



## No Plaintiff? No Problem: Court permits the substitution of a representative plaintiff after finding current plaintiff has no cause of action

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In *Matoni v. C.B.S. Interactive Multimedia Inc. (c.o.b. Canadian Business College)*, the plaintiffs sought to certify a case alleging that Canadian Business College (the “College”) misrepresented what was required in order to become licensed as a dental hygienist following completion of their unaccredited program. The plaintiffs brought claims for negligent misrepresentation, breach of the *Competition Act*, *Consumer Protection Act*, and *Business Practices Act* and in the case of College and two individuals for breach of contract and breach of collateral warranty. The plaintiffs sought to have the action certified on behalf of a class comprised of all persons who enrolled in the dental hygiene program at College since its inception in June 2005.

Madam Justice Hoy certified the proceeding as a class proceeding, but only in respect of certain claims. In particular, with respect to the claim under the *Consumer Protection Act*, she found that there was a defect in the claim of the representative plaintiffs, as the proposed representatives were at the school prior to the effective date of the *Consumer Protection Act*.

Justice Hoy found that only the claim under the *Consumer Protection Act* should be certified. Although the proposed representative plaintiffs did not personally have a claim under the *Consumer Protection Act*, she concluded that this should not result in the dismissal of the motion, and held that the claims under the *Consumer Protection Act* against Canadian Business College and the individual defendants would be certified, subject to finding an appropriate representative plaintiff.

Justice Hoy was clearly influenced, in this case, by the fact that the defendant had brought their own proceeding against the plaintiffs for intentional interference with economic relations, which she noted may well have affected the conduct of the plaintiffs. As such, she held that the representative plaintiffs should have a reasonable opportunity, free from interference from the defendants, to make such persons aware of this claim, and to add any such person as an additional proposed representative plaintiff.

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