Federal Court  Cour fédérale

Date: 20210716

Docket: IMM-3590-21

Citation: 2021 FC 755

Ottawa, Ontario, July 16, 2021

PRESENT: Mr. Justice Pentney

BETWEEN:

OSAMA EBID

Applicant

and

IMMIGRATION CONSULTANTS OF CANADA REGULATORY COUNCIL AND MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondents

ORDER AND REASONS

[1] Osama Ebid [Applicant] seeks a stay of the order made by a Discipline Committee of the Immigration Consultants of Canada Regulatory Council [ICCRC] dated May 26, 2021 (2021 ICCRC 13) [Penalty Order], revoking his membership in the ICCRC and imposing other penalties. That order followed a finding by the Discipline Committee dated March 1, 2021, that

the Applicant had engaged in conduct unbecoming and professional misconduct (2021 ICCRC 04) [Misconduct Order].

[2] The Applicant launched an application for judicial review challenging the Discipline Order, and then brought this motion in writing under Rule 369 of the *Federal Courts Rules*, SOR/98-106 for a stay of the order pending the determination of the judicial review. The Respondent Minister of Citizenship and Immigration did not participate in this proceeding.

[3] In the underlying judicial review, the Applicant claims that the disciplinary process breached his right to procedural fairness, and that it violated section 7 of the *Canadian Charter of Rights and Freedoms*, s 7, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11 [*Charter*], as well as paragraphs 1(a) and 2(e) of the *Canadian Bill of Rights*, SC 1960, c 44 [*Canadian Bill of Rights*]. He also asserts that the disciplinary process breached the *Privacy Act*, RSC, 1985, c P-21, because it affects the interests of his clients, who are third parties to the disciplinary proceeding.

[4] This proceeding arises against the backdrop of several disciplinary proceedings launched against the Applicant and Ms. Qita. While their present marital status is unclear, Ms. Qita was the Applicant's wife and it is the breakdown of their professional and personal relationship that sets the context for the disciplinary proceedings against the Applicant.

[5] The Applicant has been the Chief Executive Officer of a company called "Fast to Canada" since 2012. For most of the relevant period, Ms. Qita was the sole Registered

Immigration Consultant with the company, while the Applicant ran the business. He became a Registered Immigration Consultant in 2018, at a time when Ms. Qita was subject to disciplinary proceedings by the ICCRC. Her disciplinary hearing was held in November 2019, and her membership in the ICCRC was revoked on April 7, 2020.

[6] Two sets of allegations were brought against the Applicant. The first set related to his communications with an individual who had been a client of Ms. Qita, and who was a witness in her disciplinary hearing. The Applicant was found to have committed conduct unbecoming a Registered Immigration Consultant and to have breached his duty of good faith by, among other things, improperly intimidating and threatening the witness, making false promises and offering a financial reward for the witness' cooperation against the ICCRC, and attempting to discredit the ICCRC and its staff to the witness.

[7] The second set of allegations related to the Applicant's failure to meet his professional obligations regarding the responsible transfer of files to Ms. Qita after the breakdown of their relationship. The Applicant was found to have committed conduct unbecoming a Registered Immigration Consultant and professional misconduct, as well as breaching his duty of good faith and obstructing an ICCRC investigation. The Discipline Committee made a series of findings against the Applicant, including that he had:

- withheld relevant information from the investigator and obstructed the investigation into his conduct;
- knowingly taken steps that impeded the ICCRC from fulfilling its mandate, namely by handing over files to Ms. Qita without making copies, and failing to provide copies of files to the ICCRC when asked to do so;

- breached his duty to his clients by failing to deal with their files in a professional manner, misrepresenting the ongoing situation and the clients' options regarding future representation, inappropriately issuing a blanket denial of refunds for unearned fees, and attempting to have his clients sign a waiver and release; and
- breached his duty of good faith to Ms. Qita by failing to ensure an orderly transfer of files.

[8] The Discipline Committee then invited and considered submissions on penalty. On May 26, 2021, it issued its order and decision, by which it ordered: (i) that the Applicant's licence be revoked and that he be prohibited from re-applying for two years; (ii) that he return his original registration certificate and membership identification; (iii) that within 15 days from the date of the order, he inform all of his existing clients that his membership had been revoked; and (iv) that he pay costs to the ICCRC in the amount of $35,000, within 18 months of the date of the order.

[9] This is the order that the Applicant seeks to have stayed, pending the determination of his application for judicial review.

