Federal Court Cour fédérale

**Date: 20230607**

**Docket: T-1890-21**

**Citation: 2023 FC 802**

**Toronto, Ontario, June 7, 2023**

**PRESENT: Madam Justice Go**

**BETWEEN:**

**DOUGLAS RANDAL BOLDT**

**Applicant**

**and**

**COLLEGE OF IMMIGRATION AND CITIZENSHIP CONSULTANTS**

**Respondent**

# JUDGMENT AND REASONS

## I. Overview

[1] The Applicant, Mr. Douglas Randal Boldt, is a licenced immigration consultant regulated by the Respondent, the College of Immigration and Citizenship Consultants [“CICC” or the “College”], formerly the Immigration Consultants of Canada Regulatory Council [ICCRC].

[2] On or around August 30, 2017, a complaint was filed against the Applicant with the ICCRC [Complaint] by a former client named Ms. Rose Hongmei Ju [the "Complainant" or "RHJ"]. The matter was referred to a panel of the Discipline Committee [Panel] in June 2018. The Panel heard the merits of the Complaint in early November 2020 [Discipline Hearing].

[3] On March 1, 2021, the Panel found that the Applicant committed professional misconduct by breaching four articles of the ICCRC's Code of Professional Ethics [Code]: *ICCRC v Boldt*, 2021 ICCRC 5 [Discipline Decision]. The Panel released a decision on December 3, 2021 – under the auspices of the College – imposing sanctions on the Applicant, including a four-month suspension of his licence and the requirement to notify all existing clients of the suspension: *CICC v Boldt*, 2021 CICC 33 [Sanctions Decision].

[4] The Applicant seeks judicial review of the merits of the Discipline Decision, as well as certain interlocutory decisions that were made throughout the course of the disposition of the Complaint [together, the "Decisions"].

[5] The Applicant also brought a stay of the Sanctions Decision pending the determination of this application for judicial review on its merits. By Order and Reasons dated December 23, 2021, Justice McHaffie found that the Applicant has raised at least one serious issue in this application, and that the likely permanent impact of the temporary sanctions would cause him to suffer irreparable harm: see *Boldt v College of Immigration and Citizenship Consultants*, 2021 FC 1456 [*Boldt* 2021].

[6] For the reasons set out below, I dismiss the application.

## II. Background

### A. *Factual Context*

[7] The Applicant became a licenced immigration consultant in 2008 and runs his immigration consultancy practice through a company named VisaMax Ltd. [VisaMax] in Winnipeg, Manitoba. Through VisaMax, the Applicant began representing RHJ and her husband, ZC, both Chinese nationals, in 2010. The Applicant assisted RHJ in obtaining a study permit for a program in British Columbia with the expectation of eligibility for a post-graduation work permit. VisaMax also helped ZC obtain an open work permit based on RHJ's student visa.

[8] VisaMax shares office space with a travel agency, Bowen Travel [B Travel], owned by BL, the Applicant's girlfriend. B Travel would assist VisaMax's immigration clients with their travel arrangements.

[9] When looking for a job on his open work permit, ZC expressed an interest in starting a business with BL to qualify under Manitoba's Provincial Nominee Program [PNP] Skilled Worker Program. ZC and BL incorporated a company named Westcan Equipment Ltd. [Westcan], which was registered in BL's name only. ZC visited Winnipeg for three weeks in or around February 2012 to set up the business and stayed with the Applicant during this visit.

[10] On behalf of ZC, RHJ sent BL a $60,000 bank draft on March 25, 2012 made out to Westcan, which BL deposited into Westcan's bank account. The intention was for ZC to work for Westcan and to be paid with at least part of the $60,000. However, this arrangement only lasted briefly, as ZC shortly returned to British Columbia to join RHJ.

[11] After RHJ finished her studies, she completed a work practicum with B Travel, and later joined B Travel as a full-time employee on her post-graduation open work permit and subsequently on a closed work permit under the Manitoba PNP. Although the closed work permit only allowed RHJ to work for B Travel, she also provided services as an "Immigration Coordinator" for VisaMax.

