

**DISCOVERY RECORD RE: WILLOW**  
**as of May 17, 2013**

CONTACT		ACTION
Gayle Downey, Director, Intergovernmental Relations, MoH 250-952-1304	May 13, 2013	Request IGR undertake a search for records related to "Shanghai", "Shang Hai", "Willow", "trademark", "trade mark", "trade-mark", "College of Natural Medicine College of Canada", "CNMCC", "Canadian Intellectual Property Office" and "CIPO".
Ken Madden, Director, Information Security and Audit, MoH 250-387-1263	May 13, 2013	Mail-boxes are shut down after 13 months. Suggest call Shared Services at CITS and request a report for a security investigation. Also: each Ministry develops own policy for retaining info when new person takes over, but it has to be done within the 13-month window. Don't allow people to take material out of the MoH. MoH keeps H drive (home drive) live for 1 week, after which time it's deleted.
Sheryl Kellow Security Analyst, Shared Services BC 250-952-6695	May 13, 2013	Not a security investigation. Falls under normal istore process - submit an i-store order on-line for Knight, Gee and Diacu to people who back-up tapes. But most likely mail boxes are not around as they are not retained after 13 months.
Corrie Campbell, Director, Legisation, MoH 250-952-2281	May 13, 2013	Search of paper files (paper files include material from previous Executive Directors Linda Gee and Christine Massey) and e-mail.
Christine Massey, Executive Director, Seniors' Directorate, MoH 250-387-9602	May 13, 2010	Former Executive Director, Legislation and Professional Regulation. Request search for records related to "College of Natural Medicine College of Canada", "Shanghai", "Shang Hai", "Willow", "CNMCC", "trademark", "trade mark", "trade-mark", "Canadian Intellectual Property Office", "CIPO", "Private Career Training Institutions Agency", "PCTIA", "affidavit", "Fraser", "Rogers". Out of office until May 27.

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Jennifer Webb, Manager, Professional Regulation Policy, Professional Regulation, MoH 250- 952-1328	May 14, 2013	Search of paper files and e-mail.
Daryl Beckett, Director, Professional Regulation, MoH 250- 952-2303		Need to conduct search of paper files, H drive, and e-mails.
	May 14, 2013	Conducted K drive search: "Willow", "Shanghai", "Shang Hai", "Liu", "Council of Natural Medicine College of Canada", "CNMCC", "PCTIA", "Private Career Training Institutions Agency", "trademark", "trade mark", "trade-mark", "injunction", "official mark", "CTCMABC", "College of Traditional Chinese Medicine Practitioners and Acupuncturists of BC", "Watterson", "Henley", "CTV", "Harvey", "Degree Authorization Act", "Rogers", "Fraser", "affidavit", "Canadian Intellectual Property Office".
	May 14, 2013	Search of CLIFF using same search terms as used above in K drive search
	May 15, 2013	Search of LPR paper files.
	June 4, 2013	Hard files (except Beckett) delivered to MoJ.

## **Jodouin, Laurianne HLTH:EX**

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**From:** MacKenzie, Lori AVED:EX  
**Sent:** Tuesday, January 21, 2014 12:56 PM  
**To:** Beckett, Daryl K HLTH:EX  
**Cc:** McLachlan, Debbie HLTH:EX; Rohrick, Jason AVED:EX; Marczyk, Connie L AVED:EX  
**Subject:** RE: CTCMA Recognized Programs

Thank you Daryl, much appreciated.

**From:** Beckett, Daryl K HLTH:EX  
**Sent:** Tuesday, January 21, 2014 12:55 PM  
**To:** MacKenzie, Lori AVED:EX  
**Cc:** McLachlan, Debbie HLTH:EX; Rohrick, Jason AVED:EX; Marczyk, Connie L AVED:EX  
**Subject:** RE: CTCMA Recognized Programs

Updated info:

- In Nov 2013, CTCMA gave notice of proposal to add Central College to Schedule H of the bylaws, as being recognized for Acupuncture, TCM Herbology and TCM Practitioner programs. CTCMA will likely file the bylaw amendment with MOH towards end of Feb.

- Jireh is currently proceeding though CTCMA program review. Curriculum has been successfully reviewed, CTCMA now waiting until the clinic is in full operation before doing site visit.

