Federal Court Cour fédérale

Date: 20240730

Docket: T-1053-23

Citation: 2024 FC 1212

Ottawa, Ontario, July 30, 2024

PRESENT: The Honourable Madam Justice Ngo

BETWEEN:

DINESH MOONSHIRAM

Applicant

and

THE COLLEGE OF IMMIGRATION AND CITIZENSHIP CONSULTANTS

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Mr. Dinesh Moonshiram [Mr. Moonshiram, or the Applicant] seeks judicial review of two decisions by the Discipline Committee of the College of Immigration and Citizenship Consultants [Discipline Committee]. The first is a decision finding that the Applicant engaged in professional misconduct [Disciplinary Decision]. The second is a decision where the Discipline

Committee imposed a penalty consisting of a suspension of the Applicant's license, a fine and remediation courses [Penalty Decision] [collectively, the Decisions].

[2] For the reasons that follow, this application is dismissed. The Applicant has not demonstrated that the Decisions are unreasonable. The Decisions bear the hallmarks of transparency, justifiability and legibility. I also find that there has been no breach of procedural unfairness as the Applicant has alleged.

II. Facts

[3] The Applicant is a licensed Regulated Canadian Immigration Consultants [RCIC].

[4] The Respondent is the College of Immigration and Citizenship Consultants [College or Respondent]. The College regulates the practice of RCICs in Canada. The College's statutory authority is set out in the *College of Immigration and Citizenship Consultants Act* SC 2019, c 29, s 292 [*CICCA*] and other related legislation. The Discipline Committee of the College rendered the Decisions on review.

[5] In June 2016, Mrs. MSM and Mr. MBM [Clients] met with Mr. Moonshiram at his office in Port-Louis, Mauritius to discuss immigration applications to Canada. Mr. Moonshiram proposed that Mrs. MSM apply for a student visa and Mr. MBM for a work permit, with Calgary, Alberta, as their intended destination. They agreed to a retainer of 450,000 Mauritian Rupees (approximately $16,200 CAD). Mr. MBM stated that he sold his business to afford the fees and paid a deposit of 250,000 MUR in two installments.

[6] The Applicant submitted an application for Mrs. MSM's admission to ABM College in Calgary and visa applications on behalf of the Clients. Mrs. MSM was admitted to a program at ABM College on October 20, 2016. However, Immigration, Refugees and Citizenship Canada rejected the Clients' visa applications on November 4, 2016.

[7] The Clients alleged that Mr. Moonshiram delayed informing them about the visa application rejection until December 5, 2016. Following this, the Clients alleged experiencing significant difficulty in obtaining information from Mr. Moonshiram about the status of their applications, prompting multiple unsuccessful attempts to contact him.

[8] The Clients terminated the retainer on February 28, 2017, and requested the return of their passports and a refund. Mr. Moonshiram's office allegedly refused which lead to police intervention to recover the Clients' passports.

[9] On April 27, 2017, the Clients filed a formal complaint with the Immigration Consultants of Canada Regulatory Council [ICCRC] on April 27, 2017, who began an investigation on May 1, 2017.

[10] Between May 4, 2017, and January 5, 2018, the ICCRC and the Applicant exchanged communications. On January 5, 2018, the ICCRC informed the Applicant that the complaint was being referred to a Discipline Committee of the ICCRC.

[11] On around October 21, 2020, a second investigator was assigned to the complaint. The second investigator attempted to contact the Clients but they did not respond. The Applicant was not aware of these developments at this time.

[12] In a Notice of Referral served to the Applicant dated March 15, 2022 [Notice of Referral], the College informed the Applicant that they had replaced the ICCRC as the national regulator for RCICs. Having continued the complaint from the ICCRC, the complaint had been referred to a hearing of the Discipline Committee. The Notice of Referral set out the applicable charges and allegations of professional misconduct that the College was asserting against the Applicant.

[13] The Applicant was asked by the College Tribunal Office to attend a case management conference [CMC] call on April 13, 2022.

[14] In June 2022, the Applicant retained legal counsel. Between June 2022 and November 30, 2022, the College and the Applicant exchanged disclosure and written submissions, including Witness Evidence Forms [WEF] in the context of the disciplinary proceedings. The parties have also referred to this period as the adjudication phase.

[15] On January 18, 2023, a panel of the Discipline Committee rendered the Disciplinary Decision, which was a decision on findings of fact on the allegations of professional misconduct.

[16] Submissions on penalty were then exchanged. On May 8, 2023, the Discipline Committee issued a Penalty Decision.

III. Decisions Subject to Review

A. Disciplinary Decision

[17] The Discipline Committee found Mr. Moonshiram guilty of professional misconduct, and that he breached his obligations under the College's *Code of Professional Ethics* in force and in effect from March 11, 2016 to January 31, 2019 [*Code*].

[18] Firstly, the Discipline Committee determined that Mr. Moonshiram breached his professional obligations by offering to secure employment for Mr. MBM for a fee (also described as job selling). Job selling is prohibited by Alberta's *Consumer Protection Act*, RSA 2000, c C-26.3 [*CPA*], and its applicable Regulations. The Discipline Committee found that based on the language in the Applicant's retainer agreement, he breached the provisions of the *CPA* and applicable Regulations on job selling. The Discipline Committee rejected the Applicant's arguments that the retainer agreement contained imprecise wording or intentions.

[19] Secondly, the Discipline Committee found that Mr. Moonshiram knowingly provided false information to ABM College by listing a false Calgary address for Mrs. MSM on her visa application. This constituted misrepresentation that was not justified by the explanations Mr. Moonshiram provided. The Discipline Committee found that Mr. Moonshiram breached his

professional obligations under the *Code* by providing inaccurate information to Canadian institutions.

[20] Thirdly, the Discipline Committee determined that Mr. Moonshiram failed to communicate effectively and in a timely manner with the Clients. The Discipline Committee found that Mr. Moonshiram did not promptly inform the Clients of the rejection of their visa applications and provided vague and insufficient responses to their subsequent inquiries in the months following the rejection. His communication failures led to escalating anxiety and distress for the Clients.