[12] Around the time that RHJ began working for B Travel, it came to light that ZC was wanted on criminal embezzlement charges in China. ZC and RHJ divorced in 2013, in part due to concerns about the effect of these charges on RHJ's ongoing permanent residence application in Canada, but continued to reside together in Winnipeg. ZC returned to China in 2016 and was convicted.

[13] On June 11, 2017, RHJ's permanent residence application was refused. She was found inadmissible to Canada for misrepresentation as her divorce was "one of convenience" and she had performed unauthorized work for VisaMax.

[14] RHJ discharged the Applicant after her visa refusal and retained a lawyer. On June 23, 2017, RHJ asked BL to return the $60,000 investment. She also asked the Applicant for the

return of her immigration file at VisaMax. The Applicant issued RHJ an invoice for $43,325 for the immigration services he rendered, and asked her to sign a release in return for her file. The release purported to release the Applicant, VisaMax, BL, and B Travel from all claims RHJ may have against them, including in connection with the business investment.

[15] RHJ did not sign the release and brought the Complaint on or around August 30, 2017.

B. *The Notice of Referral*

[16] After RHJ filed her Complaint, an investigation ensued and the matter was referred to the Discipline Committee. A Notice of Referral was issued in late June 2018, which alleged that the Applicant engaged in professional misconduct by:

A. Failing to provide RHJ and ZC with retainer agreements for the various services he provided as their representative;

B. Rendering an invoice charging excessive and unreasonable fees;

C. Failing to deliver RHJ's complete file upon withdrawal;

D. Preferring his interests over those of RHJ by permitting her to work for VisaMax [Fifth Allegation];

E. Preferring his interests over those of RHJ and ZC by facilitating the Westcan business arrangement and $60,000 investment;

F. Preferring his interests over those of RHJ and ZC regarding the $60,000 by failing to instruct BL to return the funds.

C. *Procedures and orders regarding the production of RHJ's immigration files*

[17] In order to defend himself against the Complaint, the Applicant sought the production of RHJ's complete immigration files from the Governments of Canada and Manitoba. As the

ICCRC did not have the authority to compel such production, counsel for the ICCRC consented to facilitate third-party record requests for these documents at a pre-hearing conference on August 9, 2018.

[18] On August 21, 2018, ICCRC counsel sent the Applicant's then counsel RHJ's Government of Canada immigration file complete up to September 2017. The Applicant's counsel responded by requesting the complete file from September 2017 onwards.

[19] The Discipline Committee ordered ICCRC counsel on October 15, 2018 to facilitate a request for RHJ's complete immigration files from Canada and Manitoba beginning in 2010. The order stated in part:

> Counsel for [ICCRC] facilitates a request through the Complainant's counsel for the Complainant to sign IMM 5744 and the Freedom of Information and Protection of Privacy Act – Application for Access forms [FOIPPA Form], to obtain a copy of the Complainant's complete immigration files…

D. *Interlocutory Decisions*

[20] In March 2019, some of the requested documents were provided. By the April 25, 2019 pre-hearing conference, RHJ still had not signed the FOIPPA Form. In May 2019, the Applicant brought a motion to dismiss the Complaint. In June 2019, the Discipline Committee issued another order for ICCRC counsel to facilitate the production of RHJ's complete immigration files, and gave a deadline of December 13, 2019. On November 12, 2019, the Discipline Committee dismissed the Applicant's May 2019 motion as premature.

[21] In February 2020, the Applicant brought a second motion to dismiss the Complaint, which relied in part on the Respondent's failure to disclose the documents. The parties are in disagreement as to whether the Applicant also advanced delay as a separate, standalone ground for dismissal in this motion.

