

Federal Court



Cour fédérale

Date: 20110921

Docket: IMM-1569-11

Citation: 2011 FC 1085

Ottawa, Ontario, September 21, 2011

PRESENT: The Honourable Mr. Justice O'Keefe

BETWEEN:

JEFFREY HEMLIN

Applicant

and

**THE CANADIAN SOCIETY OF
IMMIGRATION CONSULTANTS and
THE DISCIPLINE COUNCIL OF THE
CANADIAN SOCIETY OF IMMIGRATION
CONSULTANTS**

Respondents

REASONS FOR ORDER AND ORDER

[1] This is a motion by the applicant for:

- a) An order staying the current disciplinary proceedings commenced by the Respondents against the Applicant pending the results of the Applicant's application for leave and judicial review;
- b) An order prohibiting the Respondents from commencing future disciplinary proceedings against the Applicant pending the results of the Applicant's application for judicial review; and,

c) An order of mandamus, directing CSIC to remove all public notices of the disciplinary proceedings against the applicant from its website, and directing CSIC and its employees from releasing information to the public about the proceedings;

[2] At the hearing of this matter, the relief requested in paragraph a) was the main thrust of the argument. The relief requested in paragraphs b) and c) were mentioned as being in the motion.

Factual Background

[3] The applicant has been an immigration consultant since March 1985.

[4] The Canadian Society of Immigration Consultants' (CSIC) mandate is to regulate its members. CSIC was created pursuant to letters patent issued October 8, 2003.

[5] The purposes of the society include the following:

1. To regulate in the public interest eligible persons who are members of the Corporation and advise or represent individuals, groups and entities in the Canadian immigration process ("Immigration Consultants"), as determined in accordance with the policies and procedures published by the Corporation from time to time.

2. To establish a code of conduct to be followed by Immigration Consultants regulated by the Corporation.

3. To establish a complaint and disciplinary procedure in respect of the conduct of Immigration Consultants regulated by the Corporation.

[...]

9. To do all such other things as may be necessary or incidental to the furtherance of the foregoing objects and purposes.

[6] The *Immigration and Refugee Protection Regulations*, SOR/2002-227, state that only members of provincial law societies, law students or members of CSIC may represent a person for a fee in immigration matters.

[7] CSIC has established a complaints and discipline policy to deal with complaints against members.

[8] Complaints were filed against the applicant which were investigated. As a result of the investigation, the manager of CSIC's complaints, compliance and discipline department referred the matters to the discipline council for a hearing.

[9] The discipline council is a tribunal that is separate from the investigative arm of CSIC. One to three members of the discipline council are selected to form a panel to adjudicate disciplinary cases. In this case, a panel of three members was selected (the panel).

[10] The panel's hearings took place on September 8, 9, 14 and 15, 2010, to deal with the allegations against the applicant.

[11] The panel issued its reasons for decision on October 29, 2010 and found the allegations to be well founded.

[12] The panel's decision did not deal with the penalty aspect of the findings.

[13] The applicant filed an appeal of the panel's decision. The parties agreed that this appeal would be heard after the hearing of the penalty aspect of the findings (disposition hearing).

[14] The disposition hearing was held on March 15, 2011 but no decision was released on the penalty aspect of the case.

[15] The applicant filed an application for judicial review of the panel's decision on March 9, 2011, which was served on CSIC on March 10, 2011.

[16] CSIC informed the applicant on or about February 11, 2011 that it agreed to stay the imposition of whatever penalty that was imposed on the applicant pending the disposition of his appeal. As well, it agreed to stay the imposition of any penalty until the judicial review application was dealt with.

[17] The applicant raised a number of issues he submitted were serious issues to be tried.

Issue

[18] Should the applicant be granted a stay of proceedings?

Analysis and Decision

[19] The applicant presented to the Court on April 7, 2011, the affidavit of Dianne Toth, sworn to on the same day. I will allow the affidavit to be filed but I do not consider it to have relevance to this motion. The issue in question in the judicial review underlying the motion had already been determined prior to the later judicial review being filed. In any event, even had I considered the material to be relevant, it would not have been sufficient to change my decision on the motion.