[10] In support of his motion for a stay, the Applicant submits that there is no evidence that his conduct harmed the public or any of his clients, and he argues that if the Discipline Committee's order remains in place his clients will suffer harm. In addition, he asserts that the order will deprive him of his income and negatively affect his professional reputation, and that he will inevitably breach the order because he cannot afford to pay the costs imposed by the Committee.

[11] For the following reasons, the motion for a stay will be dismissed. The overall equities of the situation strongly favour leaving the order of the Discipline Committee in place pending the determination of the judicial review, in particular because of the specific findings of misconduct and the public interest nature of the ICCRC discipline proceedings.

[12] The only issue is whether the Applicant has met the test to obtain a stay of the order. That test requires him to establish that: (i) there is a serious issue to be tried in the underlying application for judicial review; (ii) that he will suffer irreparable harm if the stay is not granted; and (iii) that the overall balance of convenience favours granting a stay pending the determination of the judicial review application (*R v Canadian Broadcasting Corp*, 2018 SCC 5 at para 12 [*CBC*]; *Qita v Immigration Consultants of Canada Regulatory Council*, 2020 FC 695 at para 7). The Applicant must satisfy each of the three elements of the test, but strength on one aspect may overcome weakness on another (*Monsanto v Canada (Health)*, 2020 FC 1053 at para 50).

[13] It is important to remember that an interlocutory injunction is equitable relief, and a degree of flexibility must be preserved in order to ensure that the remedy can be effective when it is needed to prevent a risk of imminent harm pending a ruling on the merits of the dispute. This was reaffirmed in *Google Inc v Equustek Solutions Inc*, 2017 SCC 34 at para 1[*Google*], where the Supreme Court of Canada noted that "[u]ltimately, the question is whether granting the injunction would be just and equitable in all the circumstances of the case."

I. Serious Issue

[14] In most interlocutory injunction cases, the "serious issue to be tried" threshold is not a high bar – it is often summarized as merely requiring the judge to make a preliminary assessment of the case to ensure that the claim is neither "vexatious nor frivolous" (*RJR – MacDonald Inc v Canada (Attorney General)*, [1994] 1 SCR 311 at p 337 [*RJR – MacDonald*]). There are exceptions, but none of them apply here.

[15] In view of my findings on the other issues, it is not necessary to review the merits of the Applicant's claims in any detail. I will simply state that I do not find that the Applicant's case is so clearly vexatious or frivolous that the stay should be denied on that ground.

II. Irreparable Harm

[16] The term "irreparable harm" refers to the nature of the harm rather than its scope or reach; it is generally described as a harm that cannot adequately be compensated in damages or cured (*RJR – MacDonald* at p 341).

[17] This harm cannot be based on mere speculation, it must be established through evidence at a convincing level of particularity (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; *Newbould v Canada (Attorney General)*, 2017 FCA 106 at paras 28-29 [*Newbould*]). In addition, the evidence must demonstrate a high likelihood that the harm will

occur, not that it is merely possible. This will obviously depend on the circumstances of each case (see the discussion in *Letnes v Canada (Attorney General)*, 2020 FC 636 at paras 49-58).

[18] In addition, the jurisprudence is clear that mere allegations of *Charter* violations are not sufficient to establish irreparable harm (*International Longshore and Warehouse Union, Canada v Canada (Attorney General)*, 2008 FCA 3 at para 33). In *Professional Institute of the Public Service of Canada v Canada (Attorney General)*, 2015 FC 1101, Justice Catherine Kane confirmed at paragraph 154 that "irreparable harm must be established independently of arguments regarding the constitutionality of the measure at issue and cannot be inferred based on a potential *Charter* breach that has yet to be determined" (see also *Right to Life Association of Toronto and Area v Canada (Employment, Workforce and Labour)*, 2018 FC 102 at paras 59-64). These principles apply with equal force to mere allegations of a violation of the rights set out in the *Canadian Bill of Rights*.

[19] The Applicant argues that if a stay is not granted, he will suffer several types of irreparable harm, which can be grouped into three categories. First, he says that the refugee sponsorship applications he is involved in will be refused, and that other clients' applications could also be refused. Second, the Applicant argues that his professional income and reputation will be damaged, and he will lose his only source of income. Third, he points to "[t]he psychological and severe distress that I and my family will experience" (Applicant's Motion Record at pp 7-8).

[20] None of these assertions meet the test for proof at a convincing level of particularity of irreparable harm that will (as opposed to may) occur. In regard to the Applicant's concerns for his clients, I note that it is only harm to the Applicant that can be considered at this stage, not that experienced by any third party (*RJR – MacDonald* at p 341). Further, his clients can obtain other representation and so their cases are not inevitably doomed to fail.