*Daryl K. Beckett, JD / Director, Professional Regulation / Health Sector Workforce Division / BC Ministry of Health / 250-952-2303 / [Professional Regulation Home](#)*

**From:** MacKenzie, Lori AVED:EX  
**Sent:** Wednesday, January 8, 2014 1:46 PM  
**To:** Beckett, Daryl K HLTH:EX  
**Cc:** McLachlan, Debbie HLTH:EX; Rohrick, Jason AVED:EX; Marczyk, Connie L AVED:EX  
**Subject:** RE: CTCMA Recognized Programs

Thank you for the quick response – much appreciated.

**From:** Beckett, Daryl K HLTH:EX  
**Sent:** Wednesday, January 8, 2014 1:45 PM  
**To:** MacKenzie, Lori AVED:EX  
**Cc:** McLachlan, Debbie HLTH:EX; Rohrick, Jason AVED:EX; Marczyk, Connie L AVED:EX  
**Subject:** RE: CTCMA Recognized Programs

Those 6 are the only CTCMA recognized programs. Meaning they have been added to CTCMA bylaws by the board. I don't know anything about the other two, but they can't be considered CTCMA-recognized until/unless added to the list in the bylaws. I have not heard that those two or any others are in the process of getting CTCMA recognition. Would have to check with CTCMA directly if you need confirmation.

On first glance 'Doctor of Oriental Medicine' would seem to raise some of same issues we had with Shang Hai College.

**From:** MacKenzie, Lori AVED:EX  
**Sent:** Wednesday, January 8, 2014 1:25 PM  
**To:** Beckett, Daryl K HLTH:EX  
**Cc:** McLachlan, Debbie HLTH:EX; Rohrick, Jason AVED:EX; Marczyk, Connie L AVED:EX  
**Subject:** CTCMA Recognized Programs  
**Importance:** High

Hello Daryl and Happy New Year,

We have a rush request from our Minister's Office for a list of private training agencies that offer TCM programming. The list needs to identify CTCMA recognition and PCTIA registration/accreditation.

According to Schedule "H" of the CTCMA Bylaws, as accessed on the internet just now, the following six schools are recognized education programs:

1. *PCU College of Holistic Medicine*
2. *International College of Traditional Chinese Medicine (Vancouver)*
3. *Vancouver Beijing College of Chinese Medicine*
4. *Pacific Rim College*
5. *Academy of Classical Oriental Sciences*
6. *Oshio College of Acupuncture and Herbology*

In addition to the 6 CTCMA-recognized institution, the PCTIA website lists two additional colleges. These are:

7. *Jireh CE International College of Holistic Medicine*, --See <http://jcecollege.ca/> (This college purports to offer a "Doctor of Traditional Chinese Medicine" program); and
  8. *Central College* --see <http://centralcollege.ca/tcm/> (This college does not purport to offer a doctoral program, but rather "Traditional Chinese Medicine" and "Acupuncture".
- Regarding Jireh, on their website, they state, in relation to their Dr. of TCM Program: "After finishing this program in Jireh CE College, students will be qualified to write the relevant BC licensing examinations, and able to apply for membership as practitioners in College of Traditional Chinese Medicine Practitioners and Acupuncturists of BC." Do you know if this program is CTCMA recognized?
  - Regarding Central College, is it permissible for Central to offer a "Doctor of *Oriental* Medicine Program", the word "doctor" having restrictions associated with it. Do you know if this program is CTCMA recognized?

Thank you for your time and assistance.

Lori

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**Lori MacKenzie**  
**Director**  
**Research Universities, Health**  
**and International Programs Branch**  
**Ministry of Advanced Education**

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P please consider the environment before printing this email

## FACT SHEET

### TRADEMARKS AND PROFESSIONAL TITLES LITIGATION

#### ISSUE

In recent years, many trademarks for generic words and phrases that are descriptive of health-related occupational and professional titles and academic credentials have been registered under the federal *Trademarks Act* to numerous private individuals and organizations, through the Canadian Intellectual Property Office (CIPO), an agency of Industry Canada.

