Federal Court  Cour fédérale

Date: 20180710

Docket: IMM-261-18

Citation: 2018 FC 715

Ottawa, Ontario, July 10, 2018

PRESENT: The Honourable Mr. Justice Pentney

BETWEEN:

KAMERON COAL MANAGEMENT LTD.

Applicant

and

THE MINISTER OF EMPLOYMENT AND SOCIAL DEVELOPMENT CANADA

Respondent

ORDER AND REASONS

[1] Kameron Coal Management Ltd. needed qualified workers for its operation of the Donkin coal mine. Because the Canadian workforce could not meet all of its needs, Kameron hired two foreign workers. It had sought and obtained the necessary approvals to do so from the Respondent, under the Temporary Foreign Workers Program (TFW Program). After an inspection by the Respondent, Kameron was found to be non-compliant with the terms of the agreement it had signed under the TFW Program. A number of penalties were imposed, including the posting of Kameron's name on a government website of "non-compliant"

employers. Kameron seeks an order for a stay of the enforcement of this aspect of the order. It asks for an order directing the Respondent to remove its name from this website, pending the final determination of its application for judicial review of the enforcement order. It says that this posting is harming its business reputation, and should be removed until it has the opportunity to challenge the non-compliance order.

[2] Kameron is not seeking a stay in relation to the other aspects of the order, namely the imposition of an Administrative Monetary Penalty and a period of ineligibility during which it cannot employ other Temporary Foreign Workers (TFWs). Kameron has also brought an application for leave and judicial review of the non-compliance order, which will be dealt with separately.

[3] For the following reasons, I am denying the partial stay.

I. Background

[4] Kameron operates the Donkin coal mine in Nova Scotia, which resumed production in 2017 following a lengthy period during which it was not in operation. Because it anticipated that it would not be able to meet all of its staffing needs from the Canadian labour market, Kameron applied for and was issued a positive Labour Market Impact Assessment decision (LMIA) to hire TFWs. In order to obtain the LMIA, Kameron had to specify the terms of employment for the TFWs, including wages and working conditions. Under the TFW Program, the LMIA involves an assessment by the Respondent as to whether the needs of the employer can be met through the Canadian workforce; if not, the LMIA authorizes the employer to seek workers from other

countries to fill its requirements on a temporary basis. In return, the employer enters into an agreement which sets out, among other things, the pay and working conditions for these TFWs.

[5] Following an inspection by the Respondent, Kameron was found to be non-compliant with the LMIA, on the basis of:

A. Failing to provide wages substantially the same as but not less favourable than those set out in the LMIA, pursuant to subparagraph 209.3(1)(a)(iv) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [*IRPR*];

B. Failing to provide working conditions substantially the same as but not less favourable than those set out in the LMIA, pursuant to subparagraph 209.3(1)(a)(iv) of the *IRPR*; and

C. Not demonstrating that, during a period of six years, beginning on the first day of employment for which a work permit was issued to the foreign national, the information provided in support of the LMIA was accurate, pursuant to paragraph 209.3(1)(c) of the *IRPR*.

[6] In essence, the contravention of the LMIA rests on the allegation that Kameron hired two American workers pursuant to the LMIA, and paid them substantially higher wages and overtime pay, as well as other benefits, than it provided for its Canadian workers. In doing so, Kameron contravened the terms of the LMIA it had entered into. The Respondent concluded that the company had not established that its actions were justified pursuant to the provisions of the *IRPR*.

[7] For the purposes of this motion, it is worthwhile to trace the history of this enforcement action. Following a compliance inspection by the Respondent, Kameron was provided with an initial notice of possible non-compliance in early June 2016, and was invited to provide written justification for the alleged non-compliance. It replied on June 22, 2016, and this was followed by a series of communications between the parties between August 2016 and January 2017. On May 4, 2017, the Respondent issued a Notice of Preliminary Findings, pursuant to section 209.993 of the *IRPR*, indicating that the Respondent had made a preliminary determination that Kameron may have been non-compliant with its obligations under the LMIA on the three grounds outlined above. The Notice also indicated the following possible consequences for the alleged non-compliance: (i) an Administrative Monetary Penalty (AMP) of $230,000; (ii) a ban from accessing the TFW Program and International Mobility Program for a period of ten years; and (iii) the publication of the company's name and its alleged contraventions on the public list of non-compliant employers on the Immigration, Refugee and Citizenship Canada (IRCC) website.