[22] On May 20, 2020, the Discipline Committee dismissed the second motion on the basis that the ICCRC had no power to compel production from RHJ and therefore did not violate any orders. Rather, ICCRC counsel had taken steps to facilitate production of the documents, as required by the orders. The Discipline Committee also found that the Applicant did not demonstrate the relevance of the requested documents to his defence, nor the extent of prejudice he would face by not having access to them. The Discipline Committee relied on *R v La*, [1997] 2 SCR 680 [*La*] to assert that the impact of missing documents is most appropriately dealt with at the Discipline Hearing itself: at para 27.

E. *Discipline Hearing and Discipline Decision*

[23] The Panel heard the Complaint over four sittings in early November 2020. The Applicant acted on his own behalf at the Discipline Hearing and brought a preliminary motion for the disclosure of communications between ICCRC counsel and RHJ's counsel regarding the production of the requested immigration files. The Panel dismissed this motion after finding that the communications are protected by litigation privilege and irrelevant to the Applicant's defence against the Complaint.

[24] The Discipline Decision, on the merits, was rendered on March 1, 2021. The Panel did not find that the Applicant charged unreasonable or excessive fees or preferred his own interests over RHJ's by permitting her to work for VisaMax. However, it found that the Applicant engaged in professional misconduct by committing numerous breaches of the Code because he:

A. Failed to provide ZC with a retainer agreement for representation relating to a Multi-Entry Visa Application and Work Permit;

B. Failed to provide RHJ with a retainer agreement for representation relating to an application for a Post-Graduation Work Permit, a Manitoba [PNP] Application, a Closed Work Permit enabling RHJ to work at B Travel, an application for a Federal Nomination, and responding to two PFLs;

C. Failed to provide RHJ's complete file to her upon withdrawal from her matter;

D. Preferred his own interests over those of RHJ and ZC by facilitating ZC to enter into a business arrangement with BL and to provide the $60,000 investment to BL in furtherance of the business arrangement [Particular 6]; and

E. Preferred his own interests over those of RHJ and ZC by failing to instruct BL to return the funds.

## III. Issues and Standard of Review

[25] The Applicant raises several issues in his application for judicial review, namely:

1) The Discipline Committee erred in finding no breach of the interlocutory production orders, and by proceeding to prosecute the Complaint without RHJ's full disclosure;

2) The Panel unreasonably dismissed the Applicant's request for the disclosure of the communications between ICCRC counsel and RHJ's counsel;

3) The Panel unreasonably denied the Applicant his right to cross-examine the Complainant;

4) The Panel erred in its credibility analysis;

5) The Panel unreasonably found that the Applicant engaged in professional misconduct under Particular 6, i.e. that he preferred his own interests over RHJ and ZC with respect to the business arrangement and $60,000 investment;

6) The Panel exhibited a reasonable apprehension of bias; and

7) The lapse of time between the Complaint around September 2017 and the Sanctions Decision in December 2021 constituted an abuse of process and breached procedural fairness.

[26] The parties are in agreement as to the applicable standard of review for the various issues raised before this Court. The presumptive standard of substantive review is reasonableness, and issues of procedural fairness are reviewable on a correctness standard: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 23; *Mission Institution v Khela*, 2014 SCC 24 at para 79.

[27] Reasonableness is a deferential, but robust, standard of review: *Vavilov* at paras 12-13. The reviewing court must determine whether the decision under review, including both its rationale and outcome, is transparent, intelligible and justified: *Vavilov* at para 15. A reasonable decision is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision-maker: *Vavilov* at para 85. Whether a decision is reasonable depends on the relevant administrative setting, the record before the decision-maker, and the impact of the decision on those affected by its consequences: *Vavilov* at paras 88-90, 94 and 133-135.

[28] For a decision to be unreasonable, the Applicant must establish the decision contains flaws that are sufficiently central or significant: *Vavilov* at para 100. Not all errors or concerns about a decision will warrant intervention. A reviewing court must refrain from reweighing evidence before the decision-maker, and it should not interfere with factual findings absent

exceptional circumstances: *Vavilov* at para 125. Flaws or shortcomings must be more than superficial or peripheral to the merits of the decision, or a "minor misstep": *Vavilov* at para 100.

