Federal Court  Cour fédérale

Date: 20211223

Docket: T-1890-21

Citation: 2021 FC 1465

Ottawa, Ontario, December 23, 2021

PRESENT: Mr. Justice McHaffie

BETWEEN:

DOUGLAS RANDAL BOLDT

Applicant

and

THE COLLEGE OF IMMIGRATION AND CITIZENSHIP CONSULTANTS

Respondent

ORDER AND REASONS

I. Overview

[1] Douglas Boldt seeks a stay of a decision of the Discipline Committee of the College of Immigration and Citizenship Consultants [CICC] (formerly known as the Immigration Consultants of Canada Regulatory Council, or ICCRC) pending his application for judicial review of that decision. The decision, reported as *CICC v Boldt*, 2021 CICC 33, imposed sanctions on Mr. Boldt, including a four-month license suspension for breaches of the ICCRC's

Code of Professional Ethics it had identified in an earlier decision: *ICCRC v Boldt*, 2021 ICCRC 5. Mr. Boldt argues that the CICC's conclusions are flawed and that imposing the suspension before they can be challenged will effectively require him to permanently shut down his practice.

[2] Mr. Boldt's arguments as to the fairness and unreasonableness of the CICC's decision raise at least one serious issue for determination on his application for judicial review. In the particular circumstances, notably taking into account Mr. Boldt's age, the nature of his consultancy practice and the likely permanent impact of the temporary sanctions, he has established he will suffer irreparable harm if a stay is not issued pending the judicial review. The balance of convenience also favours issuing the stay. I therefore conclude that a stay of the CICC's sanctions should be granted pending Mr. Boldt's application for judicial review.

II. Issues and Standard of Review

[3] The parties agree that a stay pending an application for judicial review will only be granted where an applicant meets the three-part test enunciated in *RJR-MacDonald Inc v Canada (Attorney General)*, [1994] 1 SCR 311. Mr. Boldt's request for a stay therefore raises the three following issues:

A. Does the application for judicial review raise a serious issue for determination?

B. Will Mr. Boldt suffer irreparable harm if the stay is not granted?

C. Does the balance of convenience favour the granting of the injunction?

[4] These issues are not considered entirely in isolation, as a strong finding on one of the issues may lower the threshold on others: *Immigration Consultants of Canada Regulatory Council v CICC The College of Immigration and Citizenship Consultants Corp*, 2020 FC 1191 at para 9; *Apotex Fermentation Inc v Novopharm Ltd*, 1994 CanLII 16694 (MB CA) at para 14. However, as Justice Gascon noted in *Okojie*, while the issues are not water-tight compartments, "this does not mean that one of the three compartments can be completely empty and compensated by the other two being filled to a higher level": *Okojie v Canada (Citizenship and Immigration)*, 2019 FC 880 at para 32. In assessing the three requirements, the ultimate question is whether granting the stay "would be just and equitable in all the circumstances of the case," an assessment that is necessarily context-specific: *Google Inc v Equustek Solutions Inc*, 2017 SCC 34 at paras 1, 25.

III. Analysis

A. *Serious Issue*

(1) Background to the complaint against Mr. Boldt

[5] Mr. Boldt runs his immigration consultancy practice through a company named VisaMax Ltd. Through VisaMax, Mr. Boldt acted for RHJ and her husband, ZC, both Chinese nationals. RHJ was the complainant in the proceedings before the CICC leading to this application judicial review. RHJ and ZC became clients of VisaMax in 2010, originally in the context of Manitoba's Provincial Nominee Program (PNP). When initial efforts under that program did not pan out, VisaMax helped RHJ get a study permit with an expectation of

eligibility for a post-graduation work permit. VisaMax then helped ZC get an open work permit based on RHJ's student visa.

[6] VisaMax shares office space with another company, B Travel. There was a business association between VisaMax and B Travel, as VisaMax would engage B Travel to assist in travel arrangements for its immigration clients. There was also a personal association, as Mr. Boldt was dating BL, the owner of B Travel.