[20] The Federal Court of Appeal in *Toth v Canada (Minister of Employment and Immigration)* (1988), 86 NR 302 (FCA) outlined at page 305, the requirements that must be met in order to obtain a stay of proceedings:

This Court, as well as other appellate courts have adopted the test for an interim injunction enunciated by the House of Lords in *American Cyanamid Co. v. Ethicon Ltd.*, [1975] A.C. 396... As stated by Kerans J.A. in the *Black* case *supra*:

The tri-partite test of *Cyanamid* requires, for the granting of such an order, that the applicant demonstrate, firstly, that he has raised a serious issue to be tried; secondly, that he would suffer irreparable harm if no order was granted; and thirdly that the balance of convenience considering the total situation of both parties, favours the order.

[21] I would like to first discuss the issue of irreparable harm.

[22] The applicant has submitted that he will suffer irreparable harm as he will lose income and his professional reputation will suffer damage.

[23] With respect to loss of income, CSIC has undertaken to stay the imposition of any penalty that may be imposed until after the disposition of the applicant's appeal and this application for judicial review. It seems to me that this deals with the applicant's loss of income argument.

[24] The applicant also submits that there will be damage to his reputation, which would amount to irreparable harm, if the stay is not granted.

[25] In *Butterworth v College of Veterinarians of Ontario* [2001] OJ No 5265 (SCJ), a case where the applicant sought a stay of proceedings prior to the disciplinary hearing, alleging that this professional and personal reputation would suffer irreparable harm, the Court stated at paragraphs 14 to 17:

14 The second issue is irreparable harm - harm which either cannot be quantified in monetary terms or which cannot be cured.

15 The basis of this argument is that the prospective damage to the applicant's personal and professional reputation constitutes irreparable harm.

16 If that argument prevails, then the same argument might be made in every discipline case against a professional. The allegations remain what they are - mere allegations and nothing more until proved. The Discipline Committee has not yet decided anything (except the stay application and other interlocutory matter - not germane to this application). I do not agree that merely embarking on a discipline hearing will irreparably harm the applicant's reputation. The allegations against Dr. Butterworth here are of an extremely serious nature but as I say they are mere allegations.

17 In any event if the matter proceeds the Discipline Committee may accept the applicant's argument that it is without jurisdiction and there may be no hearing. I am not persuaded that the applicant will suffer irreparable harm if the hearing is not stayed.

[26] And finally, in *Marler v Law Society of Upper Canada* [2009] OJ No 654 (SCJ) at paragraph 9, the Court stated:

. . . In my view, the applicant has not shown that there will be irreparable harm. He is continuing in the practice of law. If, at the end of the discipline hearing he is found guilty of professional misconduct, he has a right of appeal to the Appeal Tribunal. If at the end of the day he is found not guilty, there will have been no harm in any event. If it should transpire that he is found guilty and that he was denied a fair hearing, any efforts that may turn out to have been wasted may be made the subject of a costs award if the circumstances justify it.

[27] After having reviewed the file material and for the above noted reasons, the applicant has not satisfied me that he will suffer irreparable harm if the stay is not granted. I do not believe that the continuation of a disciplinary hearing will irreparably harm the applicant's reputation, on the facts of this case. As well, the applicant would be allowed to continue to work as an immigration consultant until the discipline proceedings and the judicial review proceedings are complete.

[28] As the applicant must meet all three branches of the tri-partite test in order to obtain a stay, the motion for a stay must be dismissed. I need not discuss the remaining two branches of the test.

[29] I am not prepared, based on the material before me, to grant the relief requested in paragraphs b) and c) of the motion. This relief can always be requested by application.

[30] The applicant's motion is dismissed with costs.

ORDER

IT IS ORDERED that the applicant's motion is dismissed with costs.

"John A. O'Keefe"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-1569-11

STYLE OF CAUSE: JEFFREY HEMLIN

- and -

THE CANADIAN SOCIETY OF IMMIGRATION
CONSULTANTS and THE DISCIPLINE COUNCIL
OF THE CANADIAN SOCIETY OF
IMMIGRATION CONSULTANTS

PLACE OF HEARING: Vancouver, British Columbia

DATE OF HEARING: March 21, 2011

**REASONS FOR ORDER
AND ORDER OF:** O'KEEFE J.

DATED: September 21, 2011

APPEARANCES:

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