[21] Lastly, the Discipline Committee found that Mr. Moonshiram engaged in professional misconduct by refusing to return the Clients' passports after the termination of the retainer. This involved police intervention. Although there was a dispute over who contacted the police, the Discipline Committee found that the core issue was the undue delay in returning and the inappropriate handling of the Clients' property.

[22] In sum, the Discipline Committee found that the Applicant failed to uphold his professional obligations as described in the *Code.*

B. Penalty Decision

[23] The Discipline Committee’s Penalty Decision related each finding on each allegation of misconduct, which the Discipline Committee stated reflected the severity and impact of Mr.

Moonshiram's actions on the Clients and to the integrity of the regulated immigration consultant profession generally.

[24] The Discipline Committee's finding that Mr. Moonshiram engaged in job selling, a practice prohibited by Alberta law, significantly impacted the Penalty Decision. This violation demonstrated a fundamental breach of ethical standards, as it involved exploiting vulnerable clients seeking employment opportunities in Canada. The Discipline Committee viewed this as a grave offense, necessitating a substantial penalty to deter similar conduct by other practitioners.

[25] The Discipline Committee's finding in respect of the false Calgary address also featured prominently in the Penalty Decision. The Discipline Committee found that Mr. Moonshiram's deliberate misrepresentation in documents he was responsible for undermined the trust that Canadian institutions and authorities place in immigration consultants. The Discipline Committee considered this a serious ethical breach, warranting a penalty that emphasized the importance of honesty and accuracy in all client-related documentation.

[26] The Discipline Committee assessed Mr. Moonshiram's failure to communicate effectively and in a timely manner with the Clients with the delay in returning the Clients' passports promptly after the termination of the retainer.

[27] The Discipline Committee found that the Applicant delayed communicating the date of the visa application refusal. After this, the Applicant did not promptly respond to the Clients' inquiries, and when he did, his responses were vague and confusing. The Discipline Committee

emphasized that effective communication is a cornerstone of professional practice, and the Applicant's failure in this area justified a penalty aimed at improving his communication skills and ensuring compliance with professional standards. The Applicant's refusal to return the Clients' passports in a timely way was a breach of his professional obligations, and demonstrated a clear disregard for the Clients' rights. This further eroded the Clients' trust in the professional relationship. The Discipline Committee viewed this as a significant violation, necessitating a strong penalty to reinforce the importance of respecting client property and adhering to professional obligations.

[28] The Discipline Committee imposed a penalty on Mr. Moonshiram, comprising of a 9-month suspension of his license, a fine of $15,000 and an order to pay the costs of the disciplinary proceedings. Additionally, the Applicant was required to undertake further professional training to address his communication and ethical obligations. The penalties aimed not only to sanction Mr. Moonshiram for his misconduct but also to rehabilitate him, ensuring that he would meet the professional standards required of a regulated immigration consultant in the future.

[29] The Penalty Decision underscored the Discipline Committee's commitment to upholding high ethical standards and protecting the public interest in the immigration consulting profession.

IV. Issues

[30] The Applicant challenges the Decisions on the basis that the College breached procedural fairness, and that the Discipline Committee's Decisions were unreasonable.

[31] In summary, the Applicant articulated the allegations of a breach of procedural fairness and reasonableness in that: (a) the College investigator failed to investigate important issues; (b) the College's Tribunal office discriminated against the Applicant by scheduling and proceeding with the CMC during a holy month; and, (c) the Discipline Committee did not hold an oral hearing.

[32] On the reasonableness of the Decisions, the Applicant submits that:

a) The College's Discipline Committee made unfair and unreasonable credibility findings;

b) The Applicant did not supply false and/or incorrect information in the Clients' documents;

c) The Applicant did not refuse to return the Clients' passports;

d) The Applicant did not engage in "job selling". He did not propose to secure a job in Canada for Mr. MSM; and,

e) The penalty imposed by the Discipline Committee was unreasonable.

[33] As such, I will address the following issues:

a) Preliminary issue: is the new evidence in the Applicant's affidavit admissible?

b) Was the manner of the College's disciplinary process procedurally unfair?

c) Are the Decisions unreasonable?

V. Analysis

A. Preliminary issue: is the new evidence admissible?

[34] The Respondent brought a motion which was argued at the hearing. This preliminary issue related to the Applicant's affidavit contained in the Applicant's Record. The College's motion objected to new information and documents in the Applicant's affidavit that were not before the Discipline Committee at the time it considered the allegations and rendered the Decisions (citing *Qita v Immigration Consultants of Canada Regulatory Council*, 2021 FC 764 at paras 17 to 20 [*Qita*]). The Respondent outlined in a concordance table the references where the Applicant sought to adduce new facts, new evidence or new arguments that were not adduced in either the disciplinary or penalty phases of the College proceedings [new evidence].

[35] In *Qita*, Justice Ahmed summarized the established jurisprudence that evidence that was not before the decision-maker is generally inadmissible upon judicial review. The rationale behind this rule is that reviewing courts are to review administrative decisions, not determine questions anew that were absent or inadequately placed before the decision-maker (*Qita* at para 18, other citations omitted).

[36] Justice Ahmed also outlined the three recognized exceptions to the rule, set out in *Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 at paras 19-20 [*Access Copyright*]). These include: (i) evidence that provides background information not going to the merits of the decision; (ii) evidence that displays an unsupported finding of fact; and (iii) evidence relevant to an issue of

natural justice, procedural fairness, improper purpose or fraud that could not have been placed before the decision-maker (*Qita* at para 19; *Access Copyright* at para 20).

[37] I agree with the Applicant that some of the information in the Applicant's affidavit is reflected in the College's Certified Tribunal Record [CTR] and that some information constitutes background or a summary to streamline the references to the record. However, I also agree with the Respondent that the new evidence in the Applicant's affidavit does not meet the *Access Copyright* exceptions.

[38] The new evidence is not admissible. Accordingly, I will disregard the new evidence that is not contained in the CTR and does not provide background information.

B. The Disciplinary Proceedings: Procedural Fairness Allegations

[39] The Applicant raises two types of procedural fairness allegations. One deals with the process in the investigation stage leading to the referral to the Discipline Committee; and the other deals with what occurred during the adjudication stage after the referral to the Discipline Committee.