[7] Mr. Boldt alleges that while looking for a job on his open work permit in 2012, ZC approached BL and B Travel with the goal of starting a business to qualify under the Manitoba PNP Skilled Worker program. A company was set up, and ZC invested $60,000 in the company. ZC drew a salary briefly from the company, but left for British Columbia shortly thereafter. While Mr. Boldt alleges he had little involvement or knowledge of the company, the CICC found as a fact in its decision on the merits that he was "very aware" of the company's activities and the investment: *ICCRC v Boldt*, 2021 ICCRC 5 at para 28.

[8] After completion of her studies, RHJ did a work practicum with B Travel. She was later hired by B Travel as a full time employee on her post-graduation open work permit and subsequently on a closed work permit pursuant to the Manitoba PNP. Mr. Boldt alleges there was an agreement between RHJ and BL that the remaining amount of the $60,000 investment would be used to invest in B Travel to allow the company to hire RHJ. RHJ claims she advised Mr. Boldt to deduct his fees for immigration services from the remainder of the $60,000 investment. Some of the work RHJ did was apparently for the benefit of VisaMax. Mr. Boldt

contends this was work done for B Travel, which provided services to VisaMax, although there is evidence that RHJ had a VisaMax email address and sent emails with a signature block describing her as an Immigration Coordinator for VisaMax.

[9] At some point, it came to light that ZC was wanted on criminal embezzlement charges in China. ZC made a refugee claim, but returned to China in 2016 and was convicted of embezzlement, receiving a three-year jail sentence and a fine. In the interim, ZC and RHJ had divorced in 2013 but continued to live in the same house in Winnipeg. There were allegations of infidelity on ZC's part but as the CICC noted, the couple were "also concerned about possible criminal proceedings against ZC in China and the effect it would have on immigration proceedings." RHJ's application for permanent residence was ultimately refused in 2017 and she was found inadmissible to Canada for misrepresentation as her divorce was "one of convenience" and she had performed unauthorized work for VisaMax that were different than those she was authorized to perform for B Travel.

[10] Shortly thereafter, RHJ discharged Mr. Boldt and retained a new lawyer. She requested return of her file and the return of the $60,000 investment. Mr. Boldt issued an invoice for $43,325 for services. He also advised RHJ he would release her file when she signed a release, releasing him, VisaMax, BL and B Travel from all claims she may have against him, including in connection with the business investment.

(2) The complaint and the complaint process

[11] RHJ filed a complaint with the then ICCRC in September 2017. She alleged Mr. Boldt mishandled her immigration file, acted in a conflict of interest as her employer and representative, refused to produce her file, charged her excessive fees, and mishandled the $60,000 investment.

[12] Mr. Boldt contends that ZC and RHJ were dishonest throughout and effectively duped Mr. Boldt and BL through the arrangements and investment. He further contends RHJ's complaint to the CCIC was made for improper purposes. His response to the complaint contested many of RHJ's allegations. It also alleged the Chinese government wanted ZC and RHJ back in China and worked closely with the Canadian government on the case.

[13] An investigation was conducted and the matter was referred to the Discipline Committee of the ICCRC in May 2018, with a Notice of Referral being issued in late June 2018. The Notice of Referral alleged Mr. Boldt had engaged in professional misconduct by failing to provide RHJ and ZC with retainer agreements with respect to identified matters; rendering an invoice charging excessive and unreasonable fees; failing to deliver RHJ's complete file upon withdrawal; preferring his interests over those of RHJ by permitting her to work on behalf of VisaMax; preferring his interests over those of RHJ and ZC in facilitating or encouraging the business arrangement and $60,000 investment with B Travel; and preferring his interests over those of RHJ and ZC in respect of the $60,000 by failing "to instruct his girlfriend to return the funds."

