

NOTICE OF CONTRAVENTION

Served by E-mail (dvsa@cogeco.net), Fax (905-628-1087) and Courier

August 22, 2011

Arthur Greenblatt
Executive Director
Dundas Valley School of Art
21 Ogilvie Street
Dundas, Ontario
L9H 2S1

Dear Mr. Greenblat:

[1] This letter is to inform you as the Executive Director of the Dundas Valley School of Art ("Business") that on August 22, 2011, it was determined that the Business contravened the following section(s) of the *Private Career Colleges Act, 2005* and/or of regulations made under the Act:

- A. Act, s. 11 – Restrictions on advertising and soliciting
- B. Act, s. 8 (1) – Prohibition against providing vocational programs
- C. Act, s. 9 — Prohibition against charging fee
- D. Act, s. 7 – Prohibition against operating a private career college

For a detailed explanation of each contravention see attached Schedule A.

[2] As per section 51 of *Ontario Regulation 415/06* of the *Private Career Colleges Act, 2005* the Business is required to pay penalties totaling \$4,000 within **30 days** of the date of this notice. At this time you are required to pay this amount.

[3] Please return your payment by cheque or money order payable to the **Minister of Finance**, along with the invoice you will receive in the mail, to:

Ministry of Finance
Payment Processing Centre
33 King Street West
P.O Box 647
Oshawa, ON L1J 8X3

If payment is not received within **30 days** after the date the Notice of Contravention was received, the amount will be subject to interest at the current postjudgment interest rate beginning on the 31st day following the date of notice. The current rate can be found at the following address:

www.attorneygeneral.jus.gov.on.ca/english/courts/interestrates.asp.

Review

[4] If you believe that the decision made above is inaccurate you may request a review of this decision by submitting a *Request for a Review of a Notice of Contravention* form to the Ministry of Training, Colleges and Universities within **15 days** of receipt of the Notice of Contravention.

Issued by:

ORIGINAL SIGNED BY

Bradley Fauteux
Superintendent of Private Career Colleges (Acting)

Schedule A

[5] The Superintendent has issued this Notice of Contravention based on the following findings, supporting facts and evidence:

A. Advertising an unregistered Private Career College, contrary to section 11(1) of the Act and advertising unapproved vocational programs, contrary to section 11(2) of the Act

[6] On July 22, 2011, a Designate of the Superintendent (“Designate”) reviewed a website belonging to the Business, www.dvsa.ca and found it to be advertising a Diploma in Visual Art Foundation Studies (“Foundation Studies”) program, as well as a Studio Fine Art/Public Community Art (“Fine Art”) program.

[7] The website provides an overview of both programs, and describes the Foundation Studies program as being a one year diploma program (24 weeks), and the Fine Art program as being two years in duration, but does not list the cost of either program.

The “background” page of the Business’s website states that the full-time program “...is geared for high school graduates planning on an art career...”

The Full-Time Studies page states “In Full-Time studies, we teach future artists and designers creative research skills within an intensive studio based program” and “Our students go on to establish careers in many different fields...”

The website also lists the Business’s name and provides background information on the Business, and provides an address (21 Ogilvie Street, Dundas, Ontario, L9H 2S1), phone number (905-628-6357), fax number (905-628-1087), and e-mail addresses (dvsa@cogeco.net, and dvsa_fulltime@hotmail.com).

[8] The Business has, therefore, advertised itself as a private career college without being registered, contrary to section 11 (1) of the Act.

[9] On July 29, 2011, a Designate sent an e-mail to dvsa_fulltime@hotmail.com while posing as a student to enquire about the Business's Foundation Studies program.

On July 29, 2011, the Business's Director of Full-time Studies replied via e-mail and encouraged the Designate to apply as soon as possible, stating that classes begin on September 26. He also attached some information sheets and an application form to the e-mail.

The information sheets contained descriptions of the Foundation Studies Diploma Program and the Fine Art program, as well as the Business's contact information.