[40] Allegations of a breach of procedural fairness are considered by the Court in a manner akin to applying the correctness standard of review. The reviewing court must conduct its own analysis to determine for itself whether the process followed by the decision maker was fair, with regard to all the relevant circumstances (*Baker v Canada (Minister of Citizenship and*

Immigration), 1999 CanLII 699 (SCC), [1999] 2 SCR 817 at paras 21 to 28; *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at para 54).

[41] An assessment of procedural fairness requires taking into account the particular context and circumstances at issue, to determine whether the process followed by the administrative decision maker was fair and offered the parties a right to be heard and a full and fair chance to know and respond to the case against them. It is well established that the requirements of the duty of fairness are eminently variable and must be determined on a case-by-case basis (*Baron v Canada (Attorney General)*, 2023 FC 1177 at paras 22-24).

[42] It is also trite law that a party that knows of a procedural flaw, effect or irregularity with an administrative process must raise it with the administrative decision-maker as soon as reasonably possible. It must give the first-instance decision-maker a chance to address the matter before any harm is done, to try to repair any harm or to explain itself. A party, knowing of a procedural problem at first instance, cannot stay still in the weeds and then, once the matter is in the appellate court, pounce (*Hennessey v Canada*, 2016 FCA 180 at para 21 [*Hennessey*]; see also *Irving Shipbuilding Inc. v Canada (Attorney General*), 2009 FCA 116 at para 48; *Canada (Minister of Transport, Infrastructure and Communities) v Farwaha*, 2014 FCA 56 at para 113; *Kozak v Canada (Minister of Citizenship and Immigration)* 2006 FCA 124 at para 166).

[43] A party's failure to raise a breach of procedural fairness allegation at the earliest practical opportunity will amount to an implied waiver (Highway v Peter Ballantyne Cree Nation, 2023

FC 565 at paras 56-57, citing *Muskego v Norway House Cree Nation Appeal Committee*, 2011 FC 732 at para 42).

[44] For the following reasons, I find that the Applicant did not raise allegations of procedural fairness at the earliest practical opportunity during the disciplinary process, and cannot raise these allegations now on judicial review.

[45] In this case, the Applicant alleges the College's investigation was procedurally unfair because the investigator exhibited a closed mind by failing to investigate false statements and discrepancies by the Clients. The Applicant provided as an example the Clients' allegation that he did not communicate the negative visa decision to them in a reasonable time. The breach of the duty of fairness was that the College did not test the Client's assertions and allegations during the investigation stage. The Applicant also alleged that he was not advised that the investigation was reassigned or "restarted" in 2020.

[46] The Applicant referred to *Milner v Registered Nurses Association of British Columbia*, 1999 CanLII 3148 (BCSC) at paragraph 37 [*Milner*], where the Justice Boyd considered *R v Dixon*, 1998 CanLII 805 (SCC), [1998] 1 SCR 244 [*Dixon*] in respect of disclosure obligations. The Applicant also referred to *Canada (Citizenship and Immigration) v Jozepovic*, 2021 FC 536 at paragraph 17 [*Jozepovic*], citing *Sheriff v Canada (Attorney General)*, 2006 FCA 139 at paragraph 29 [*Sheriff*] relating to disclosure obligations in professional discipline cases.

[47] The Respondent points to the overarching principle that on the issue of procedural fairness, the Court is required to consider whether the Applicant knew the case he had to meet. The Respondent submits that an investigator owes a lower standard of procedural fairness because their mandate is limited. They are not adjudicating on the merits, and this standard is even lower if the investigator's mandate is limited to investigating and reporting but not referring or recommending charges. Furthermore, the case law is clear that persons under investigation are not entitled to disclosure of the entire investigatory file while the investigation is ongoing (citing *Patient X v College of Physicians and Surgeons of Nova Scotia*, 2013 NSSC 165 at para 29, aff'd 2015 NSCA 41; *Kuny v College of Registered Nurses of Manitoba*, 2017 MBCA 111 at para 22, 28). The obligation for full disclosure arises in the adjudication phase, after a matter is referred to the Discipline Committee.

[48] The Applicant's references are distinguishable to the present case. First, *Milner* dealt with a failure of disclosure of undisclosed information and the appellant's rights to a fair hearing. Second, *Jozepovic* dealt with a motion to compel further disclosure after the defendant claimed litigation privilege over the investigative documents created during the investigation. Finally, *Sheriff* dealt with a regulatory body's sporadic disclosure in the context of the applicants' preparation for the hearing even though the applicants in that case had requested further disclosure. In *Sheriff*, the issue centered on relevant materials not being disclosed to the applicants. I cannot extrapolate the principles described in *Milner*, *Jozepovic* and *Sheriff* to stand for the proposition that the information provided to the Applicant during the investigation was wanting.

[49] Indeed, the College investigator's role is described in section 25 of the College's By-law 2021-2, effective as of November 22, 2021 [By-law]. This section outlines the investigator's authority and powers in the context of an investigation of a complaint as limited to information gathering. The investigator does not have the authority to refer the complaint, in whole or in part, to the Discipline Committee; declining to refer the complaint to the Discipline Committee; or, referring the complaint to an investigator to initiate or continue the investigation. Rather, that authority rests with the College's Complaints Committee (section 26.5 of the By-law).

[50] The Applicant seems to be arguing that the College investigator ought to have conducted a better investigation. However, the College investigator investigated the allegations of misconduct by collecting statements and information, as he was required to under the By-Law. While the Applicant asserts that the investigator should have tested the Clients' submissions to assess whether they were false or inconsistent, he has pointed to no helpful authority to support the contention that what the investigator did in this case was insufficient.

[51] The Applicant agues on the second prong of the *Dixon* test, the "lack of disclosure" prevented him from telling the College investigator to dig deeper, interview staff, or obtain other Mauritian legal documents, for example.

[52] However, the Applicant's arguments downplay his procedural rights. In this case, the Applicant did make written submissions to the Discipline Committee, submitted his own WEFs and documents, and called witnesses such as his office staff to challenge the Client's allegations. The College also produced its own WEFs that included a WEF by the investigator with

supporting documentation that it intended to rely upon. The Applicant responded to the College's WEFs. He had the right to cross-examine the College investigator but he did not do so. The Clients' credibility was an allegation of which the Applicant raised throughout, and addressed with the Discipline Committee.

