); *Bajwa v. British Columbia Veterinary Medical Association*, 2012 BCSC 878 at paras. 175–177. As discussed, the proper avenue for Ms. Takatsuki's claims was a complaint to the PTIRU and a subsequent judicial review, if required.

Has the plaintiff established a claim for negligent misrepresentation?

[87] The requirements for a successful claim in negligent misrepresentation are set out in *Queen v. Cognos Inc.*, [1993] 1 S.C.R. 87 at 108–110, 1993 CanLII 146, as follows:

(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.

[88] Ms. Takatsuki's claims in negligent misrepresentation are based on the brochure provided by Vesper. The alleged misrepresentations are: (1) that Ms. Takatsuki could transition to the University of Law and graduate from an overseas university in two years; and (2) that Ms. Takatsuki would be provided with six months of in-person lectures for six hours, five days per week.

[89] For the reasons that follow, I find that the plaintiff's claims for negligent misrepresentation are legally and factually unsustainable.

[90] Legally, allegations of negligent misrepresentation pertaining to future conduct or future events are not actionable: *PD Management Ltd. v. Chemposite Inc.*, 2006 BCCA 489 at paras. 12–14 [*PD*]; *Pan v. Dong*, 2024 BCSC 869 at paras. 98–99. Both of Ms. Takatsuki's alleged "misrepresentations" pertain to a future outcome or event. As the Court explained in *PD*, a "representation" is a statement related to some past or existing fact, circumstances, or state of facts pertinent to the contract, which is influential in bringing about the agreement. A promise that something will be done in the future cannot properly be construed as a statement respecting some past or existing fact. As such, it is not a representation: at para. 12, citing *Black's Law Dictionary*, 6th ed. (St. Paul: West Publishing, 1990) at 1301.

[91] Factually, the plaintiff has also not established her allegations. With respect to Ms. Takatsuki's ability to transfer to University of Law, Ms. Takatsuki asserts, based on a string of text messages exchanged between herself, Mr. Kang, and Mishio that there was no available pathway through which students could transfer to a bachelor's program at that university. Ms. Takatsuki relies on the following text message from Mishio to her in 2022:

1. We have few students graduated Derby by Online, but everyone applied our tutoring.
2. About University of Law, They have some transferring program but not applicable to bachelor program. They do not have any online.
3. BNU's program is according to the explanation of the website. It depends on the program delivery.

[Emphasis added.]

[92] I am not prepared to conclude that the above text regarding University of Law is a categorical statement that there was no available pathway for students to transfer to a bachelor's program at that university. The context in which the above statement was made is unclear on the evidence, as some of the text messages between Ms. Takatsuki and Mishio, including the ones immediately preceding the above, were in the Japanese language with no English translation. Further, there was a prior text message sent by Mr. Kang to Ms. Takatsuki in which he advised that admission to the University of Law was possible if certain pre-requisites were met, as reproduced below:

Mishio was helping the situation and settle the case because it would be difficult for you to pass our program to progress to University of Law. It is possible to have the admissions to University of Law but the student has to have a certain ability to show the prerequisite for the admissions ...

[Emphasis added.]

[93] I am also not satisfied that any loss sustained by Ms. Takatsuki resulted from her reliance on the alleged misrepresentation, as there is a more likely explanation for her inability to transfer to the University of Law. Ms. Takatsuki stopped attending Concordia when she was dismissed from Cloud Nine even though she was never dismissed from Concordia. She testified that she thought she had also been dismissed from Concordia because her email account stopped working. However, her subjective belief is not evidence of its truth.

[94] I accept Mr. Kang's evidence that Ms. Takatsuki's dismissal from Cloud Nine did not impact her status at Concordia. This is consistent with the evidence of both Mr. Kang and Mr. Castillo that while Concordia and Cloud Nine may have a business relationship, they are separate entities.

[95] In order to be eligible to transfer to an overseas university such as the University of Law, Ms. Takatsuki was required to satisfy her requirements at Concordia, not Cloud Nine. Ms. Takatsuki did not complete her program at Concordia.

[96] Lastly, with respect to Ms. Takatsuki's allegation of misrepresentation based on the discrepancy between the number of hours of instruction as advertised in the brochure, and the number of program hours offered by Cloud Nine, I find that she has not established reasonable reliance on the brochure.

[97] Ms. Takatsuki entered into the Enrolment Contract with Cloud Nine after she received the brochure. The Enrollment Contract shows the number of program hours offered by Cloud Nine, which the plaintiff concedes is accurate. By signing the contract, Ms. Takatsuki agreed to receive the number of instruction hours indicated therein. As a result, I find that any reliance she had on the brochure instruction hours after signing the Enrolment Contract was not reasonable.

DAMAGES

[98] In light of my findings, it is unnecessary to decide the issue of damages. However, even if damages were an issue, in light of my credibility findings, I would not be satisfied that the plaintiff has proven any alleged loss or damages on a balance of probabilities, except in relation to her tuition fees.

[99] Further, the damages claimed by Ms. Takatsuki are largely unrecoverable. In addition to a tuition refund, Ms. Takatsuki seeks general damages for mental distress and punitive damages as part of her breach of contract claim.

[100] In breach of contract cases, expectation damages are the usual measure of contract damages. The focus of expectation damages is on the value which the plaintiff would have received if the contract had been performed: *Bank of America Canada v. Mutual Trust Co.*, 2002 SCC 43 at para. 25.

[101] It may be that Ms. Takatsuki’s tuition fees represent the value that she would have received if the contract had been performed, assuming that her claims were made out. However, in my view, her claims for general damages for mental distress and punitive damages are not supported in fact and in law.

[102] Damages for mental distress are generally not awarded in breach of contract claims, except where the object of the agreement was to provide pleasure, relaxation, or peace of mind: *Fidler v. Sun Life Assurance Co. of Canada*, 2006 SCC 30 at paras. 31, 38–39, 41, 44–45. The exception does not apply in this case. Although the jurisprudence recognizes that damages for mental distress for breach of contract may be awarded in appropriate cases, in light of my findings, I do not find this case to be an appropriate case.

[103] Ms. Takatsuki has also not established a basis for an award of punitive damages. Her reliance on *Ojanen v. Acumen Law Corporation*, 2021 BCCA 189 in this respect, is misguided. The facts in that case are easily distinguishable. The context of an articling student being wrongfully dismissed and accused of misconduct is very different from a private training institution applying its student dismissal policy. Further, the plaintiff has not established “high-handed, malicious, arbitrary, or highly reprehensible misconduct” such as that found in *Ojanen*: para. 80.

CONCLUSION

[104] For the foregoing reasons, I would dismiss Ms. Takatsuki’s claims because they are an impermissible collateral attack and an abuse of process. In the

alternative, I would also dismiss her claims because she has not established them on the merits.

COSTS

[105] If the parties are unable to agree on costs, they may submit written submissions within 30 days from release of this judgment. The submissions from each party must not exceed three (3) pages.

“Laurie J.”