[14] Mr. Boldt felt he needed production of RHJ's immigration files from Canada and Manitoba in order to defend the complaint. The ICCRC did not have the power to compel the production of records. However, counsel for the ICCRC consented to the ICCRC facilitating a third-party record request to Canada and Manitoba at a pre-hearing conference in August 2018. After involvement of RHJ's counsel, a Pre-Hearing Conference Panelist of the ICCRC's Discipline Committee ordered the ICCRC's counsel on October 15, 2018 to facilitate a request for documents through RHJ's counsel, "to obtain a copy of the Complainant's complete immigration files from the Government of Canada and the Province of Manitoba for the timeframe of 2010 until the present date."

[15] Some of these immigration file documents were provided in March 2019, but not all. The issue was raised at a pre-hearing conference in April 2019 and Mr. Boldt brought a motion in May 2019 seeking dismissal of the complaint against him. On June 28, 2019, the ICCRC again ordered its counsel to facilitate a request through RHJ's counsel to obtain "a copy of the Complainant's complete immigration files from the Government of Canada and the Province of Manitoba for the timeframe of 2010 until October 15, 2018" [emphasis in original]. The order also provided that ICCRC counsel was to ensure the files specifically included a list of identified documents. The order stated that if no information or explanation were received regarding any undisclosed records, the matter would move forward to determine disclosure timelines "should the Discipline Panel hearing the Motion to Dismiss, not dismiss the matter in its entirety." The order noted that the appropriate consent and documents should be received as soon as possible, but gave a deadline of December 13, 2019, after which a pre-hearing conference would be scheduled to determine next steps.

(3) The interlocutory decisions

[16] The Discipline Committee of the ICCRC heard Mr. Boldt's motion to dismiss the complaint on September 30, 2019. On November 12, 2019, the ICCRC dismissed the motion as premature. The ICCRC noted the December 13, 2019 deadline in the June 28, 2019 order, noting "the ICCRC still has the opportunity to provide the complete federal and provincial government files." The ICCRC noted Mr. Boldt could bring another motion before the Discipline Committee panel hearing the complaint on its merits if the missing information was essential for him to make full answer and defence.

[17] Mr. Boldt brought another motion to dismiss the complaint in February 2020, again citing the failure to disclose documents among other reasons. On May 20, 2020, the ICCRC again dismissed the motion. Noting it had no power to compel production, it found the ICCRC had not violated the prior orders since it had taken steps to facilitate production of the documents as required, even though those did not result in production. The ICCRC also noted the complainant was a witness but not a party to the proceeding, and that the ICCRC could only facilitate requests for documents but could not compel RHJ to disclose documents if she chose to withhold them. The ICCRC also concluded Mr. Boldt had not established the relevance of the documents to his defence or the prejudice he would face in not having access to them. Citing the Supreme Court of Canada's decision *R v La*, [1997] 2 SCR 680, the ICCRC noted that demonstrating the impact of missing documents is most appropriately done at the hearing itself, and that "[u]ntil then, this ground for the motion must fail."

(4) The merits and sanctions decisions

[18] A panel of the Discipline Committee of the ICCRC heard the merits of the complaint in early November 2020. Mr. Boldt, previously represented by counsel, acted on his own behalf. At the hearing, Mr. Boldt brought a preliminary motion seeking disclosure of communications between ICCRC counsel and RHJ's counsel, including in respect of production of the requested immigration files. The ICCRC found the communications to be protected by litigation privilege and irrelevant and denied the motion. Mr. Boldt did not re-raise his motion to dismiss based on the lack of production.