[53] As such, the Applicant has not demonstrated first, that there was any failure to disclose by the College. Second, even if there was a failure to disclose, the Applicant has not demonstrated that this failure impaired his ability to explore possible avenues of investigation and to make full answer and defence (*Dixon* at para 36). I find that he had a full opportunity to participate and to make a full defence.

[54] I now address the issue of procedural fairness generally related to the investigation, the investigator's "closed mind" and not advising him that the investigation was continued in 2020.

[55] Although there was a pause in the investigation, the matter was still ongoing. No new allegations were advanced in 2020. When the complaint was referred to the Discipline Committee in March 2022, a Notice of Referral was served on the Applicant.

[56] The Notice of Referral put the Applicant on notice of the charges and allegations made against him. The College subsequently provided full disclosure including the investigation materials during the adjudication process and in accordance with section 25.1 of the College's *ICCRC Tribunal Committee Rules of Procedure* [Rules of Procedure]. The term "Tribunal

Committee" includes the Discipline Committee and the Rules of Procedure apply to the Discipline Committee in the conduct of cases before it.

[57] The College's disclosure included the investigation file. The challenges the Applicant now brings on judicial review about the investigation and the investigator should have been apparent to him in reviewing the investigation file. There is no evidence that the Applicant or his legal counsel sought any additional disclosure from the College, or raised issues about the investigation (or the investigator).

[58] The College also delivered a WEF from the College investigator. As stated above, the Applicant had the right to cross-examine the College investigator on the conduct of the investigation. He did not do so.

[59] The Applicant also alleges the College's Tribunal office violated his right to procedural fairness by scheduling a CMC during a holy month where the Applicant was fasting and unable to attend. While the Applicant recognizes that adjournments are a matter of discretion, he states that his request for an adjournment of the CMC should have been considered more significantly given the grounds of religious observance. Finally, the Applicant alleges that the Decisions were procedurally unfair because the Disciplinary Committee did not hold an oral hearing. He states that credibility of the Clients was at issue, which demanded an oral hearing.

[60] The Respondent describes the College Tribunal Office's role akin to a Court Registrar, responsible for scheduling and adjudication logistics. The Respondent objects to the characterization of the CMC as discriminatory or a breach of procedural fairness.

[61] The evidence demonstrates that the Applicant's request for an extension of time was to request to move "the hearing", thus predicated on his misunderstanding of the purpose of the CMC. It was clear from the record that the College Tribunal office was trying to reassure the Applicant that the CMC was not the disciplinary hearing and that the call was simply to manage the administration of time lines in the case. The record demonstrates that the CMC was administrative in nature.

[62] The Applicant never raised the issue of the CMC as a breach of procedural fairness before the Discipline Committee. In any event, the CMC did not impact the Applicant's ability to make a full defence. Any issues of procedural fairness arising from the CMC were cured or remedied by the extensions of time granted to the Applicant after he retained counsel.

[63] The Discipline Committee was also not required to hold an oral hearing. The *Rules of Procedure* specify, "a written adjudication process will be used" unless the Tribunal Committee allows another format (Rule 51.1).

[64] The Notice of Proceeding issued by the Discipline Committee (that the Applicant received) gives the parties an opportunity to make a motion to change the format of the adjudication (Rule 51.2 of the *Rules of Procedure*). A party may make a motion to the Discipline

Committee at any time, even after the adjudication of the case has started (Rule 38.1 of the *Rules of Procedure*). The Tribunal Committee has the discretion to convert the format of adjudication from written to oral (or a combination of formats) in certain circumstances. This includes "where using a written Adjudication process would cause significant unfairness, and it would be fair, efficient, proportional and practical to allow an oral adjudication" (Rule 51.4 of the *Rules of Procedure*) or "where a party can show that oral adjudication is the only process that can allow the party to challenge important testimony from a witness" (Rule 51.5 of the *Rules of Procedure*).

[65] It is clear that the Applicant could have requested that the written adjudication process be converted to an oral hearing at any time. He did not do so.

[66] Throughout the adjudication process, the Applicant was represented by legal counsel. The Applicant did not raise the issue of procedural fairness whether it be the CMC, the adequacy of the investigation or the format of adjudication before the Discipline Committee while he was fully engaged in the disciplinary process. This is not a question of formal waiver; the requirement of raising an allegation like this in a timely fashion is meant to ensure that the decision-maker will have an opportunity to address the matter before any harm is done (*Canadian National Railway Company v Canada (Transportation Agency)*, 2021 FCA 173 at para 68).

[67] The Applicant is improperly raising these issues on judicial review when he never placed the question before the Discipline Committee. He let the process run its course with no

objections on his part, thus depriving the Disciplinary Committee a chance to remedy or mitigate any issues. Having not raised the procedural fairness allegations in a timely way, the Applicant cannot now raise these issues on judicial review.

C. The Decisions are not Unreasonable

[68] On the merits of the Decisions, the parties agree that the standard of review is reasonableness (see *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 23 [*Vavilov*]). I also agree that reasonableness is the applicable standard of review.

[69] A reasonable decision must bear the hallmarks of reasonableness – justification, transparency and intelligibility (*Vavilov* at para 99) and will always depend on the constraints imposed by the legal and factual context of the particular decision under review (*Vavilov* at para 90). A decision may be unreasonable if the decision maker misapprehended the evidence before it (*Vavilov* at paras 125-126). The party challenging the decision bears the onus of demonstrating that the decision is unreasonable (*Vavilov* at para 100). The decision-maker may assess and evaluate the evidence before it and that, absent exceptional circumstances, a reviewing court will not interfere with its factual findings. The Court "must refrain from reweighing and reassessing the evidence considered by the decision maker" (*Vavilov* at para 125). The party challenging the decision bears the onus of demonstrating that the decision is unreasonable (*Vavilov* at para 100).

[70] The Applicant alleges errors on the merits of the Discipline Committee's Decisions including its finding of professional misconduct on the charges against him as well as the Penalty

Decision. The Respondent asserts the Applicant is challenging reasonable findings by the Discipline Committee and inappropriately asking this Court to reweigh evidence.