The application form provided the opportunity for students to enroll in either the Foundation Studies program, or one year of the Fine Art program. The application form listed the tuition for each of these programs as \$3,800 for the 2011-2012 academic year, and stated that students must also pay a \$50 application fee.

[10] On August 3, 2011, the Designate sent another e-mail to dvsa_fulltime@hotmail.com and enquired about the class schedules for the Foundation Studies and Fine Arts programs.

On August 3, 2011, the Business's Director of Full-time Studies replied via e-mail and advised that the schedule is the same for all classes, which begin on September 26, run for 24 weeks, and are delivered Monday through Thursday, 9:30-3:30 (576 hours total).

[11] The Business's Foundation Studies and Fine Art programs both correspond with National Occupation Classification ("NOC") code 5136 – Painters, Sculptors and Other Visual Artists. Based on the evidence gathered these programs fit the definition of vocational programs requiring the approval of the Superintendent according to the Act.

Since these programs are not approved, advertising and soliciting of same is prohibited in accordance with Sections 11 (2) and 11 (3) of the Act, respectively.

B. Providing unapproved vocational programs, contrary to s. 8(1) of the Act

[12] On February 26, 2007, the Business submitted a pre-screening application to the Private Career Colleges Branch regarding the Business's 480 hour Foundation Studies program.

A response was sent to the Business on September 6, 2007 advising not only that the Foundation Studies program requires approval, but that the Business's Fine Art program also require approval. The letter also advised that the Business did not receive approval to deliver these programs by September 18, 2007, it would be a contravention of the Act to advertise, deliver, or charge fees for the programs.

[13] On May 30, 2011, the Business submitted a pre-screening application for a Fine Arts Full-time program that cost \$3,800 and is 576 hours in duration. On July 22, 2011 August 4, 2011, a Designate sent a letter to the Business advising that the program requires approval.

[14] On August 16, 2011, Designates attended the Business's campus at 21 Ogilvie Road, Dundas, Ontario. Upon arrival, the Designates met with the Business's Executive Director, Arthur Greenblatt, and spoke with him about the Business's full-time studies programs.

[15] Mr. Greenblatt advised that the Business does not have much enrolment in any of its full-time programs for the upcoming academic year, but that they have been provided to the public for several years. Mr. Greenblatt advised that the Foundation Studies program advertised on the Business's website is the same as the "Fine Arts Full-time" program which the Business submitted for pre-screening in July, 2011.

[16] The Designates requested access to the Business's records pertaining to its full-time programs, and were directed to the Business's Business Manager, Linda, who provided the relevant documents which included student enrolment contracts, receipts, records of evaluations, and draft financial records.

According to the documentation provided, the Business had the following enrolment for the academic years beginning in September 2009 and 2010:

2009

Foundation Studies: Five students enrolled and were each charged \$3,500.

Fine Art Year 1: Four students enrolled and were each charged \$3,400

Fine Art Year 2: One student enrolled and was charged \$3,400

2010

Foundation Studies: Three students enrolled and were each charged \$3,750

Fine Art: One student enrolled and was charged \$3,700

[17] Some of the documents that were obtained on August 16, 2011 confirmed that the Business had enrolled at least two students for the academic year beginning on September 24, 2011.

[18] By offering and providing the Foundation Studies and Fine Art programs without the approval of the Superintendent, the Business has contravened section 8 of the Act.

C. Charging fees for unapproved vocational programs, contrary to s. 9 of the Act

[19] On August 16, 2011, Designates attended the Business's campus at 21 Ogilvie Road, Dundas, Ontario. During the site visit the Designates met with Arthur Greenblatt, the Business's Executive Director, as well as Linda, the Business Manager.

The Designates requested copies of the Business's records pertaining to its full-time programs, and received the relevant documents which included student enrolment contracts, draft financial records, receipts.

According to the documentation provided, the Business had charged the following fees for the academic years beginning in September 2009 and 2010:

2009

Foundation Studies: Five students enrolled and were each charged \$3,500.