## IV. Analysis

[29] While some of the Applicant's arguments are framed in the language of reasonableness, I agree with the Applicant that there is an overlap between reasonableness and procedural fairness with respect to many of these issues: *Vavilov* at paras 76-77, referring to *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 [*Baker*] at paras 22-23. As such, where appropriate, I will analyse each of the issues raised by the Applicant with both reasonableness and procedural fairness in mind.

### A. *Did the Panel unreasonably deny the Applicant his right to cross-examine the Complainant?*

[30] The Applicant argues that the Panel breached procedural fairness by rejecting his request to cross-examine RHJ at the Discipline Hearing. The Applicant emphasizes the fundamental role that cross-examination plays in the truth-seeking function of the courts, which equally applies in the administrative context: *Rezmuves v Canada (Citizenship and Immigration)*, 2013 FC 973 at para 29. The Applicant further submits that the Panel failed to ensure that any of the criteria set out in *Emery v Alberta (Appeals Commission of the Workers' Compensation Board)*, 2000 ABQB 704 [*Emery*] at para 23 were met.

[31] At issue in this case was the Applicant's right to cross-examine RHJ about her immigration files. Specifically, the Applicant sought to question RHJ about the pages that he

alleges RHJ and/or her counsel inappropriately redacted and/or removed from VisaMax's office. Pointing to the out-of-sequence page numbers in the disclosed documents pertaining to RHJ's immigration file, the Applicant alleges that 2,669 pages of her file were removed.

[32] The Applicant contends that the Panel created a legitimate expectation that he would be entitled to cross-examine RHJ regarding his allegation. At the Discipline Hearing, the Applicant attempted to explain how he knew documents were removed from RHJ's file. The Panel responded by saying "You may… cross-examine the Complainant in regard to this matter." Further, when the Applicant asserted that RHJ's lawyer removed two thirds of the documents that were ordered produced, the Panel again stated "that's something you can ask the Complainant about."

[33] However, the Applicant asserts that when he later attempted to do so, counsel for ICCRC objected on the basis that the Applicant had not established that 2,669 pages were removed from the file. Instead of allowing the Applicant to explain his basis for this conclusion, the Panel asked "What is the purpose?" and determined that the documents in question were irrelevant in any event.

[34] The Applicant further points out that shortly thereafter, counsel for ICCRC acknowledged that she understood how the Applicant arrived at the 2,669 figure but asserted that the documents were not relevant. The Applicant contends that this position contradicted her earlier statement that "[a]s the Prosecutor, I indicated that I would assist because… Mr. Boldt

indicated that this was relevant to his defence and it made sense to me because these are the Complainant's files and she is the Complainant."

[35] The Applicant presents the Panel's denial of the legitimate expectation it created to cross-examine RHJ as a Catch-22 situation and argues that the Panel breached procedural fairness by depriving him of a "vital" process to meaningfully present his case fully and fairly: *Innisfil (Township) v Vespra (Township)*, [1981] 2 SCR 145 at 18; *Baker* at para 26.

[36] Before addressing the Applicant's arguments, it is necessary to first set out what these missing files were that the Applicant wished to cross-examine RHJ on. The evidence in this regard was limited.

[37] To start, there was an email dated August 21, 2018 from Ms. Cook, the Applicant's former counsel, acknowledging receipt of the Complainant's materials going to September 2017. Ms. Cook thus asked for the file from September 2017 onwards.

[38] There was also a letter dated March 16, 2020 from RHJ's counsel after he received RHJ's Access to Information Request Package from the Government of Canada. Counsel stated that he redacted all the documents post-dating RHJ's representation by the Applicant on the basis that the redacted materials are not relevant to the Complaint and are privileged.

[39] Based on the above, I agree with the Respondent that there was some evidence before the Panel that some of the missing documents post-dated September 2017.