[21] In regard to the harm to the Applicant's professional reputation, the ICCRC finding of misconduct was made on March 1, 2021, and the penalty order was made on May 26, 2021, and both decisions have been published online on CanLII, a widely available legal information repository. In addition, the Applicant has been ordered to advise his current clients that his licence has been suspended. By virtue of this, it can be inferred that the harm to the Applicant's professional reputation has already occurred. Interlocutory relief is meant to prevent future harm, not to remedy that which has already happened, and the Applicant has failed to establish that he will suffer further reputational harm between now and the time when his judicial review is dealt with.

[22] I would also note that a certain degree of harm to professional reputation is an intrinsic part of being subjected to professional misconduct proceedings by the ICCRC (*Newbould* at para 31). One incidental by-product of this is that it may serve as an incentive for members of regulated professions such as immigration consultants to maintain high professional standards and to cooperate fully in any discipline-related inquiries or investigations launched by the ICCRC.

[23] The Applicant claims that he will lose his only income if the order remains in place, and he submits that his constitutes irreparable harm. I cannot agree. First, this is a purely financial harm, which can be repaired by a damages award if the Applicant is ultimately successful in his judicial review. In addition, the Applicant has demonstrated resourcefulness as an entrepreneur in the past, and there is no evidence that he will not be able to find gainful employment.

[24] In regard to the claim that not granting the stay will cause the Applicant and his family severe psychological stress, there is simply no evidence in the record to substantiate this claim. It can reasonably be inferred that being subject to disciplinary proceedings and having the penalty imposed by the Discipline Committee would inevitably cause a degree of distress; however, that is also an intrinsic part of the disciplinary process for a regulated profession. The Applicant has not brought forward any evidence to support this aspect of his claim in regard to the nature of the distress or its impact on him or his family, other than his own assertions. The case-law is clear that more is required.

[25] Overall, I find that the Applicant's claims of irreparable harm fall well short of the requirements set out in the case law summarized earlier. Some of it relates to alleged harms to third parties, which cannot be considered. Some of it relates to harms that have already occurred or are simply part and parcel of practicing in a regulated profession and thus being subject to the discipline procedures of a regulator such as the ICCRC. Other aspects of the harm the Applicant claims have not been established in the evidence.

III. Balance of Convenience

[26] 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* at para 12). The expression often used is "balance of inconvenience" (*RJR – MacDonald* at p 342). The factors that must be considered in assessing this element of the test are numerous and will vary with the circumstances of each case; it is at this stage that any public interest considerations may come into play (*RJR – MacDonald* at pp 342-43).

[27] While the Applicant did not specifically address this element of the test, he did refer to certain wider considerations that fit within this rubric. In particular, the Applicant notes that in an earlier proceeding, the Discipline Committee refused to grant an interim suspension of his licence. He argues that this means there is no public interest concern arising from the allegations against him because otherwise, the Discipline Committee would have ordered a suspension of his licence.

[28] I am not persuaded by the Applicant's argument that the earlier disciplinary proceeding is evidence of a conclusion that there was no harm to the public interest. While it is true that the Discipline Committee refused to issue an interim suspension of his licence, it is equally true that the Discipline Committee imposed a number of conditions on his continued practice of the profession, including that he and Ms. Qita inform all of their existing clients that they were no longer practicing together as immigration consultants, and that neither of them contact any client

or other individual who may be a witness in any disciplinary proceeding with the intent to intimidate or suggest any testimony (Applicant's Motion Record at p 112).

[29] All that can be taken from this is that the Discipline Committee was not convinced that an interim suspension of the licence of the Applicant and Ms. Qita was necessary at that time. The fact that the Discipline Committee imposed conditions on the Applicant's continued practice of the profession is an indication of their concern to protect the public interest. This fact, combined with the subsequent finding against the Applicant in the Misconduct Order that he had breached his professional standards by interfering in an ICCRC investigation by contacting a witness in Ms. Qita's disciplinary proceeding, is an indication that the conditions may not have been entirely successful in achieving their desired goal. This does not tend to tip the balance of convenience in the Applicant's favour.

[30] On the other side, the ICCRC is a professional regulatory body whose mandate is to protect the public interest by establishing and maintaining professional standards of conduct (*Immigration Consultants of Canada Regulatory Council v Rahman*, 2020 FC 832 at para 6). It does this in several ways, including by investigating and, where warranted, disciplining members who fail to meet the applicable standards of professional conduct (*Zaidi v Immigration Consultants of Canada Regulatory Council*, 2018 FCA 116; *Watto v Immigration Consultants of Canada Regulatory Council*, 2019 FC 1024 at para 3).