[71] When a reviewing court applies the standard of reasonableness, the question is not whether other alternative interpretations or conclusions would have been possible. Rather, it is whether the interpretation chosen by the decision maker passes the muster of reasonableness, even though other interpretations or conclusions might have been possible (*Tong v Canada (Public Safety and Emergency Preparedness)*, 2023 FC 625 at para 32).

(1) Charge of "Job Selling" in Contravention of the *CPA*

[72] The first issue related to the allegation that the Applicant had engaged in "job selling", which is securing or attempting to secure employment for a fee. This type of activity is prohibited in many Canadian jurisdictions, like in Alberta under the *CPA* and applicable Regulations, where the Clients were to locate.

[73] The Applicant challenges this finding, first on the basis that it was a breach of natural justice because it did not accord with the charge that was referred to the Discipline Committee and second because the Discipline Committee erred in its interpretation of job selling.

[74] The Respondent states that the Applicant's assertions are disingenuous as he was fully aware of the allegations and responded to them. The Respondent outlined whenever the Applicant has alleged not receiving adequate notice in this application for judicial review, that I be guided by the principles set out in *Hesje v Law Society of Saskatchewan*, 2015 SKCA 2 at

paragraph 50. The focus on whether the member charged is aware of the case he has to meet, rather than exclusively focusing on the charge itself is consistent with how courts approach charges laid by an administrative body.

[75] I reject the Applicant's arguments. The Notice of Referral clearly set out the particulars of proposing "to secure a job in Canada for Mr. MBM in exchange for money." Furthermore, the Applicant received a College WEF and College submissions setting out the evidentiary basis and relevant statutory provisions on job selling that it was relying on. The Applicant also responded to the allegation of job selling, and referenced the applicable statute in his written submissions to the Discipline Committee. The Applicant clearly had notice of the job-selling allegation and a chance to fully address this allegation despite his argument to the contrary.

[76] The Applicant argues that the Discipline Committee erred in its approach to statutory interpretation and that it ought to have engaged with the words, what they meant and whether they were met. He states the Discipline Committee erred in its use of the phrase "the essence of the legislation", instead of interpreting the text of the legislation.

[77] For the reasons that follow, I reject this argument. The Discipline Committee was reasonable in finding that the Applicant engaged in job selling.

[78] In reviewing the Disciplinary Decision, the evidentiary record and the statutory provisions under the *CPA* and its Regulations, the *Employment Agency Business Licensing Regulation*, Alta Reg 45/2012 [*EABLR*], and the *Designation of Trades and Business Regulation*

(Alta Reg 178/1999) [*DTBR*], I cannot find that the Discipline Committee erred in its assessment of the job selling allegations.

[79] I disagree with the Applicant that the Discipline Committee did not interpret the text of the legislation. In fact, it considered that the Applicant is captured under subsection 4(2)(b) of the *DTBR* as an "employment agency business" based on the definition of this term:

> **"4(1)** Part 10 of the Consumer Protection Act applies to the employment agency business.
>
> **(2)** In this section, "employment agency business" means any of the following activities:
>
> > **(b)** securing or attempting to secure employment in Alberta for individuals".

[80] Subsection 12(1) of the *EABLR* prohibits an "employment agency business" operator from directly or indirectly demanding or collecting a fee for securing or attempting to secure employment:

> **Fee prohibition**
>
> **12(1)** No employment agency business operator shall directly or indirectly demand or collect a fee, reward or other compensation
>
> > **(a)** from an individual who is seeking employment or from another person on that individual's behalf,
> >
> > **(b)** from an individual who is seeking information respecting employers seeking employees or from another person on that individual's behalf,
> >
> > **(c)** from an individual for securing or attempting to secure employment for the individual or providing the individual with information respecting any employer seeking employees or from another person on that individual's behalf, or

> **(d)** from an individual for evaluating or testing the individual, or for arranging for the individual to be evaluated or tested, for skills or knowledge required for employment, where the individual or the employment is in Alberta, or from another person on that individual's behalf.

[81] The Discipline Committee also had before it a copy of the Applicant's retainer agreement that the Clients signed. Section 2 of the retainer agreement provided that "[i]n consideration of the fees paid and the matter stated above, the RCIC agrees to "[o]btain a job offer as Cook/Retail Supervisor for Mr. MBM and settling terms and conditions of employment".

[82] The Applicant submitted to the Discipline Committee that his retainer agreement was imprecise and inaccurate and that it was not his intention to secure a job for Mr. MBM. He did not yet undertake any efforts on this front. The College argued before the Discipline Committee that the statute and regulations did not require proof of an intention to job sell, or evidence of specific acts to secure employment.

[83] The Applicant acknowledged at the hearing that the retainer language was a problem, but argued that it did not meet the statutory requirements for job selling.

[84] The Discipline Committee assessed the retainer agreement and considered the Applicant's submissions with respect to the allegation of job selling. It considered the Applicant's Reply to the College's WEF, where the Applicant argued that the fees in the retainer agreement were not related to obtaining a job and that it was not the same as "securing a job". The Discipline Committee rejected the Applicant's submissions, and found that the retainer agreement language was clear and unambiguous. It stated that a reasonable person reading the

agreement would expect Mr. Moonshiram to fulfil a promise to obtain a job for Mr. MBM as a Cook/Retail Supervisor and that he would settle the terms and conditions of the employment on behalf of Mr. MBM.

[85] The Applicant's interpretation of the legislation is overly narrow. If one were to accept his interpretation, then only engaging in actual acts to secure employment would fit into the prohibition. It also ignores the clear and unequivocal language in the legislation that clearly and expressly states that demanding or collecting a fee for securing or attempting to secure employment is prohibited.

[86] The facts are (a) the Applicant demanded a fee from the Clients in exchange for his services; (b) the retainer agreement listed the services which included "to obtain an offer of employment for Mr. MSM"; and, (c) he collected fees through the Clients' payment of the retainer deposit. While the Applicant attempted to re-interpret his own retainer agreement, it was open to the Discipline Committee to reject the Applicant's argument that to "obtain a job" was not the same as "securing or attempt to secure a job".

[87] Finally, I disagree with the Applicant that the Discipline Committee improperly cited *ICCRC v Sen*, 2021 ICCRC 2 at paragraph 224 to justify its finding on job selling by using the terms "the essence of the legislation" in the decision. This reference in the Disciplinary Decision related to the policy objectives behind the legislation.