[40] The Applicant points to the June 28, 2019 order of the Discipline Committee, which ordered ICCRC counsel to facilitate the disclosure of several documents including RHJ's study and work permits dated between 2011 and 2014, as well as her permanent and temporary residence application documents dated between 2014 and 2017. I presume these documents form part of the file that the Applicant contends RHJ removed from his office. I note that RHJ did testify to removing some of her personal files from VisaMax's office after her withdrawal, which she justified by stating that the Applicant had not assisted her with some of her immigration applications and that in accordance with the office practice, she was entitled to remove her personal files when she cut ties with VisaMax.

[41] Ultimately, the evidence with respect to how many documents were removed from VisaMax remains unclear. There is also no evidence as to whether any of the 2,669 pages presumably missing from the disclosed materials were removed from VisaMax, as opposed to having been created after RHJ discharged the Applicant.

[42] I note further that the evidence suggests that the Applicant was able to obtain RHJ's immigration files through a separate legal proceeding, and presumably knew what pages were redacted. This was confirmed at the Discipline Hearing during the discussion around the Applicant's cross-examination of RHJ, when the Applicant offered to prepare a spreadsheet of the purportedly missing files. Despite the Panel's invitation for him to do so, it appears that the Applicant never did submit such spreadsheet.

[43] Another important piece of context in my view is the Applicant's stated purpose for cross-examining RHJ on the missing files at the time of the Discipline Hearing.

[44] The Respondent points out that the Applicant maintained during the Discipline Hearing that the purpose of the cross-examination was to defend against the allegation that he preferred his own interests over those of RHJ by allowing her to work for VisaMax, contrary to the conditions on her closed work permit. Since the Applicant successfully defended himself against this allegation, the Respondent submits that the denial of the Applicant's right to cross-examine RHJ is not germane to this application for judicial review.

[45] The relevant portions of the transcript highlighted by the Respondent are reproduced as follows:

> MR. BOLDT: Okay, the relevancy is that -- relevancy is that I'm making the defence for the fifth charge based on two defences. One is on the MacIntyre Rule. That even if -- regardless of what I did, [RHJ] would have been refused. This is a critical part of my defence and a critical part of this is that information from the file is missing, in fact two-thirds of the file is missing. How are we to make a determination on what I did and what I didn't do, how, how -- whether I was -- whether I behaved misappropriately.
>
> […]
>
> MR. BOLDT: So, by having -- with respect, by having those documents in front of you you will be able to make a better determination on what the issues were, and whether what I did had any bearing on the refusal of [RHJ]. That is the heart of the, the heart of the case. And how do you do that with two-thirds of the file missing?
>
> [Emphasis added]

[46] The above-quoted excerpt from the transcript, in my view, supports the Respondent's argument that it was in the context of defending himself against the Fifth Allegation regarding RHJ's unauthorized work for VisaMax that the Applicant requested to cross-examine RHJ. I acknowledge the Applicant's argument about the legitimate expectation created by the Panel and the apparent shifting of positions by the ICCRC counsel. However, given the Panel's dismissal of the Fifth Allegation, the Applicant is essentially asking the Court to overturn a decision despite having successfully defended the allegation in question.

[47] Similarly, as the Respondent submits, none of the allegations against the Applicant went to the issue of competence. Nor did the ICCRC allege, contrary to the Applicant's assertion, that he allowed RHJ's permanent residence application to be refused. Despite his repeated assertions that questions about "what RHJ was hiding" were relevant to his defence, I find it reasonable for the Panel to ensure that the Discipline Hearing stayed relevant to the allegations in the Notice of Referral.

[48] The Applicant further submits that RHJ's credibility was a key issue in respect of the other allegations, namely those relating to the return of the Complainant's file, the Applicant's involvement in Westcan and the $60,000 investment. As such, the Applicant should have been able to cross-examine RHJ in order to challenge her credibility. For the reasons set out below at paras 92-103, I am not convinced that credibility was a determinant factor in this case. As such, I do not find that the outcome of the case would have been affected irrespective of whether the Applicant was able to impeach the Complainant's credibility by cross-examining her on the missing files.