[8] Kameron responded to this Notice of Preliminary Findings on June 6, 2017, which resulted in a further exchange of correspondence between the parties. Finally, on December 14, 2017, the Respondent issued a Notice of Final Determination, finding Kameron to be non-compliant with the LMIA, on the three grounds set out above, imposing an AMP of $54,000, and a one-year ban from accessing the TFW or International Mobility programs. In addition, the Notice indicated that Kameron's name would immediately be published on the public list of non-compliant employers on the IRCC website.

[9] Kameron is seeking a stay of the aspect of the order which requires the posting of its name and the details of non-compliance on the IRCC website. It claims that this posting constitutes a serious and irreparable harm to the Applicant's business reputation. It does not seek any order in regard to the other penalties imposed by the Notice of Final Determination.

II. Issue

[10] The only issue in this motion is whether a stay of enforcement of the "posting" order is warranted, pending the final disposition of the underlying application for leave and judicial review.

III. Analysis

[11] Section 18.2 of the *Federal Courts Act*, RSC 1985, c F-7, grants a broad authority to make any interim orders the Court considers appropriate pending the final disposition of an application. The parties both submit, and I agree, that the three-part test governing the grant of interlocutory injunctions applies here. The Supreme Court of Canada has recently summarized this test in *R v Canadian Broadcasting Corp*, 2018 SCC 5 at para 12 [*CBC*]:

> … At the first stage, the application judge is to undertake a preliminary investigation of the merits to decide whether the applicant demonstrates a "serious question to be tried", in the sense that the application is neither frivolous nor vexatious. The applicant must then, at the second stage, convince the court that it will suffer irreparable harm if an injunction is refused. Finally, the third stage of the test requires an assessment of the balance of convenience, in order to identify the party which would suffer greater harm from the granting or refusal of the interlocutory injunction, pending a decision on the merits.
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> [Footnotes omitted.]

[12] Interlocutory relief of this nature is a highly discretionary, and highly exceptional, remedy: *Bergman v Canada (Public Safety and Emergency Preparedness)*, 2010 FC 1129 at para 21. As the SCC recently stated in *Google Inc v Equustek Solutions Inc*, 2017 SCC 34 at para 25: "The fundamental question is whether the granting of an injunction is just and equitable in all of the circumstances of the case. This will necessarily be context-specific."

A. *Serious Issue*

[13] In many cases, the "serious issue to be tried" threshold is not a high bar – it is often summarized as merely requiring a claim which is neither "frivolous nor vexatious": *RJR - MacDonald Inc v Canada (Attorney General)*, [1994] 1 SCR 311 at 337 [*RJR-MacDonald*]. This is particularly the case where the interlocutory injunction is brought to stop something from happening; where an applicant seeks to preserve the status quo, courts have found that the first element should not impose a high burden.

[14] There are two recognized exceptions to this rule: (i) where the results of the stay motion will in effect amount to a final determination of the matter, and (ii) when a question of constitutionality presents itself as a simple question of law. In both of these circumstances, the applicant must show that it has a strong case on the merits in order to obtain an interlocutory order.

[15] Kameron submits that neither exception applies, while the Respondent argues that granting the partial stay in this case will give the Applicant part of the relief it seeks in the underlying judicial review, and thus the first exception applies.

[16] In my view, it is not necessary to determine this question, because the SCC's decision in *CBC* indicates that a higher threshold will apply in a third circumstance: where the applicant is seeking an order which would require the respondent to take some action in order to change the status quo in effect at the time of the application – often described as a "mandatory interlocutory injunction".

[17] In light of the relief requested by Kameron, I asked for supplementary submissions from the parties on the application of the *CBC* decision regarding the "serious issue" test for mandatory injunctions. Both parties submit that the *CBC* test applies; they differ on the application of the test to these facts. I agree that the test on the serious issue question set out in *CBC* applies to this case.

[18] Here, as the Applicant's motion record makes clear, the company's name and the details of its contravention have already been posted on the IRCC website. Kameron seeks an order that the Respondent remove this from the IRCC website. This closely resembles the facts of the *CBC* case, where the Crown sought an order that the CBC remove from its website certain material that breached a non-publication order which had been issued in the context of a criminal trial. The CBC had posted the material prior to the issuance of the publication ban. The Crown applied for an order to require the CBC to remove the material from its website.