[88] I view this to mean that the Discipline Committee considered the object of the legislation prohibiting job selling (i.e., to protect vulnerable and often desperate individuals from being exploited). It was reasonable for the Discipline Committee to do so. It is well established that in approaching statutory interpretation, words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament (*Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27 at para 21).

[89] The Discipline Committee assessed the evidence including the retainer agreement in light of the prohibition in the legislation. While the Applicant disagrees with the Discipline Committee's analysis, it is not unreasonable.

[90] I find no reason to interfere with the Discipline Committee's finding that Mr. Moonshiram "breached his professional obligations by offering services for a fee that were prohibited by law."

(2) The Use of a False Address in Mrs. MSM's Application

[91] This allegation related to the Applicant knowingly using a Calgary address in Mrs. MSM's application when it was not her actual address.

[92] Mrs. MSM had advised the College investigator that the Calgary address in her study permit application documentation was not her address. She was unaware of the address until Mr. Moonshiram's office provided her with a copy her ABM College acceptance letter on February

28, 2017. The Applicant challenges this finding given the Clients' credibility issues and because it was not based on "clear, convincing and cogent" evidence on a balance of probabilities. The Applicant stresses that the address in question is not "false".

[93] The evidence demonstrates that the College investigator had asked the Applicant whether he placed "a Canadian address on any documents knowing the clients were not in Canada and had no Canadian address". In response, the Applicant explained that it was common practice for clients to "ask me for help getting suitable accommodations" and that the Calgary address was only a potential address. The Applicant also confirmed that at the time of the application for Mrs. MSM, her actual "residential address" and "address for correspondence" was in Mauritius and not in Canada.

[94] Despite the Applicant's assertions that Mrs. MSM might have lived there if she went to Calgary and other reasons, the Discipline Committee underlined the issue was whether Mr. Moonshiram submitted information to a Canadian institution that he knew to be false. Based on the record before it, it was not unreasonable for the Discipline Committee to conclude that the Calgary address included in Mrs. MSM's application was not accurate and that the Applicant knew it was not accurate. This is a reasonable finding of fact that I will not disturb.

[95] The Discipline Committee then considered the Applicant's explanations, and recognized that Mrs. MSM bore some responsibility for the inaccurate information because she would have reviewed the documents before signing them. However, the Discipline Committee identified that

the Applicant had a duty to ensure the accuracy of the information on the forms that he submits as a duly licensed RCIC. His explanations did not excuse him from his professional obligations.

[96] The Discipline Committee's rejection of the Applicant's explanations is not unreasonable. The Applicant is asking me to reweigh the evidence, or to come to a different conclusion, which I cannot do on judicial review.

[97] The failure to ensure the accuracy of the information submitted was a breach of Articles 2.2.9, 3.1, 5.1, 6.1 and 7.1 of the *Code*. The Discipline Committee explained why it did not accept the Applicant's justifications, and despite Mrs. MSM having reviewed the documents before signing, how his conduct amounted to a breach of the *Code*.

[98] In sum, I have not been persuaded that the Discipline Committee's findings on the issue of the false statement/incorrect information was unreasonable.

(3) Failure to Communicate and Inappropriate Communications

[99] The College advanced two allegations on the issue of communications before the Discipline Committee. One had to do with the Applicant failing to communicate with the Clients in a timely and effective way. The other had to do with the tone of his communications, described as inappropriate.

[100] The Discipline Committee found that Mr. Moonshiram breached of articles 2.2.9, 3.1, 5.1, 6.1 of the *Code* in respect of failing to communicate in timely and effective way with the

Clients as required by the *Code*. However, the evidence failed to establish that the tone of his communications in this single case, while disconcerting, was not sufficient to be a violation of the *Code*.

[101] At the hearing, counsel for the Applicant stated that the Discipline Committee mentioned without any engagement with contrary evidence in the CTR that the Applicant "first told the Clients about their failed applications on December 5, 2016." The Applicant contends that this finding of fact was the basis for the Discipline Committee's subsequent analysis of whether the Applicant engaged in professional misconduct by failing to communicate effectively and in a timely manner with the Clients.

[102] The Applicant argued that there was conflicting evidence before the Discipline Committee when the Clients were informed about the rejection of their visa applications. This included his written submissions and reply to the WEF of the College's investigator. The Applicant also identified letters that he sent to the High Commissioner of Canada in Pretoria on November 8, 2016 and a letter from his legal counsel to the High Commissioner of Canada dated November 25, 2016 about the visa application refusals. More generally, the Applicant argued to the Discipline Committee that given the Clients' credibility issues, his evidence should be preferred. The Applicant also pointed to a copy of a Statement of Claim that the Clients filed against the Applicant in Mauritius seeking a refund of their payment. It was stated that they waited for "two months following the payment of the retainer" before being informed that their visa application had rejected. The Applicant states that because the retainer was paid in

September 2016, two months from payment places the timing to November 2016. This would constitute a timely communication.

[103] I agree that the Discipline Committee found that the Applicant failed to advise the Clients immediately after receiving the rejection of their applications and stated December 5, 2016 in the Decisions as a fact. However, I am not prepared to accept the Disciplinary Decision's reference to December 5, 2016 was an error, which I will explain in the following paragraphs.

[104] The contemporaneous documents in the record include Skype and text screenshots of exchanges between the Clients and the Applicant over the course of the retainer. The record shows that on December 7, 2016, Mrs. MSM wrote to Mr. Moonshiram and indicated that they were stressed by the news that their visa applications had been rejected. They made several attempts to reach Mr. Moonshiram by phone between December 5 and 7, 2016 but their calls were not returned by him. The December 5, 2016 notification date is consistent with the communications found in the contemporaneous screenshots.

[105] In addition, the correspondence in November 2016 that the Applicant pointed to during the hearing were communications from the Applicant or his legal counsel to the High Commissioner. However, the Clients are not copied on these communications. I cannot infer from these documents that the Clients were aware that their visa applications were rejected when these letters were sent.