[49] I also note that the Applicant did have the opportunity to cross-examine RHJ on the other allegations, which would have allowed him to impeach her credibility. Further, while the Applicant was not able to cross-examine RHJ about the missing files, as the Panel noted, the Applicant was free to submit his own evidence – including a spreadsheet – about what files were missing and what, if any, were removed from VisaMax. The Applicant chose not to clarify what the missing files were.

[50] As the jurisprudence confirms, the denial of cross-examination, in itself, is insufficient to establish a breach of procedural fairness; the denial must be considered in the circumstances of the case: *Emery* at para 24. The Applicant fails to demonstrate that the Panel's refusal to allow the Applicant's cross-examination of RHJ on the missing documents constitutes a breach of procedural fairness.

B. *Did the Discipline Committee err in finding no breach of the interlocutory production orders, and by proceeding to prosecute the Complaint without RHJ's full disclosure?*

[51] The Applicant argues that the Discipline Committee breached procedural fairness by allowing RHJ to testify without providing the requested documents and by proceeding with prosecuting the Complaint in the absence of such disclosure. The Applicant argues that by issuing orders to facilitate and ensure the production of these files, the ICCRC created a legitimate expectation that the prosecution would not proceed in the absence of relevant and probative documents, citing *Baker* at para 26.

[52] The Applicant also cites *Markandey v Ontario (Board of Ophthalmic Dispensers)*, [1994] OJ No 484 [*Markandey*] to assert the importance of the full disclosure of all information relevant to the conduct of a case: at para 43. Further, the Applicant emphasizes that the disclosure principles in *R v Stinchcombe*, [1991] 3 SCR 326 [*Stinchcombe*] apply in the professional disciplinary context, where increased disclosure requirements are justified by the significant consequences on one's career and status in the community: *Sheriff v Canada (Attorney General)*, 2006 FCA 139 [*Sheriff*] at para 32.

[53] Here, the Applicant notes that even after the requested files were ultimately disclosed, two-thirds were removed by RHJ's legal counsel based on an "unsubstantiated claim of privilege." Citing *Canada (Citizenship and Immigration) v Jozepovic*, 2021 FC 536 [*Jozepovic*], the Applicant asserts that the heightened disclosure requirements take precedence over counsel's claim of litigation privilege on investigative documents, given the significant personal consequences involved: at para 19.

[54] Further, the Applicant submits that the Discipline Committee reversed the onus in its May 20, 2020 Decision by requiring the Applicant to demonstrate that the documents he sought were relevant and that he would be prejudiced by not having access to them, quoting from *La*. The Applicant asserts that the documents requested were clearly probative and relevant, as RHJ relied on her Complaint to have her permanent residency refusal reconsidered. The Applicant asserts that it was pertinent to review whether RHJ's allegations in her reconsideration application were consistent with those made in the Complaint.

[55] With respect, I find the Applicant's arguments lack merit.

[56] The Supreme Court of Canada's [SCC] comment in *R v Mills*, [1999] 3 SCR 668 at para 45, as cited by the Respondent, is instructive with respect to the onus and process of *ordering* third-party records where it *is* compellable:

> In the context of ordering production of records that are in the hands of third parties, Lamer C.J. and Sopinka J. outlined a two-stage process. At the first stage, the issue is whether the document sought by the accused ought to be produced to the judge; at the second stage, the trial judge must balance the competing interests to decide whether to order production to the accused. At the first stage, the onus is on the accused to establish that the information in question is "likely to be relevant" (para. 19 (emphasis in original)). Unlike in the Crown disclosure context, where relevance is understood to mean "may be useful to the defence", the threshold of likely relevance in this context requires that the presiding judge be satisfied "that there is a reasonable possibility that the information is logically probative to an issue at trial or the competence of a witness to testify" (para. 22 (emphasis in original)). This shift in onus and the higher threshold, as compared to when records are in the possession of the Crown, was necessitated by the fact that the information in question is not part of the state's "case to meet", the state has not been given access to it, and third parties are under no obligation to assist the defence.
>
> [Emphasis added]