[19] In its decision, the Supreme Court clarified that where the applicant seeks an interlocutory injunction which would have the effect of requiring the respondent to take some positive action, the initial threshold is a high bar. The following passages (from paras 15-16) are particularly instructive, in light of the facts of the case before me:

> In my view, on an application for a mandatory interlocutory injunction, the appropriate criterion for assessing the strength of the applicant's case at the first stage of the *RJR--MacDonald* test is *not* whether there is a serious issue to be tried, but rather whether the applicant has shown a strong *prima facie* case. A mandatory injunction directs the defendant to undertake a positive course of action, such as taking steps to restore the *status quo*, or to otherwise "put the situation back to what it should be", which is often costly or burdensome for the defendant and which equity has long been reluctant to compel. Such an order is also (generally speaking) difficult to justify at the interlocutory stage, since restorative relief can usually be obtained at trial. Or, as Justice Sharpe (writing extrajudicially) puts it, "the risk of harm to the defendant will [rarely] be less significant than the risk to the plaintiff resulting from the court staying its hand until trial".
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> …
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> For example, in this case, ceasing to transmit the victim's identifying information would require an employee of CBC to take the necessary action to remove that information from its website. Ultimately, the application judge, in characterizing the interlocutory injunction as mandatory or prohibitive, will have to look past the form and the language in which the order sought is framed, in order to identify the substance of what is being sought and, in light of the particular circumstances of the matter, "what the practical consequences of the … injunction are likely to be". In short, the application judge should examine whether, in substance, the overall effect of the injunction would be to require the defendant to *do* something, or to *refrain from doing* something.
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> [Emphasis in original.]

[20] In view of the nature of the interlocutory order that Kameron seeks in this application, I find that it must meet the higher threshold established by the SCC in the *CBC* decision at para 18, namely: "The applicant must demonstrate a strong *prima facie* case that it will succeed at trial. This entails showing a *strong likelihood* on the law and the evidence presented that, at trial, the applicant will be ultimately successful in proving the allegations set out in the originating notice" [emphasis in original].

[21] I note in passing this is a significantly higher standard than is applied in the context of whether to grant leave under subsection 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [*IRPA*], where all that is required is that an applicant demonstrate "an arguable case": *Bains v Canada (Employment and Immigration)* (1990), 109 NR 239, [1990] FCJ No 457 (QL) (FCA).

[22] Kameron argues that it meets the higher threshold for "serious issue". It says that the basic facts are not in dispute: it hired two TFW employees for its Donkin coal mining operation, as it was permitted to do under the terms of the LMIA it signed with the Respondent; it paid these two employees higher wages and overtime, and provided certain additional benefits than it had specified in the LMIA; in doing so, it breached the terms of the agreement it had reached with the Respondent. However, Kameron argues that it has several very strong arguments against the finding of non-compliance.

[23] Kameron contends that the Respondent made two significant legal errors: first, it erred in finding three instances of non-compliance under the *IRPR*; Kameron argues that its only breach related to failing to provide accurate information in support of its LMIA application, contrary to paragraph 209.3(1)(c). The other breaches do not apply here because they relate to provisions which seek to prevent adverse treatment of TFWs in regard to wages and working conditions. In this case, Kameron provided more generous wages and benefits to its TFWs, and it argues that the first two grounds of non-compliance cannot stand.

[24] Second, Kameron argues that the Respondent failed to properly consider the justifications it put forward for its non-compliance, outlined above. It argues that its "good faith" justification

was not given adequate consideration by the Respondent, and also that the Notice of Final Determination erred in referring to the wrong justification provision in the *IRPR*.

[25] Kameron says that it acted in good faith, relying on the advice of legal counsel, and also relying on the fact that when these employees arrived at the border, they were granted work permits by Canada Border Services Agency officials. On this basis, Kameron argues that it has established a strong *prima facie* case that it had a reasonable justification for its action, a justification which is specifically provided for in the *IRPR*, and one which the Respondent failed to consider.

[26] Kameron also says the decision is unreasonable because there is no indication that the Respondent ever considered the actual justification provision in respect of the alleged contraventions. It notes that the Investigation Report, which formed the basis for the final Notice, refers to the wrong provision. The Investigation Report refers to the justification under section 209.4 of the *IRPR*, which relates to the failure by the employer to participate in the review and inspection process, which is not relevant to this case. It says that this error indicates that the Respondent did not consider the appropriate justification (namely subsection 209.3(4)), in relation to the provisions that it was accused of violating (subparagraph 209.3(1)(a)(iv), and paragraph 209.3(1)(c)). Kameron argues that this error is sufficient to render the decision unreasonable.