[106] I cannot agree that there was "clearly contradictory evidence" that the Applicant advised the Clients of the rejected applications on November 4, 2016. There has been no fundamental misapprehension of the evidence related to the Discipline Committee's finding of fact that justifies judicial intervention (*Vavilov* at para 126).

[107] It also bears noting that the Discipline Committee's finding of a failure to communicate in a timely and effective way encapsulated months of exchanges between the Clients and Mr. Moonshiram. The Discipline Committee's findings did not rest only on when the Clients were advised about the rejection of their visa applications. Rather, it also noted that Mr. Moonshiram failed to respond to the Clients' multiple attempts to contact him and receive information in the months that followed the rejection of the visa applications.

[108] The record supports the Discipline Committee's finding. In December 2016 and early 2017, the Clients made numerous requests for information. These communications went mostly unanswered. When the Applicant did respond, it was not responsive to the requests for information. After the Clients asked again for a refund and for the return of their passports, the Applicant eventually responded to them on March 17, 2017. He indicated he would look after this when he returned to the country. The Discipline Committee noted that no date was given to the Clients. After March 17, 2017, the Applicant stopped responding to the Clients. The Clients then retained a lawyer who sent the Applicant a letter dated March 23, 2017 demanding the return of the Clients' passports and a refund. By April 26, 2017, Mrs. MSM had made multiple attempts to contact the Applicant that went unanswered.

[109] The Discipline Committee found that the manner in which the Applicant dealt with the Clients resulted in an escalation of stress and anxiety culminating in police intervention, a lawsuit and a complaint to the College. It was open to the Discipline Committee to arrive at this conclusion based on the record before it.

[110] Even if there was an error, *Vavilov* instructs that not all errors will necessarily render a decision unreasonable. Any alleged flaws or shortcomings must be more than merely superficial or peripheral to the merits of the decision. It would be improper for a reviewing court to overturn an administrative decision simply because its reasoning exhibits a minor misstep. Instead, the court must be satisfied that any shortcomings or flaws relied on by the party challenging the decision are sufficiently central or significant to render the decision unreasonable (*Vavilov* at para 100).

[111] As previously described, the allegation of a failure to communicate in an effective and timely way covered the totality of the exchanges between December 2016 and April 2017. Thus, the date when the Clients were advised of their rejected applications was not so sufficiently central to the merits to justify the Court's intervention.

[112] In sum, the Discipline Committee's finding on the failure to communicate in a timely and effective way is not unreasonable.

(4) Delay in Returning Clients' Passports

[113] The Applicant again contended that he did not receive adequate notice of this allegation. The Respondent disputes this, referring to the Notice of Referral and the record before the Discipline Committee.

[114] Again, this argument cannot succeed. The Applicant had notice of this allegation through the Notice of Referral. He submitted a WEF along with documentary evidence and made written submissions to the Discipline Committee addressing this allegation. He therefore knew the case he had to meet and had the full opportunity to defend himself.

[115] With respect to the merits of the Discipline Committee on this charge, I also find that the conclusion was not unreasonable. The record is clear that on February 28, 2017 and March 20, 2017, the Clients requested that the Applicant return their passports. The Applicant directed his staff not to return them.

[116] The Applicant alleged that an altercation by the Clients occurred at his office on February 28, 2017, which resulted in his instructions not to return the passports to the Clients. The passports were eventually returned on April 27, 2017, with the assistance of police. The evidence before the Discipline Committee also demonstrated that the Applicant was out of the country in March 2017 and was not prepared to deal with the passports until his return to Mauritius on April 15, 2017.

[117] The Discipline Committee recognized that the parties do not agree about who contacted the police, but that police intervention was necessary. The Discipline Committee cited Article 11.5.1 of the *Code*, in that a RCIC must amongst other things, return to the client all documents, files and property belonging to the client upon the termination of the retainer. This is because "the material is held in trust by the RCIC for the limited purpose of providing professional services to the client".

[118] The Discipline Committee considered the Applicant's explanation why he kept the passports after the termination of the retainer because the Clients were harassing him. However, the Discipline Committee did not accept the Applicant's justification for keeping the passports and found that his response to deal with the issue only upon his return to Mauritius several weeks later to be inappropriate. The Discipline Committee found that the Applicant did not comply with his professional obligations to return the passports to the Clients in a timely way after the termination of the retainer. This constituted professional misconduct.

[119] While the Applicant arduously argued that the Discipline Committee failed to acknowledge that the Clients were harassing the Applicant and subjected his office staff to physical threats and violence, I disagree that they ignored his explanations. In fact, the Discipline Committee expressly found that this explanation was unsatisfactory and explained why.

[120] The Discipline Committee did not accept the Applicant's arguments. The rejection of the Applicant's explanations was not unreasonable. It was open to the Discipline Committee to make

this finding, especially given the requirements under the *Code*. I cannot reweigh the evidence or arguments.

(5) Clients' Credibility

[121] The Applicant has argued throughout this judicial review that the Clients' credibility was a significant issue and that the Discipline Committee erred in making findings against him despite this. However, the Applicant placed the Clients' credibility squarely before the Discipline Committee and it addressed this issue. In fact, the Disciplinary Decision has a separate section that addresses the Clients' credibility specifically.

[122] The Discipline Committee noted that it did not need to resolve all evidentiary disputes between the parties. The Discipline Committee explained that its factual findings rested "largely on uncontested documentary evidence." This documentary evidence included the contemporaneous Skype and text screenshots and exchanges during the material times, the forms submitted in the visa application process, documents confirming when the passports were returned and the Applicant's retainer letter.

[123] I do not find that the Discipline Committee was unreasonable in preferring contemporaneous documentation in the record to the Applicant's explanations or justifications. As stated before, it was open to the Discipline Committee to prefer one piece of evidence to another. The Discipline Committee's rationale is sufficiently clear and transparent.

[124] In respect of the Disciplinary Decision, the Applicant has not met his burden of demonstrating that it was unreasonable. The Applicant's position was tantamount to asking the Court to reweigh and re-evaluate the evidence and his arguments.

(6) Penalty Decision

[125] The Applicant argues that the penalty imposed was unreasonable.