[19] The Discipline Committee of the ICCRC rendered its decision on the merits on March 1, 2021. It found Mr. Boldt did not charge excessive and unreasonable fees or prefer his own interests over those of RHJ in respect of her role helping VisaMax while she was employed with B Travel. However, it found Mr. Boldt had failed to provide retainer agreements, failed to return RHJ's file, and preferred his interest over those of RHJ and ZC in respect of the $60,000 investment. On the latter point, the panel found as follows:

> The panel finds that, on a balance of probabilities, the Member was well aware of the $60,000 investment and part of the reason for the formation of the company was immigration related. The Member's girlfriend benefitted from the arrangement, as did the Member, in providing immigration advice to a client. The Member failed to put his clients' interest over his own interests and those of an individual with whom he had a personal relationship. He did not provide immigration services honourably or with integrity and in doing so he brought the integrity of immigration practice into disrepute.

[20] The parties made submissions on penalty in March and May 2021. The same panel, now as Discipline Committee of the CICC in light of the coming into force of the *College of Immigration and Citizenship Consultants Act*, SC 2019, c 29, s 292 [*CICC Act*], issued its decision on sanctions on December 3, 2021. Materially for present purposes, it ordered a four-month suspension of Mr. Boldt's license to commence January 4, 2022, and ordered Mr. Boldt to forward by December 17, 2021 a sworn declaration confirming he has notified all existing clients of the suspension in writing.

[21] I heard Mr. Boldt's stay motion on December 16, 2021, the day before the deadline for Mr. Boldt to notify his clients. At the hearing, the CICC consented to an interim stay of that deadline pending this decision. I issued an order to that effect on December 16, 2021.

(5) The underlying application for judicial review

[22] On December 10, 2021, Mr. Boldt filed this application for judicial review, asking the Court to quash the December 3, 2021 sanctions decision; the March 3, 2021 merits decision; and the May 20, 2020 decision rejecting his motion to dismiss. In accordance with section 71 of the *CICC Act*, the CICC is named as a respondent. Unlike the situation prior to the enactment of the *CICC Act*, the application for judicial review is not considered a matter under the *Immigration and Refugee Protection Act*, SC 2001, c 27 or the *Citizenship Act*, RSC 1985, c C-29, and is therefore not subject to the requirement to seek leave to apply for judicial review.

[23] In his application for judicial review, Mr. Boldt asserts that the ICCRC erred in finding there was no breach of the interlocutory production orders and, in any case, by proceeding to

prosecute the complaint without full disclosure from RHJ; in dismissing his request for disclosure of correspondence between ICCRC's counsel and RHJ's counsel; in making unreasonable evidentiary rulings during the merits hearing; and in making unreasonable and unjustified findings in the merits and sanctions decisions. He also alleges that the length of time between the original complaint in September 2017 and the sanctions decision in December 2021 was unreasonable and amounted to a failure of procedural fairness.

[24] I note that the CICC, appropriately in my view, takes no issue with Mr. Boldt's application for judicial review challenging the various decisions of the ICCRC/CICC leading to its final sanctions decision. The Court of Appeal has frequently confirmed that judicial review should not be sought until an administrative process is completed, and that interlocutory matters that remain relevant may be challenged at that time: *Dugré v Canada (Attorney General)*, 2021 FCA 8 at paras 34–37, 50; *Canada (Border Services Agency) v CB Powell Limited*, 2010 FCA 61 at paras 30–32, 47–51. While Rule 302 of the *Federal Courts Rules*, SOR/98-106 provides that absent order otherwise, a judicial review application shall be limited "to a single order in respect of which relief is sought," it seems counterproductive in such circumstances to require an applicant to file separate applications for judicial review in respect of each of the various intervening orders that may have culminated in the final order in an administrative process.

(6) Mr. Boldt has raised a serious issue to be determined on the application for judicial review

[25] A "serious issue" for the purposes of the test for a stay is one that shows the application is not "frivolous and vexatious." This assessment is based on a "preliminary assessment" of the

merits, but a "prolonged examination is generally neither necessary nor desirable": *RJR-MacDonald* at pp 337–338; *Western Oilfield Equipment Rentals Ltd v M-I LLC,* 2020 FCA 3 at para 8.