[27] The Respondent argues that Kameron was properly found to be non-compliant on three separate grounds: the payment of wages that were 60-120% higher than those specified in the LMIA; the provision of different working conditions, notably overtime paid at a rate that was 46-

60% higher than specified in the LMIA; and the provision of inaccurate information in support of its LMIA application. These are three separate contraventions. The Respondent submits that the wages and working conditions provisions of the *IRPR* are not only to protect vulnerable TFWs, they are also intended to protect the integrity of the Canadian economy and labour market. The Respondent says that the LMIA is contravened because it was never provided the proper information about wages and working conditions, and so it was unable to analyze the issue of whether there would have been sufficient Canadian workers to meet Kameron's needs at the higher salary and more favourable working conditions.

[28] This case encapsulates the difficulty of assessing whether an applicant, in an interlocutory application based on a limited record, and where the full hearing on the merits of the application for judicial review has not yet occurred, has met the high threshold established by *CBC*. Anything that is said by me at this stage may have an impact on the ultimate hearing on the merits. However, I must assess this case as it stands, against the very high threshold set by the SCC in *CBC*.

[29] On balance, I am not satisfied that Kameron has demonstrated "a strong likelihood" that it will be successful on its judicial review application (*CBC*, para 17). This is not in any way to discount the arguments Kameron has presented, which appear to raise new issues in relation to this regulatory scheme, and which can be fully explored on the hearing of the merits of the application for judicial review, if leave is granted. While the arguments that Kameron advances appear to be somewhat novel, the Respondent has put forward a substantive response founded in the wording of the *IRPR*, and its purpose in the enforcement scheme. Having considered the

submissions of both parties, I cannot conclude, based on the record before me, that Kameron has met the high threshold set by the *CBC* decision for mandatory interlocutory injunctions.

[30] While this conclusion is sufficient to dispose of the matter, in consideration of the arguments put forward by the parties I will also examine the other elements of the test.

B. *Irreparable Harm*

[31] The term irreparable harm refers to the nature of the harm rather than its scope or reach; it is generally described as a harm which cannot adequately be compensated in damages, or cured (*RJR-Macdonald*, at 341). Several cases have determined that this harm cannot be based on mere speculation, it must be established through clear and compelling evidence: see *Glooscap Heritage Society v Canada (National Revenue)*, 2012 FCA 255 at para 31; *Gateway City Church v Canada (National Revenue)*, 2013 FCA 126 at paras 15-16 [*Gateway City Church*]; *Newbould v Canada (Attorney General)*, 2017 FCA 106 at paras 28-29 [*Newbould*].

[32] Equitable relief must, however, retain its necessary flexibility, and some forms of harm are not easily established, especially in interlocutory proceedings where speed is of the essence and the ability to prepare a complete evidentiary record is necessarily somewhat limited. What is required, at the end of the day, is a "sound evidentiary foundation" for the assessment of the harm. Mere assertions or speculation on the part of the applicant will not be sufficient: see, for example *Vancouver Aquarium Marine Science Centre v Charbonneau*, 2017 BCCA 395 at para 60. As the Federal Court of Appeal noted recently, in *Newbould* at para 29:

> In my view… the quality of the evidence – "clear and compelling" or something less – is a function of the nature of the irreparable harm being alleged. Where the harm apprehended is financial,

> clear and compelling evidence is required because the nature of the harm allows it to be proven by concrete evidence such as that set out at paragraph 17 of *Gateway City Church*. In the case of harm to social interests such as reputation or dignity, as in *Douglas*, the occurrence of irreparable harm can be satisfied by inference from the whole of the surrounding circumstances.

[33] The Applicant asserts that it will suffer irreparable harm to its business reputation by the posting of its name on a Government of Canada website that is meant to make public the names of "offending" companies. It points to media coverage of the government's efforts to enhance enforcement of the program rules, and notes that a newspaper story about these enforcement activities names only Kameron as a non-compliant employer – none of the other companies listed on the website are mentioned. It says that the posting of a company's name is obviously meant to serve as a deterrent, and that it can only serve as a deterrent because it will have an impact on the overall reputation of the company. The Applicant contends that the posting of its name as a non-compliant employer, in the context of a program that is intended to protect vulnerable TFWs, can only lead the public to infer that it has been mistreating the foreign workers it has hired, precisely the opposite of what it actually did. Kameron asserts that this will inevitably harm its reputation.

