

Federal Court



Cour fédérale

**Date: 20140514**

**Docket: T-1774-13**

**Citation: 2014 FC 472**

**BETWEEN:**

**THE COLLEGE OF PEDORTHICS OF  
CANADA**

**Plaintiff**

**and**

**CANADIAN COLLEGE OF PEDORTHICS  
LTD., COLLEGE OF CERTIFIED  
PEDORTHISTS OF ONTARIO LTD., 2244915  
ONTARIO LTD. C.O.B. AS NATIONAL  
ACADEMY OF OSTEOPATHY, AND SHANIN  
POURGOL**

**Defendants**

**REASONS FOR JUDGMENT**

**PHELAN J.**

[1] These are the Reasons for Judgment granting default judgment to the Plaintiff pursuant to Rule 210(1) on the grounds that no Statement of Defence had been filed by the Defendants within the prescribed time.

[2] The Statement of Claim was issued on October 29, 2013 and was served on all the Defendants on November 1, 2013. A Statement of Defence and Counterclaim (Defence) was prepared in fact but never served.

[3] The Defendants brought a motion before Prothonotary Aalto seeking leave to file the Statement of Defence and Counterclaim.

[4] The motion for leave was dismissed. A critical reason (among several others) for the dismissal is that the Defendants failed to provide evidence of merit in the defence and counterclaim other than some generalized belief that there is no infringement. There was no appeal of the Aalto Order.

[5] The *EX PARTE* motion for default judgment was filed after the expiry of the appeal period of the Prothonotary's Order.

[6] Prior to the hearing of the *EX PARTE* motion counsel for the Plaintiff was contacted by new Defendants' counsel. The Court also received a letter from new counsel indicating that the Defendants wanted to negotiate a settlement. Counsel also indicated that she was available by telephone but did not attend at Court. The conduct of the Defendant to frustrate the legal process continued supplemented with a cavalier approach to the Court.

[7] The intervention of new counsel added nothing to the process and I disregard any suggestion that default judgment should not be granted.

[8] The Plaintiff has clearly established that the Defendants are in default.

[9] The Plaintiff has provided prima facie evidence of its claim and has provided sufficient basis for the calculations of damages and other relief pleaded.

[10] Therefore the Plaintiff is entitled to the Judgment requested.

"Michael L. Phelan"

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Judge

Winnipeg, Manitoba  
May 14, 2014

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** T-1774-13

**STYLE OF CAUSE:** THE COLLEGE OF PEDORTHICS OF CANADA v  
CANADIAN COLLEGE OF PEDORTHICS LTD.,  
COLLEGE OF CERTIFIED PEDORTHISTS OF  
ONTARIO LTD., 2244915 ONTARIO LTD. C.O.B. AS  
NATIONAL ACADEMY OF OSTEOPATHY, AND  
SHANIN POURGOL

**PLACE OF HEARING:** WINNIPEG, MANITOBA

**DATE OF HEARING:** MAY 12, 2014

**REASONS FOR JUDGMENT:** PHELAN J.

**DATED:** MAY 14, 2014

**APPEARANCES:**

Robert A. Watchman

FOR THE PLAINTIFF

**SOLICITORS OF RECORD:**

PITBLADO LLP  
Barristers and Solicitors  
Winnipeg, Manitoba

FOR THE PLAINTIFF