[26] Mr. Boldt relies on three main arguments: (a) the alleged shortfall in documentary production, including the finding the ICCRC had not breached the production orders, the decision to proceed to the merits without full disclosure of RHJ's immigration files and to permit her testimony, the refusal to order disclosure of communications between counsel, and orders from the panel that prevented Mr. Boldt from cross-examining RHJ on the issue; (b) the issue of delay; and (c) the rationality of the merits decision as it relates to the $60,000 investment.

[27] With respect to the documentary production issue, Mr. Boldt argues the ICCRC itself recognized the relevance of the documents he was requesting, ordering facilitation of their production on two separate occasions. He underscores the concession of ICCRC's counsel at the merits hearing that she consented to the facilitation request because it "made sense" at the time, and notes that CICC's current complaint form now contains an "Acknowledgment and Consent" that includes the complainant's consent to the release of information from federal and provincial immigration authorities. He points to various aspects of the unofficial transcript of the videoconference hearing before the panel (apparently produced automatically by Zoom) in which he was precluded from asking RHJ questions about production of the complete file. With respect to counsels' communications, he argues that the assertion by RHJ's counsel in correspondence that parts of RHJ's file were privileged because they were irrelevant is unsustainable. He also challenges the assertion of litigation privilege.

[28] On the delay issue, Mr. Boldt pointed to a number of cases pertaining to delay in disciplinary matters, including *Wachtler v College of Physicians and Surgeons of the Province of Alberta*, 2009 ABCA 130 at paras 46, 48–49 and *Abrametz v Law Society of Saskatchewan*, 2020 SKCA 81 at paras 213–216. He relies on the total length of the investigative and disciplinary process of over four years, including the seven-month delay between submissions and the decision on sanctions, and says delays attributable to the documentary production issue cannot be put on his shoulders in the circumstances.

[29] With respect to the rationality of the reasons, Mr. Boldt notes that while the ICCRC found that part of the reason for the formation of the company in which ZC invested was immigration related, and that BL benefitted from the arrangement while Mr. Boldt benefitted from providing immigration advice to his client, they did not rationally explain how this showed any impropriety on Mr. Boldt's part or how it entailed putting his own interests over those of his clients. He argues there is nothing in the reasons that showed that RHJ had a right to request return of the funds invested by ZC, or whatever portion of them may have remained.

[30] The CICC argues the application for judicial review is without merit. It argues Mr. Boldt did not ask the Discipline Committee panel hearing the merits to dismiss the case on the basis of non-disclosure from the complainant, and in any event did not establish the relevance to a material issue of either the entirety of RHJ's immigration file or the communications between counsel, which it asserts were in any case privileged, citing *Law Society of Upper Canada v Thangavel Muthali Kesavan*, 2012 ONLSAP 20 at para 46 and *Blank v Canada (Minister of Justice)*, 2006 SCC 39 at para 45. It also argues that regardless of RHJ's immigration file, the

evidence supporting the CICC's adverse findings in respect of the failure to provide retainer agreements, which was admitted, the failure to return RHJ's file without a release, and the $60,000 investment was overwhelming.

[31] With respect to delay, the CICC argues that not having put the issue before the CICC, Mr. Boldt cannot be permitted to raise an allegation of undue delay before this Court and that, in any case, most of the length of the process was attributable to Mr. Boldt's requests for production and his unsuccessful motions to dismiss the complaint. The CICC also argues its decision with respect to the $60,000 was sufficiently justified to meet the requirements of reasonableness.

[32] Keeping in mind the principle that a prolonged examination of the merits is not desirable at the stay stage, and that the Court will be called upon to decide the merits independently at a later stage, I consider it best to simply state that despite the able submissions of counsel for CICC, I conclude on the evidence and submissions raised before me that Mr. Boldt has established that his application for judicial review is not frivolous and vexatious. In the context of the allegations made, the factual disputes raised, the preliminary orders issued, a review of the unofficial transcript, and the findings and reasons of the ICCRC/CICC, I cannot conclude that Mr. Boldt's application is frivolous, vexatious, or "devoid of any possibility of success": *Coote v Lawpro Professional Indemnity Company*, 2013 FCA 246 at para 7.