[57] The SCC also provides guidance in *Stinchcombe* that even in the context of disclosure, as opposed to production, as is the case here, the duty to disclose is discretionary, not absolute: at 339. The exercise of discretion tends to rely on relevance as the overarching consideration:

> As indicated earlier, however, this obligation to disclose is not absolute. It is subject to the discretion of counsel for the Crown. This discretion extends both to the withholding of information and to the timing of disclosure. For example, counsel for the Crown has a duty to respect the rules of privilege... A discretion must also be exercised with respect to the relevance of information. While the Crown must err on the side of inclusion, it need not produce what is clearly

> irrelevant. The experience to be gained from the civil side of the practice is that counsel, as officers of the court and acting responsibly, can be relied upon not to withhold pertinent information…
>
> [Emphasis added]

[58] Based on the above-cited case law, I am not convinced that the Discipline Committee "reversed the onus" by expecting the Applicant to demonstrate the relevance of the documents he sought to have produced, be it in the context of production, or disclosure, as the Applicant seems to suggest.

[59] This is the case even despite the initial "tacit acknowledgment" by the ICCRC, as the Applicant alleges, of the relevance of the files. As the Respondent submits, and I agree, an initial acknowledgment of some relevance did not necessitate a dismissal of the Complaint should the files not be produced. An acknowledgment does not infer that the files met the requisite level of relevance that would warrant a dismissal of the case in their absence.

[60] Indeed, I find that the order dated June 28, 2019 did contemplate that the disciplinary matter would proceed, with or without the files. After the Chair listed the documents for ICCRC's facilitation of production, the order stated:

> Any document that is requested in above Order and is not received by the Government of Canada or the Province of Manitoba, it is this Chairperson request that each governing body identify why such information has not been disclosed. If no explanation is provided, or information received, this matter will move forward as expeditiously as possible in the scheduling of a prehearing conference to determine disclosure timelines by the Counsel of the [Applicant] in preparation of the discipline hearing, should the Discipline Panel hearing the Motion to Dismiss, not dismiss the matter in its entirety.

[Emphasis added]

[61] Further, the fact that RHJ may have relied on her Complaint as a basis to have her permanent residency refusal reconsidered does not make her files relevant to the Discipline Committee's assessment of the Complaint. As already noted, none of the allegations before the Discipline Committee related to the Applicant's competence or to the denial of RHJ's permanent residence application. The only allegation that may have been impacted by the non-disclosure of the files was ultimately dismissed by the Panel.

[62] I also agree with the Respondent that the Applicant never established the relevance of the missing immigration files to the substantive allegations in the Notice of Referral, namely the Applicant's failure to provide retainer agreements, failure to return RHJ's files upon withdrawal, and the conflict of interest regarding the business arrangement.

[63] The Respondent further argues, and I agree, that the Applicant has not demonstrated prejudice arising from an inability to make full answer and defence to the allegations. The Respondent points out that the Applicant could not adequately explain at the Discipline Hearing why he required the redacted documents, and that in any event, he was successful in defending some of the substantive allegations without the documents.

[64] I also find *Jozepovic*, which the Applicant relies on, distinguishable. In *Jozepovic*, the consequences of the underlying proceedings involved the defendant being declared a war criminal or of having committed crimes against humanity: at para 18. The Court specifically noted that the extent of *Stinchcombe* disclosure obligations depends on the "seriousness of the

consequences of the proceedings on the personal rights, reputation, career and status in the community": *Jozepovic* at para 18. The Court found that the consequences in *Jozepovic* were "far more serious" than those in professional misconduct in cases like *Sheriff*, which are more similar to the case at bar: at para 18.

