

Federal Court of Appeal



Cour d'appel fédérale

Date: 20180613

Docket: A-87-17

Citation: 2018 FCA 116

**CORAM: NEAR J.A.
GLEASON J.A.
LASKIN J.A.**

BETWEEN:

ZAMIR UL HASAN ZAIDI

Appellant

and

**IMMIGRATION CONSULTANTS OF
CANADA REGULATORY COUNCIL**

Respondent

Heard at Toronto, Ontario, on May 28, 2018.

Judgment delivered at Ottawa, Ontario, on June 13, 2018.

REASONS FOR JUDGMENT BY:

NEAR J.A.

CONCURRED IN BY:

**GLEASON J.A.
LASKIN J.A.**

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REASONS FOR JUDGMENT

NEAR J.A.

[1] The appellant, Zamir Ul Hasan Zaidi, appeals a judgment of the Federal Court (per Justice McDonald) of February 6, 2017 (*Zamir Ul Hasan Zaidi v. Immigration Consultant Regulatory Council of Canada*, 2017 FC 141). The Federal Court dismissed the appellant's application for judicial review of a decision of the respondent, the Immigration Consultants of

Canada Regulatory Council (ICCRC) (incorrectly referred to as the Immigration Consultant of Canada Regulatory Council in the Notice of Appeal).

[2] The appellant would like to become a Regulated Canadian Immigration Consultant (RCIC). The respondent regulates the qualifications required to become a RCIC, one of which is that applicants must achieve a certain level on a language test demonstrating their proficiency in either English or French. The appellant has taken approved language proficiency tests several times and has not achieved the required score.

[3] The appellant applied to the Federal Court for judicial review “in respect of the restrictions imposed” by the Minister of Citizenship and Immigration and ICCRC on May 10, 2016. He argues that the ICCRC discriminated against him on the basis that the language tests did not sufficiently accommodate his medical disabilities. He asked the Federal Court to declare that he meets the ICCRC’s language requirements.

[4] The Federal Court dismissed the application largely on the basis that the appellant did not present any evidence that he was refused accommodation or that accommodation was inadequate.

[5] This Court issued a direction dated May 7, 2018, asking the parties to be prepared to make submissions as to whether the ICCRC is a federal board, commission, or other tribunal as referred to in subsection 18(1) of the *Federal Courts Act*, R.S.C., 1985, c. F-7, and assuming that the ICCRC falls within that definition, whether this proceeding is subject to sections 72 and 74

of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (IRPA), such that this Court has jurisdiction to hear the appeal in the absence of a certified question.

[6] In my view, the ICCRC is a federal board, commission, or tribunal pursuant to subsection 18(1) of the *Federal Courts Act* and so the Federal Courts have jurisdiction to hear this application. In deciding whether a body is a federal board, commission, or other tribunal as defined in section 2 of the *Federal Courts Act*, the Court must consider (1) the particular jurisdiction or power being exercised and (2) the source of that jurisdiction or power (*Anisman v. Canada (Canada Border Services Agency)*, 2010 FCA 52, 400 N.R. 137. Further, it is necessary to consider whether the powers exercised by the body in a particular instance are public in nature or of a private character and this Court has set out several factors to consider in doing so (*Air Canada v. Toronto Port Authority et al.*, 2011 FCA 347, [2013] 3 F.C.R. 605 (*Toronto Port Authority*)).

[7] The Federal Courts have previously considered whether the regulations identifying the ICCRC's predecessor organization, the Canadian Society of Immigration Consultants, as the organization to regulate immigration consultants were *ultra vires* (see *Law Society of Upper Canada v. Canada*, 2008 FCA 243, [2009] 2 F.C.R. 466 (*LSUC FCA*); *Law Society of Upper Canada v. Canada (Minister of Citizenship and Immigration)*, 2006 FC 1489, 307 F.T.R. 141). In that case, however, neither Court explicitly decided whether that organization was a federal board, commission, or other tribunal.

[8] In addition, I would note that Prothonotary Milczynski has previously found that the ICCRC is not a federal board, commission, or other tribunal (*Muhammad Amir-Afzal Watto v. Immigration Consultants of Canada Regulatory Council and Minister of Citizenship, Immigration and Multiculturalism* (16 January 2017), Toronto, IMM-4328-16 (FC)). In that case, however, the decision under review determined who may serve on a board of directors and the ICCRC was acting in its private capacity “like any other business” (*Toronto Port Authority* at para. 52). As this Court explained in *Toronto Port Authority* at paragraph 52, federal boards may also act in private ways in certain circumstances.

[9] In this case, the appellant has asked to review an alleged decision at the core of the ICCRC’s mandate to regulate who is able to practice a profession. Further, the source of that power is federal legislation, the IRPA, by which the government has delegated its regulatory power to the ICCRC. In my view, this decision is public in nature and made with authority delegated by the federal government and the Federal Courts have jurisdiction to hear it pursuant to subsection 18(1) of the *Federal Courts Act*.

[10] This Court does not, however, have jurisdiction to hear this appeal in the absence of a certified question. Paragraph 74(d) of the IRPA states that this Court can only hear an appeal or a judgment of the Federal Court where the trial judge certifies a serious question of general importance and states the question. Indeed, in the *LSUC FCA* decision regarding the ICCRC’s predecessor organization, the trial judge certified a question. This did not occur in this case and therefore this Court cannot hear this appeal.

[11] Finally, even if the Federal Court had certified a question, I am of the view that there is no merit to the appeal.

[12] The appellant simply did not provide any evidence that he was discriminated against on the basis of disability due to the ICCRC's language proficiency requirements and his various health challenges. Indeed, there is no evidence that the appellant sought accommodation or that he was denied accommodation. The appellant took the test numerous times and simply was unable to meet the minimum language proficiency requirements. There is no reason to intervene in this case.

[13] I would dismiss the appeal with costs.

"David G. Near"

J.A.

"I agree
Mary J.L. Gleason J.A."

"I agree
J.B. Laskin J.A."

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

**AN APPEAL FROM A JUDGMENT OF THE HONOURABLE MADAM
JUSTICE McDONALD DATED FEBRUARY 6, 2017, DOCKET NUMBER T-743-16**

DOCKET: A-87-17

STYLE OF CAUSE: ZAMIR UL HASAN ZAIDI v.
ICCRC

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: MAY 28, 2018

REASONS FOR JUDGMENT BY: NEAR J.A.

CONCURRED IN BY: GLEASON J.A.
LASKIN J.A.

DATED: JUNE 13, 2018

APPEARANCES:

Zamir Ul Hasan Zaidi
(Self-Represented) FOR THE APPELLANT

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