B. *Irreparable Harm*

[33] The parties are generally in agreement on the law regarding irreparable harm, although they accent different aspects of it. Mr. Boldt underscores that what makes harm "irreparable" is not the magnitude of the harm, but it being unquantifiable or incurable in monetary terms at trial. The CICC does not contest this, but stresses that the evidence of irreparable harm must be clear and not speculative, and cannot simply be financial loss or inconvenience. All of these propositions are well supported in the jurisprudence, including cases dealing with the ICCRC: *RJR-MacDonald* at p 341; *Bansal v Immigration Consultants of Canada Regulatory Council*, 2019 FC 1273 at paras 21–22; *Qita v Immigration Consultants of Canada Regulatory Council*, 2020 FC 695 at para 26; *Ebid v Immigration Consultants of Canada Regulatory Council*, 2021 FC 755 at paras 16–17.

[34] The CICC suggests the party seeking a stay must establish a "real risk of disastrous consequences," citing the decision of a judge of Ontario's Divisional Court in *Yazdanfar v College of Physicians and Surgeons of Ontario*, 2012 ONSC 2422 (Div Ct) at para 33. I decline to follow this decision for two reasons.

[35] First, the "real risk" language in the expression refers to a lower standard of proof than the balance of probabilities, judging by its apparent source in *Matrix Photocatalytic Inc v Purifics Environmental Technologies Inc*, 1994 CanLII 7433 (ON SC) at paras 79–81. This is inconsistent with Federal Court of Appeal jurisprudence that binds me, holding that irreparable harm must be established on the usual civil standard of a balance of probabilities: see, *e.g.*,

Canada (Attorney General) v Robinson, 2021 FCA 39 at para 17; *Jaballah v Canada (Minister of Citizenship and Immigration)*, 2006 FCA 179 at para 4; *FH v McDougall*, 2008 SCC 53 at paras 45–49. The jurisprudence of the Ontario Court of Appeal appears to be the same, despite *Matrix* and *Yazdanfar*: *Ontario Public Service Employees Union v Ontario (Attorney General)*, 2002 CanLII 44918 (ON CA) at para 23. Other provincial courts of appeal have adopted the same approach: *Fraser v Limbo Cove Resources Inc*, 2021 NSCA 41 at para 19; *Her Majesty the Queen in Right of Newfoundland and Labrador v OD Holdings Limited and City Sand and Gravel Limited*, 2021 NLCA 52 at para 10; *Irwin v Alberta Veterinary Medical Association*, 2015 ABCA 176 at para 4. I note that *Yazdanfar* cites an endorsement of the Ontario Court of Appeal in support of the statement, which I understand to be *Sazant v College of Physicians and Surgeons (Ontario)*, 2011 CarswellOnt 15914. However, on my reading, neither that decision nor the *Noble v Noble*, [2002] OJ No 4997 (SCJ) decision cited in *Yazdanfar* uses the language of either a "real risk" or "disastrous consequences."

[36] Second, to the extent the Court in *Yazdanfar* intended "disastrous consequences" to define the requisite level of irreparable harm, it appears inconsistent with the recognition in *RJR-MacDonald* that irreparability is about the nature of the harm and not its magnitude. I note the Divisional Court itself, sitting as a panel in a subsequent case, has questioned the use of the term: *Azeff v Ontario Securities Commission*, 2016 ONSC 1279 (Div Ct) at paras 11–12; see also *Law Society of Ontario v Fuhgeh*, 2021 ONLSTA 24 at paras 29–30.