[34] Other than an assertion of harm in an affidavit and letter submitted in support of this application, the Applicant has introduced no evidence of the nature or scope of the harm to its interests or reputation. It asks that the harm be inferred, noting that harm to business reputation has been recognized in other interlocutory injunction cases: *RJR-MacDonald*, at 341.

[35] The Respondent argues that the Applicant has not met the threshold of evidence required by the cases referred to earlier, and that the claim should be dismissed on this ground.

[36] As noted above, irreparable harm caused by damage to an individual's reputation can be inferred in appropriate cases. However, an interlocutory injunction will generally not issue where the harm is largely of a financial nature and the respondent is in a position to compensate the applicant if the ultimate decision finds a legal wrong has been done.

[37] In this case, the harm that is asserted is to the reputation of the business. There is no evidence of the nature or extent of any such harm, nor of whether the Applicant has undertaken any efforts to try to minimize or avoid such harms through its own communications efforts.

[38] This case may be compared with *Gateway City Church*, where the Church sought an order preventing the Minister from revoking its charitable status under the *Income Tax Act*, RSC 1985, c 1 (5th Supp). The Court of Appeal found that the appellant had not met the evidentiary threshold of establishing irreparable harm. The following passage is particularly apt in view of the matter before me:

> [13] If the Church's registration as a charity is revoked, it will not be able to issue receipts for donations. Future donors will not be able to claim deductions for their donations. The Church says donations will fall off, preventing it from doing essential work for its congregation and the wider community.
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> [14] Such a general assertion is insufficient to establish irreparable harm: *Holy Alpha and Omega Church of Toronto v. Canada (Attorney General)*, 2009 FCA 265 at paragraph 22. That sort of general assertion can be made in every case. Accepting it as sufficient evidence of irreparable harm would unduly undercut the power Parliament has given to the Minister to protect the public interest in appropriate circumstances by publishing her notice and

> revoking a registration even before the determination of the objection and later appeal.

[39] In the case before me, I am prepared to infer that there is some risk of harm associated with the posting of the Applicant's name on the website. However, the lack of specific evidence of the nature or degree of harm that will occur in the period pending the final determination of the leave and judicial review application is a factor which weighs against the granting of an injunction.

C. *Balance of Convenience*

[40] The third stage of the test "requires an assessment of the balance of convenience, in order to identify the party which would suffer greater harm from the granting or refusal of the interlocutory injunction, pending a decision on the merits" (*CBC*, para 12). The expression often used is "balance of inconvenience". The factors which must be considered in assessing this element of the test are numerous and will vary with the circumstances of each case: *RJR-MacDonald*, at 342.

[41] The harm to be assessed is that which will occur between the date of the grant (or refusal) of the interlocutory injunction and the decision on the underlying application. In the case of an application for judicial review in this Court, that delay is normally a matter of months, assuming the application proceeds as it should in the normal course.

[42] This balance takes on a different dimension where issues of constitutional validity, or statutory enforcement arise, because there is a public interest in compliance with duly enacted

laws (*Manitoba (AG) v Metropolitan Stores Ltd*, [1987] 1 SCR 110 at 129. In *RJR-MacDonald* at 343, the SCC cited with approval the following passage from a decision of Justice Blair in *Ainsley Financial Corp v Ontario Securities Commission* (1993), 14 OR (3d) 280, 1993 CanLII 5552 (Gen Div):

> Interlocutory injunctions involving a challenge to the constitutional validity of legislation or to the authority of a law enforcement agency stand on a different footing than ordinary cases involving claims for such relief as between private litigants. The interests of the public, which the agency is created to protect, must be taken into account and weighed in the balance, along with the interests of the private litigants.

[43] This Court and the Federal Court of Appeal have found the public interest in the enforcement of statutory or regulatory provisions weighs in support of the public authority seeking to enforce orders made under validly enacted laws, absent a challenge to the constitutionality of these laws: see, for example *Dugonitsch v Canada (Employment and Immigration)* (1992), 53 FTR 314, [1992] FCJ No 320 (QL) (TD) at para 15; *Baron v Canada (Public Safety and Emergency Preparedness)*, 2009 FCA 81 [*Baron*]; *Atwal v Canada (Citizenship and Immigration)*, 2004 FCA 427at para 19.