[126] To overturn a professional Discipline Committee's penalty decision, an applicant must show that the decision was unreasonable because the Discipline Committee made an error in principle or the sentence was clearly unfit (*College of Physicians and Surgeons of Ontario v Peirovy*, 2018 ONCA 420 at paras 37-38 [*Peirovy*]). A penalty will be "clearly unfit" where the decision does not fall within "a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Peirovy* at para 38, citing *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47).

[127] Professional regulatory tribunals are owed a significant level of deference on the issue of penalty, and the Discipline Committee has expertise to determine the degree to which the Applicant's conduct threatened the public and the profession (*Rak v Ontario College of Pharmacists*, 2024 ONSC 3783 at para 22 [*Rak*], citing *Peirovy* at para 73).

[128] I first start with subsection 69(3) of the *CICCA* that states that the Discipline Committee may order the penalty that it considers necessary and appropriate in the circumstances, including suspension or revocation of a license and to require a licensee to pay a penalty. This confirms

that the Discipline Committee has been given broad discretion under its enabling statute to impose a wide range of penalties.

[129] The Discipline Committee turned its mind to the appropriate factors to consider when arriving at the penalty to impose. It identified the case law with the relevant factors to assess on penalty, including what was the least restrictive penalty that the panel was able to impose. The Discipline Committee assessed the seriousness of the findings that the Applicant engaged in job selling and violated the College's *Code* by misrepresenting information in a visa application as well as the issues associated with communication and the return of the passports. When discussing the latter, the Discipline Committee assessed that the Applicant's conduct was at best incompetent, and at worst, deceptive.

[130] As well, the Discipline Committee noted that the Applicant expressed no remorse or regret, assessed that there was no evidence that his misconduct reflected a pervasive pattern of unprofessional behaviour. The Discipline Committee properly delineated the factors it had to consider and engaged in a reasonable assessment of aggravating and mitigating factors in arriving at the penalty.

[131] The Discipline Committee concluded by finding that the Applicant's misconduct directly harmed the Clients' interests and diminished the public trust and confidence in the immigration consulting profession, and the penalty imposed was warranted "to send a message to the profession that Mr. Moonshiram's breaches of his professional obligations to the Clients were egregious."

[132] On the issue of the $15,000 fine and 9-month suspension, the Applicant states that the precedents cited established a lower range for a fine and a shorter range for a suspension. He states that the penalty imposed by the Discipline Committee is silent on the reasons why he was imposed a fine on the higher end. He also states that his suspension is three to four times the magnitude in length compared to other disciplinary dispositions where job selling is involved, therefore not consistent with precedent.

[133] With respect, the Applicant's arguments on penalty cannot succeed.

[134] Here, the $15,000 fine was consistent with the range of $9,000 to $15,000 in prior decisions. I see no reason to disturb it.

[135] With respect to the 9-month suspension, it was reasonable for the Discipline Committee to distinguish the Applicant's case to other cases cited. The Discipline Committee identified that the other cases were all resolved by mutual agreement through an admission of misconduct in an agreed statement of fact and a joint submission on penalty. This resolution and joint submission avoided the need for a lengthy contested hearing.

[136] The Discipline Committee also explained why the same cited cases would not support the College's request for the revocation of the Applicant's license. The Discipline Committee also explained why a lengthy suspension was warranted.

[137] The Penalty Decision took into account all of the findings of professional misconduct as against the Applicant. It was not limited to the finding of job selling. As such, to the extent that the other penalty decisions provided a range for a suspension of a license where a finding of job selling was made, the Discipline Committee was also required to consider the particular facts and findings of professional misconduct in the Applicant's case.

[138] It is also within the Discipline Committee's purview to assess the impact of the Applicant's conduct on the public trust and confidence and to consider deterrence to future similar conduct by the profession in determining the appropriate penalty.

[139] The Applicant has not convinced me that the Court should intervene on judicial review in respect of the Penalty Decision. The penalty imposed is not "clearly unfit" and the Discipline Committee's Penalty Decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law (*Peirovy* at para 38; *Vavilov* at para 86).

VI. Conclusion

[140] Much of the Applicant's arguments centred on reweighing or reassessing the evidence, and critiquing the Decisions for not having enough detail. However, written reasons given by an administrative body must not be assessed against a standard of perfection (*Vavilov* at para 91).

[141] Both of the Decisions on judicial review have the qualities that make the Discipline Committee's reasoning logical and consistent in relation to the relevant legal and factual constraints. Given that they meet the hallmarks of transparency, justifiability and legibility, this

application for judicial review must be dismissed. I also do not find that there has been any breach of procedural unfairness.

VII. Costs

[142] Both parties requested costs in this matter but indicated at the hearing that they had not agreed on quantum. Given that the Respondent was successful, the Respondent is entitled to its costs.

[143] The parties are strongly encouraged to arrive at an agreement on costs prior to August 30, 2024. If the parties reach an agreement by then, they may deliver a letter on consent to the Court confirming their agreement as to costs. The Court will consider whether the agreement as to costs is appropriate in accordance with Rule 400 of the *Federal Courts Rules*, SOR/98-106.

[144] In the event that the parties are unable to agree on costs:

a) The Respondent will serve and file its written submissions by September 13, 2024, not to exceed three (3) pages double-spaced, exclusive of schedules, appendices and authorities.

b) The Applicant will serve and file his written submissions by September 27, 2024, not to exceed three (3) pages double-spaced, also exclusive of schedules, appendices and authorities.

[145] If no agreement as to costs is filed by August 30, 2024, and no costs submissions are served and filed by **September 27, 2024,** then no costs will be awarded.

JUDGMENT in docket T-1053-23

THIS COURT'S JUDGMENT is that

1. This application for judicial review is dismissed;
2. The Respondent, the College of Immigration and Citizenship Consultants, is entitled to costs;
3. The parties are directed to make submissions on the appropriate award of costs to the Court as described in this judgment.

"Phuong T.V. Ngo"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1053-23
STYLE OF CAUSE:	DINESH MOONSHIRAM v THE COLLEGE OF IMMIGRATION AND CITIZENSHIP CONSULTANTS
PLACE OF HEARING:	HALIFAX (NOVA SCOTIA)
DATE OF HEARING:	FEBRUARY 29, 2024
JUDGMENT AND RESONS:	NGO J.
DATED:	JULY 30, 2024

APPEARANCES:

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