[37] In my view, therefore, the onus is on Mr. Boldt to establish, on a balance of probabilities, that he has suffered irreparable harm in the sense of harm that cannot be cured through damages from the other party. In my view, Mr. Boldt has met his onus.

[38] The principal evidence of Mr. Boldt is that he is currently 67 years old. He is the sole licensed immigration consultant at VisaMax and has about 60 active immigration clients, many of which are nearing completion, and three employees. The nature of his practice is that about 90% of his clients are referred from prior or existing clients. If suspended for four months and required to refer those clients to a delegate, the clients will not return and will not refer other clients, and his employees will have to seek other positions. He will not simply be able to reopen his business after the suspension, but rather will have to rebuild it "from scratch," which is untenable at his age. The result, as he describes it, is a "complete shutdown of my business."

[39] The parties cited a number of decisions in which stays were sought pending appeals or judicial reviews of professional disciplinary sanctions, including *Bansal*, *Qita*, and *Ebid*, which relate to the ICCRC, as well as *Yazdanfar*; *Metera v Financial Planning Group (#3)*, 2003 ABQB 884; *Newbould v Canada (Attorney General)*, 2017 FCA 106; and *Visconti v College of Physicians and Surgeons of Alberta*, 2009 ABQB 742.

[40] The CICC claims the financial harm faced by Mr. Boldt cannot constitute irreparable harm since some financial loss is not sufficient to establish irreparable harm; Mr. Boldt has not provided information regarding his assets and liabilities, such as a T4, to allow an assessment of the "overall financial impact" on him; and the four-month duration of the loss is finite. I am

satisfied that Mr. Boldt's evidence establishes on a balance of probabilities financial harm through the effectively permanent closure of his business that is not curable through a damages award. In this regard, I am unable to conclude in Mr. Boldt's circumstances, given his age and his background, that he would be able to find comparable employment or sources of revenue, as was the conclusion in *Bansal* (at para 24), *Qita* (at para 28), and *Ebid* (at para 23).

[41] While not determinative, I think it worth observing that the decisions in the prior ICCRC cases appear to conclude that any lost income could be recovered with an award of damages in the event the application for judicial review was successful: *Bansal* at para 25, citing *Watto v Immigration Consultants of Canada Regulatory Council*, 2018 ONSC 4825 at para 21; *Qita* at paras 27–28; *Ebid* at para 23. However, I question whether this conclusion can be reached as quickly, at least under the new legislation, the *CICC Act*. The Supreme Court of Canada in *Ernst* confirmed the existence of common law immunities protecting administrative bodies from civil suits for, at least, the conduct of their adjudicative functions: *Ernst v Alberta Energy Regulator*, 2017 SCC 1 at paras 50–57, 171–176; *Ali v Attorney General*, 2019 ONSC 807 at paras 33–34. The Discipline Committee of the CICC hears and determines complaints against members in exercise of its jurisdiction under the *CICC Act*. Without needing to decide the issue, it is far from clear that a member could recover from the CICC the financial harm arising from a sanction decision if this Court quashes the decision as unfair or unreasonable. The CICC argued that recoverability from the CICC has not been decided. Unsurprisingly, however, it did not concede that a member who is successful on judicial review can readily recover damages from either the CICC or a complainant.

[42] This is not to say that financial harm arising from a suspension will necessarily constitute irreparable harm. *Bansal*, *Qita*, and *Ebid* make that clear. Irreparable harm is a fact-specific assessment. It is simply to note that a reliance on a presumed ability to recover damages from the CICC, at least after enactment of the *CICC Act*, may be misplaced.

[43] The CICC also points to *Ebid* for the proposition that a degree of reputational harm is an intrinsic part of being subjected to professional misconduct proceedings: *Ebid* at 22, citing *Newbould* at para 31. However, Mr. Boldt is not raising the reputational harm of being subjected to misconduct proceedings, which have already occurred, or even the reputational harm of being found to have engaged in ethical violations, but the reputational harm of being subject to a license suspension and having to advise clients of the suspension.