[44] I have weighed the following considerations in assessing the balance of convenience. First, the nature of the statutory framework is an important consideration. The provisions under which the Applicant was found to be non-complaint were introduced in order to seek to enhance compliance with the rules governing TFWs. The Regulatory Impact Assessment Statement, published at the time of the introduction of these changes states that following:

> The objectives of these amendments are to increase the Government's ability to encourage employer compliance with TFWP/IMP conditions and deter non-compliance by implementing

> a range of consequences to enable a proportionate response to varying degrees of non-compliance. This will help protect foreign nationals who require a work permit to work in Canada and protect the Canadian economy and labour market.

[45] It is noteworthy that the objectives include both the protection of TFWs, and the protection of the Canadian economy and labour market.

[46] The posting of the employer's name and the details of its non-compliance were one of the changes introduced to achieve these objectives. The *IRPR* make clear that in certain circumstances posting of this information is mandatory – the Minister is not given a wide discretion in the matter:

List of Employers	***Liste des employeurs***
Publication of employer's information	**Publication des renseignements sur les employeurs**
209.997 (1) If an officer or the Minister of Employment and Social Development makes a determination under subsection 209.996(1) or (2) in respect of an employer, the Department or that Minister, as the case may be, must add the information referred to in subsection (2) to the list referred to in that subsection, except if the officer or that Minister issues a warning to the employer in accordance with paragraph 209.996(4)(d).	**209.997 (1)** Si l'agent ou le ministre de l'Emploi et du Développement social formule une conclusion à l'égard d'un employeur aux termes des paragraphes 209.996(1) ou (2), le ministère ou ce ministre, selon le cas, ajoute les renseignements visés au paragraphe (2) à la liste visée à ce paragraphe, sauf s'il donne un avertissement à l'employeur aux termes de l'alinéa 209.996(4)d).
Content of list	**Contenu de la liste**
(2) A list is posted on one or more Government of Canada websites and includes the following information:	**(2)** Une liste est affichée sur un ou plusieurs sites Web du gouvernement du Canada et comporte les renseignements

	ci-après :
(a) the employer's name;	**a)** le nom de l'employeur;
(b) the employer's address;	**b)** l'adresse de l'employeur;
(c) the criteria set out in subclause 200(1)(c)(ii.1)(B)(I) or subparagraph 203(1)(e)(i) that were not satisfied or the conditions set out in the provisions listed in column 1 of Table 1 of Schedule 2 with which the employer failed to comply, as the case may be;	**c)** les critères prévus à la subdivision 200(1)c)(ii.1)(B)(I) ou au sous-alinéa 203(1)e)(i) qui n'ont pas été remplis ou les conditions prévues aux dispositions mentionnées dans la colonne 1 du tableau 1 de l'annexe 2 qui n'ont pas été respectées par l'employeur, selon le cas;
(d) the day on which the determination was made;	**d)** la date à laquelle la conclusion a été formulée à l'égard de l'employeur;
(e) the eligibility status of the employer;	**e)** la mention du fait que l'employeur est inadmissible ou non;
(f) if applicable,	**f)** s'il y a lieu, à la fois :
(i) the administrative monetary penalty amount, and	**(i)** le montant de la sanction administrative pécuniaire,
(ii) the ineligibility period of the employer.	**(ii)** la période d'inadmissibilité de l'employeur.

[47] A second important consideration is the delay in bringing the application for the partial stay. While in many interlocutory injunction cases delay will only be a factor where it is demonstrated that the lapse of time has caused prejudice to the respondent (see *Lindsay Petroleum Co v Hurd* (1874), LR 5 PC 221; *Erlanger v New Sombrero Phosphate Co* (1878), 3 App Cas 1218, 39 LT 269 (HL); *Canada Trust Co v Lloyd*, [1968] SCR 300; *M(K) v M(H)*, [1992] 3 SCR 6), in this case I find that delay is relevant because it tends to cast some doubt as to the nature and scope of the anticipated impact on the reputation of the Applicant. The sequence

of events is instructive. Unlike many situations in which an interim or interlocutory injunction is sought on an urgent basis to address an unknown and unforeseeable event which will cause significant harm to the applicant, here the company had known for a long time that the posting of its name was a potential outcome of the inspection.