Fine Art Year 1: Four students enrolled and were each charged \$3,400

Fine Art Year 2: One student enrolled and was charged \$3,400

2010

Foundation Studies: Three students enrolled and were each charged \$3,750

Fine Art: One student enrolled and was charged \$3,700

The records also demonstrate that the majority of these fees had been collected.

[20] By charging fees for vocational programs without the approval of the Superintendent, the Business has contravened section 9 of the Act.

D. Operating an unregistered Private Career College, contrary to s. 7 of the Act

[21] On July 22, 2011, a Designate reviewed a website belonging to the Business www.dvsa.ca which contained information about a Foundation Studies program and a Fine Art program, both of which are vocational.

The website also provides an address for the Business (21 Ogilvie Street, Dundas, Ontario, L9H 2S1), phone number (905-628-6357), fax number (905-628-1087), and e-mail addresses (dvsa@cogeco.net, and dvsa_fulltime@hotmail.com).

[22] On July 29, 2011, a Designate sent an e-mail to dvsa_fulltime@hotmail.com while posing as a student to enquire about the Business's Foundation Studies program.

On July 29, 2011, the Business's Director of Full-time Studies replied via e-mail and encouraged the Designate to apply as soon as possible, stating that classes begin on September 26. He also attached some information sheets and an application form to the e-mail.

[23] During an August 16, 2011 site visit to the Business's campus at 21 Ogilvie Street, Dundas, Ontario, Designates obtained enrolment contracts, receipts, and records of evaluation.

[24] The Business had a public website which was used to advertise its vocational programs, as well as a publicly provided e-mail address that was actively monitored by the Business. Additionally, it maintains a physical presence in Ontario at which it offered and provided vocational programs, and charged fees to its students.

The Superintendent therefore finds that the Business was operating an unregistered Private Career College, contrary to s. 7 of the Act.

PRIOR CONTACT WITH THE MINISTRY

[25] On February 26, 2007, the Business submitted a pre-screening application to the Private Career Colleges Branch regarding the Business's 480 hour Foundation Studies program.

A response was sent to the Business on September 6, 2007 advising not only that the Foundation Studies program requires approval, but that the Business's Fine Art program also require approval. The letter also advised that the Business did not receive approval to deliver these programs by September 18, 2007, it would be a contravention of the Act to advertise, deliver, or charge fees for the programs.

[26] On May 30, 2011, the Business submitted a pre-screening application for a Fine Arts Full-time program that cost \$3,800 and is 576 hours in duration. On August 4, 2011, a Designate sent a letter to the Business advising that the program requires approval.

INVESTIGATIVE METHODS USED

[27] In obtaining the above evidence a Designate of the Superintendent, employed as an Investigator with the Ministry's Private Career College's Branch, posed as a prospective student in order to directly experience how the Business markets its goods and services to the general public. This practice, known as "test shopping" or "secret shopping", is a longstanding, commonly used investigative method in regulatory compliance and enforcement work. It allows the Designate to put him or herself into the position of a typical consumer to determine whether or not prospective students are receiving the protections intended for them under the Act and regulations. The Investigator therefore gathers evidence after placing the Business in the position and context it would normally occupy in the ordinary course of its business.

[28] The Investigator also conducted electronic searches for online information and advertising about the Business. This allows the Designate to see how the Business markets itself to consumers. Generally speaking, findings are based on advertising supplied or controlled directly by the Business, rather than third party sources of information over which the Business may exercise little control.

[29] The investigator used authority provided under Sec. 38 of the Act. The Act states that "...if in the Superintendent's opinion, a person that is not a registrant is or was required to be registered, the Superintendent or person designated by the Superintendent may make such inquiries and conduct such examinations of the person's affairs as the Superintendent or designate considers appropriate in the circumstances." This can entail a field visit to the Business, photographing the premises, inspection of documents, interviewing both staff and students, and removal or copying of any material, either electronic or paper, which the investigator feels is

relevant to the investigation or inquiry. Use of these authorities allows the investigator to obtain information about the Business's activities which assists the Superintendent in reaching a determination.