[44] In this regard, I cannot accept the CICC's reliance on its decisions having already been published on its website and on the CanLII online legal repository. The CICC cites *Ebid* to argue that public availability of the decision means any reputational harm has already occurred: *Ebid* at para 21. However, in *Ebid*, Justice Pentney noted that the applicant had already advised his current clients of the suspension: *Ebid* at para 21. Mr. Boldt has not yet advised his clients, having brought his stay motion before he was required to do so and obtaining this Court's interim stay of that provision on consent of the CICC. In my view, the very requirement in the CICC's order that Mr. Boldt advise his clients personally recognizes that they cannot be assumed to have consulted either the CICC website or CanLII to check the disciplinary status of their consultant. Mr. Boldt's primary concern is the reputational and financial impact flowing from having to advise his clients of the suspension, followed by the operation of the suspension, and

the resulting closure of his business. None of this has yet happened as a result of online publication of the CICC's decisions.

[45] Finally, the CICC argues Mr. Boldt's immigration business is in fact in the hands of a company, VisaMax. It argues the company can take mitigation steps to avoid irreparable harm. I am not satisfied that CICC has reasonably explained any steps VisaMax could take to avoid the harm described by Mr. Boldt, nor that the irreparable harm described would be materially altered by the fact that Mr. Boldt runs his consultancy practice as the sole licensed consultant of a company business.

[46] Given my conclusions with respect to the irreparable harm to Mr. Boldt, I need not address the parties' dispute about whether irreparable harm to the clients or employees of a disciplined professional can be used to show irreparable harm.

C. *Balance of Convenience*

[47] As the CICC concedes, the balance of convenience often relies on the result of the other two prongs of the test for a stay. Nonetheless, the question remains whether the harm to Mr. Boldt, recognized as irreparable at the second stage, is outweighed by other harms to the CICC, its regulatory function, and/or the public interest: *Ebid* at para 26.

[48] The CICC is a professional regulatory body with a mandate to protect the public interest by establishing and maintaining professional standards of conduct: *Ebid* at para 30, citing *Immigration Consultants of Canada Regulatory Council v Rahman*, 2020 FC 832 at para 6. I

agree with the CICC that there is a general public interest in the prompt implementation of sanctions for breaches of conduct, particularly where the conduct is serious. At the same time, I agree with Mr. Boldt that this argument about protection of the public interest is somewhat, although by no means entirely, undermined by the fact that the CICC's sanctions decision itself took some seven months to be rendered.

[49] On balance, despite the public interest in prompt enforcement of administrative sanctions, I conclude that the balance of convenience favours granting the stay given the harm to Mr. Boldt if the stay is not granted. While not necessary to this conclusion, I note that the potential harm to VisaMax's employees also appears to weigh in favour of granting the stay.

[50] Considering the foregoing factors together and considering the circumstances, I conclude it "would be just and equitable in all the circumstances of the case" to grant the stay requested.

IV. Conclusion

[51] The sanctions decision of the CICC will therefore be stayed pending the determination of this application for judicial review. In the circumstances, I am not prepared at this time to include a stay pending "any appeals therefrom" as requested by Mr. Boldt, as the factors on such an appeal, including the question of serious issue, may be very different after a determination by this Court. They are better addressed at that time, by this Court or the Federal Court of Appeal as appropriate.

[52] Based on the submissions of the parties, I conclude that costs of this motion should be awarded to Mr. Boldt, payable in any event of the cause but, for clarity, not forthwith.

ORDER IN T-1890-21

THIS COURT ORDERS that

1. The motion is granted. The order in respect of sanctions issued by the Discipline Committee of the College of Immigration and Citizenship Consultants on December 3, 2021 is hereby stayed pending the determination of this application for judicial review.
2. Costs are payable to the applicant in any event of the cause.

"Nicholas McHaffie"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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