[48] On the limited record before me, it appears that the Applicant was first notified that it was at risk of a finding of non-compliance in June 2016. Given the mandatory wording of the posting provision in the *IRPR*, this should have put it on notice that there was a real possibility that its name and the details of its non-compliance would be posted on the IRCC website. At the latest, this was stated in clear terms when it received the Notice of Preliminary Findings in May 2017. Each of these communications resulted in an exchange of correspondence with the Respondent, and during this period the Applicant no doubt hoped that it might convince the authorities that it should not be found to be in non-compliance. However, it is also fair to infer that the Applicant, which was advised by counsel throughout this period, would have also known that a finding of non-compliance was a real possibility.

[49] In such circumstances, if there was a serious concern about a significant and irreparable harm to its reputation, it would be fair to expect that the Applicant would have moved very quickly to prevent or reduce this harm upon receipt of the Notice of Final Determination on December 21, 2017. While the Applicant did file its application for leave and judicial review on January 17, 2018, it did not move to seek a partial stay of the order until March 28, 2018. While it is not clear on the record before me exactly when the Applicant's name was published on the website, the Notice of Final Determination indicated that this would occur "immediately".

[50] As noted above, I am prepared to infer that there may be some damage to the Applicant's business reputation arising from the posting of its name. However, the delay in bringing the application, in circumstances where the Applicant had every opportunity to prepare to bring an immediate application for relief to prevent or minimize this anticipated damage to its business reputation, combined with the absence of more specific evidence of the impact of the posting on the business reputation of the Applicant during the period pending the outcome of the leave and judicial review application, are all considerations which weigh against the granting of the order.

[51] Against this, I have considered the public interest in compliance with the legislative and regulatory framework. One element of that framework is the mandatory posting of the names of employers who are found to be non-compliant. This is an ordinary and intended consequence of a finding of non-compliance in many instances, as is clear from the very terms of the *IRPR*. In other circumstances, courts have found that interlocutory relief will not be granted where the harm alleged is the natural and ordinary consequence of the implementation of the legislative and regulatory regime; something more is required in order to obtain such extraordinary relief.

[52] So, for example, the hardships associated with separation from one's family are an ordinary consequence of a removal order in an immigration context, and these difficulties, in and of themselves, do not justify the grant of a stay: see *Baron* at para 69. On this point, I would refer again to the *Gateway City Church* decision of the Federal Court of Appeal which rejected the alleged harm to the Church's reputation that might flow from a revocation of charitable status (para 14):

> … That sort of general assertion can be made in every case. Accepting it as sufficient evidence of irreparable harm would unduly undercut the power Parliament has given to the Minister to

> protect the public interest in appropriate circumstances by publishing her notice and revoking a registration even before the determination of the objection and later appeal.

IV. Conclusion

[53] I have concluded that the granting of this interlocutory order would not be just and equitable in all of the circumstances of this case, because:

- Kameron has not demonstrated a strong *prima facie* case that it will succeed on the merits of its application for judicial review;
- The evidence of irreparable harm to its business reputation is lacking, given the particular circumstances of this case; and
- The balance of convenience favours the Respondent, in view of: the mandatory nature of the posting requirement of the *IRPR*; the delay in bringing this application, given that Kameron had a lengthy period of advance notice of the possibility that its name and the details of its contravention would be posted on the IRCC website; and the fact that whatever incidental harm may be done to a company's reputation through the posting of this information is a natural consequence of the enforcement of the Regulations.

[54] Neither party made any submissions regarding costs. Although I am dismissing the motion, I have decided not to grant costs, considering all of the circumstances of this case, and in exercise of my discretion under Rule 400 of the *Federal Courts Rules*, SOR/98-106.

ORDER in IMM-261-18

THIS COURT ORDERS that:

1. The motion is dismissed.

2. No costs are awarded.

"William F. Pentney"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-261-18
STYLE OF CAUSE:	KAMERON COAL MANAGEMENT LTD. v THE MINISTER OF EMPLOYMENT AND SOCIAL DEVELOPMENT CANADA

MOTION IN WRITING CONSIDERED AT OTTAWA, ONTARIO PURSUANT TO RULE 369 OF THE FEDERAL COURTS RULES

JUDGMENT AND REASONS:	PENTNEY J.
DATED:	JULY 10, 2018

APPEARANCES:

M. Lee Cohen Craig M. Garson	FOR THE APPLICANT
Tokunbo Omisade	FOR THE RESPONDENT

SOLICITORS OF RECORD:

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Garson MacDonald Barristers and Solicitors Halifax, Nova Scotia	FOR THE APPLICANT
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