[31] In this case, the Applicant was found to have engaged in conduct unbecoming when he contacted an individual who was a witness in a disciplinary proceeding against Ms. Qita. He was

found to have interfered with the ICCRC disciplinary process by his communication with this witness. In addition, he was found to have committed professional misconduct by failing to abide by directions and orders issued by the ICCRC relating to the breakdown of his personal and professional relationship with Ms. Qita. This includes a variety of actions that did not allow an orderly transition of files between them, communication with clients that was misleading, threatening or otherwise inappropriate, as well as misrepresentations to the investigator looking into the discipline complaints against him.

[32] The overall impression that emerges from the disciplinary decision is that the Applicant and Ms. Qita lost sight of their obligations towards their clients in the midst of the breakdown in their personal relationship, to the extent that the ICCRC decided to take disciplinary action against both of them, including seeking an interim suspension of their licences. This is summarized by the Discipline Committee in the following way (2021 ICCRC 13):

> 25. The Panel found that Ebid communicated in an unprofessional manner with SH in March and November 2019. There was a clear pattern of harassment and threats in both communications. Similarly, in the summer of 2019, Ebid's communications with FTC clients who had retained Qita as their authorized representative showed a similar pattern of disregard for the interests of clients and a preference for his own personal interests over theirs.
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> 26. In conclusion, the Panel found that the matters that were reviewed in the hearing showed a pattern of behaviour and that Ebid's misconduct was not an isolated or single act but rather part of a pattern of pursuing his personal interests over his professional obligations.

[33] These findings support a conclusion that the public interest considerations in this case tip the balance of convenience in favour of denying the stay of the Discipline Committee order. The decision to impose these sanctions on the Applicant followed an extensive hearing that resulted

in several findings of professional misconduct against him, as well as consideration of separate submissions on the appropriate sanction to be imposed for these breaches. The ICCRC's responsibility to protect the integrity of the immigration system by enforcing professional standards of conduct, which led it to impose these sanctions in this case, are relevant considerations in assessing the balance of convenience.

[34] I find that the balance of convenience strongly favours denying the stay of the Discipline Committee order.

IV. Overall Assessment of the Equities of the Case

[35] Stepping back from the specific elements of the test, the overall question is whether it is just and equitable in all of the circumstances to grant the stay (*Google* at para 1).

[36] I find that the stay should be denied, considering all of the circumstances. The nature of the professional misconduct findings against the Applicant are a particularly significant factor, because they point to his failure to abide by the standards of the profession in significant ways; he is not alleged to have committed some sort of technical breach of some arcane rule or to have failed to file his paperwork on time. Rather, the Applicant has been found to have interfered with the ICCRC's investigation into professional misconduct complaints against Ms. Qita and himself, and he has failed to meet his professional obligations to clients in the course of the breakdown of the relationship with Ms. Qita.

[37] These are extremely serious findings, which point to a concern that issuing a stay might permit the Applicant to continue to engage in similar conduct while his judicial review application is pending.

[38] For all of these reasons, I am denying the Applicant's motion for a stay of the order of the Discipline Committee pending the determination of his judicial review.

[39] The Respondent sought its costs, and I see no reason to depart from the usual rule. The Applicant will pay the Respondent's costs, which are fixed at $500.00, pursuant to Rules 400 and 401.

ORDER in IMM-3590-21

THIS COURT ORDERS that

1. The motion for stay is dismissed.

2. The Applicant shall pay the Respondent's costs, which are fixed at $500.00.

"William F. Pentney"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-3590-21
STYLE OF CAUSE:	OSAMA EBID v IMMIGRATION CONSULTANTS OF CANADA REGULATORY COUNCIL AND MINISTER OF CITIZENSHIP AND IMMIGRATION

MOTION IN WRITING CONSIDERED AT OTTAWA, ONTARIO PURSUANT TO RULE 369 OF THE *FEDERAL COURTS RULES*, SOR/98-106

ORDER AND REASONS:	PENTNEY J.
DATED:	JULY 16, 2021

APPEARANCES:

Osama Ebid	FOR THE APPLICANT ON HIS OWN BEHALF
Jordan Glick Aly Háji	FOR THE RESPONDENTS IMMIGRATION CONSULTANTS OF CANADA REGULATORY COUNCIL

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