#### KEY FACTS

##### Litigation History

- Prior to 2006, a federally-incorporated entity called the Council of Natural Medicine College of Canada (CNMCC) was granted numerous trademarks for a variety of titles and academic credentials such as 'R.Ac. (Registered Acupuncturist)' and 'D.T.C.M. (Doctor of Traditional Chinese Medicine)' and began claiming an exclusive legal right to use them, including authorizing their use by third parties. The titles and credentials were identical or nearly so to titles reserved in regulations under the *Health Professions Act (HPA)* for the exclusive use of registrants of the College of Traditional Chinese Medicine Practitioners and Acupuncturists of BC (the College).
- In BC, only the College may authorize individuals to practice as Traditional Chinese Medicine doctors and acupuncturists. Despite this, CNMCC purported to 'accredit' education programs and offer 'certification examinations' for graduates of such programs, ostensibly leading to authorization by CNMCC to practice and use its trademarked titles. The only entity known to be 'accredited' by CNMCC was a related institution called the Shang Hai Traditional Chinese Medicine College of BC in Burnaby, now closed following action taken by the Private Career Training Institutions Agency (see 'Enforcement and Unlicensed Practitioners' fact sheet).
- In 2006, CNMCC demanded that the College cease and desist using the *HPA* reserved titles that CNMCC had registered as federal trademarks. In 2007, the College commenced action in Federal Court for an order declaring the CNMCC trademarks invalid and an injunction barring CNMCC from authorizing others to use the trademarks. The Ministry of Health, with Ministry of Justice support, assisted the College by providing a supporting affidavit setting out the government's concerns and position in detail, but the government was not otherwise involved in this proceeding. In September 2009, judgment was issued in favour of the College; invalidating the CNMCC's trademarks that are also *HPA* reserved titles. In February 2012, the Federal Court extended the permanent injunction to include additional titles that are confusingly similar to those reserved under the *HPA* for College registrants.
- As another element of its response to CNMCC, in April 2007 the College applied for numerous titles as official marks under the *Trademarks Act*. Official marks confer exclusive use rights on the public body adopting them and can override registered trademarks. CNMCC sought a Federal Court order declaring invalid the Registrar of Trademarks' February 2009 public notice of the College's adoption and use of the official marks. The Ministry of Justice intervened against the College's position. The Federal Court dismissed CNMCC's challenge in March 2013, rejecting the Ministry of Justice position in the process.

## FACT SHEET

- In December 2010, the Minister of Regional Economic and Skills Development and the Minister of Health started action in BC Supreme Court for a permanent injunction preventing CNMCC and Shang Hai from contravening the *Degree Authorization Act* and/or the *HPA* by unauthorized issuing of certificates regarding practice as a 'doctor' or use of the title 'doctor'. In February 2011, the BC Supreme Court granted the Ministers a temporary injunction against CNMCC and Shang Hai. In January 2011, CNMCC commenced action in BC Supreme Court against several parties, including the two Ministers for abuse of process relating to the injunction proceeding. The claim against the Ministers was dismissed summarily in June 2013.
- In April 2015, a Federal Court struck down five trademarks of the Canadian School of Nutrition, including 'Registered Holistic Nutritionists' following successful legal action by the College of Dietitians of Alberta.

### Government Position

- The government believes that the trademarking and use of titles that are identical to or likely to be confused with provincially-reserved titles by practitioners who are not registrants of provincial regulatory bodies will confuse and mislead the public about the competency of the providers, the safety of the services provided and the ability to seek to redress through a government-endorsed regulator if there is a complaint about a practitioner, thus creating a significant public health risk in BC. The government position is that trademark registration of words and phrases which are descriptive of health-related occupational and professional titles and academic credentials is both an incorrect application of the current provisions of the *Trademarks Act*, and a constitutionally invalid application of the *Trademarks Act* because it is solely within the jurisdiction of the provinces to regulate trades and professions within their geographic boundaries.
- In January 2007, the Deputy Minister of Health wrote to the Registrar of Trademarks, requesting that phrases which are likely to be merely descriptive of a professional service or academic qualification be immediately removed from the Register. In February 2007, the Registrar responded that CIPO was applying the *Trademarks Act* correctly and that only the Federal Court can remove trademarks from the register. In June 2007, shortly after a new Registrar of Trademarks was appointed, CIPO issued a Practice Notice regarding professional designations under the *Trademarks Act*. The Practice Notice indicates that where CIPO considers that a consumer, when faced with the applied-for mark, would upon "first impression" assume the wares and services are produced by a professional with that designation, the mark will not be registered. The Practice Notice does not, however, address the registration of trademarks that are descriptive of academic credentials.
- In August 2007, provincial Deputy Ministers of Health met with CIPO representatives including the new Registrar of Trademarks. While a working group comprised of officials from provincial governments and CIPO formed to find possible solutions, work eventually stalled due to lack of interest by CIPO in following through with meaningful participation.
- Should the Ministry of Health decide to pursue litigation jointly with a college or other provinces that have expressed concerns or are currently pursuing litigation regarding this matter, consultation with Ministry of Justice and intellectual property litigation specialist is required.

### **FINANCIAL IMPLICATIONS**

N/A

**Approved by:**

Ted Patterson, Health Sector Workforce Division; February 23, 2014

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