[65] At the hearing before me, the Applicant further argued that the Discipline Committee unreasonably found that the ICCRC counsel complied with the order to "facilitate" the production of RHJ's files, as it conducted no analysis of what it means to facilitate. The Applicant cited several dictionary definitions of "facilitate" to argue that the ICCRC counsel failed to comply with the order because it failed to 'achieve the result' of obtaining the files.

[66] I reject this argument.

[67] As the Applicant conceded before the Court, RHJ was not a party to the disciplinary proceedings and the ICCRC did not have the power to summons her files. The only way for the ICCRC to obtain the files was through RHJ. The order made by the Discipline Committee was to further that objective, and the ICCRC did exactly that, by requesting RHJ to sign the FOIPPA Form naming an ICCRC investigator as her designated representative. The fact that RHJ designated her counsel instead, and allowed her counsel to redact files, was beyond ICCRC's control. I find that what ICCRC did was to "make easy or less difficult or more easily achieved" the objective of obtaining the files, which is consistent with the definition of "facilitate" as set out in the Oxford English Reference Dictionary.

[68] Finally, the Applicant argues that the Discipline Committee unreasonably concluded that RHJ's counsel was the only one who could request her files from the Government. The Applicant notes that neither the *Access to Information Act*, RSC 1985, c A-1 or the *Privacy Act*, RSC 1985, c P-21 place restrictions on who can be designated as a third-party capable of receiving documents. The Applicant asserts that RHJ could have designated the ICCRC's investigator as a recipient. That may be so. However, ICCRC could not compel RHJ to designate their investigator, just as they lacked the power to force RHJ to disclose the entirety of her immigration files. Therefore, it is of no import whether the Discipline Panel erred in finding that only RHJ's counsel could request the file.

C. *Did the Panel unreasonably dismiss the Applicant's request for disclosure of the communications between ICCRC counsel and RHJ's counsel?*

[69] The Applicant also challenges the decision of the Panel to dismiss his motion at the Discipline Hearing requesting the disclosure of all correspondence between ICCRC counsel and RHJ's counsel relating to the production of RHJ's immigration files. In the alternative, the Applicant requested that the communications be presented to the Panel to determine admissibility before providing relevant portions to him. The Applicant requested these communications to support his allegation that RHJ's counsel improperly influenced the ICCRC.

[70] ICCRC counsel argued in response to this motion that the correspondences requested were "administrative in nature and not related to the allegations set out in the Notice of Referral." In dismissing this motion, the Panel found that the ICCRC has no legal duty to disclose irrelevant information, that counsel's communications in preparing for a hearing are

protected by litigation privilege, and that absent a *prima facie* case of impropriety, the ICCRC is not required to produce evidence to "counter [the Applicant's] unfounded allegations."

[71] Relying on *Stinchcombe* and *Sheriff*, the Applicant submits that such correspondence should have been disclosed. The Applicant argues that the Panel unreasonably concluded that the requested communications were irrelevant to the Notice of Referral without first assessing their contents for relevance or determining whether they fell within the duty to disclose "all evidence that may assist the accused": *Sheriff* at para 33. The Applicant submits that the Panel applied the wrong legal test in doing so, relying on *Markandey* at para 43.

[72] One of the defences the Applicant advanced in the proceedings was that the Complaint lacked merit and was filed for an improper purpose. Based on a letter of direction from the Law Society of Manitoba received by RHJ's counsel relating to a separate legal matter involving the Applicant, the Applicant contends that it was reasonable for him to inquire into the nature of the discussions between counsel. The Applicant argues that *Markandey* establishes that it was ICCRC counsel's obligation to facilitate a review of the requested documents, and that the Panel had a duty to review the decision to not disclose them: at para 43; *Stinchcombe* at para 21.

[73] Further, the Applicant argues that the Panel erred in applying the law of litigation privilege: *College of Physicians of BC v British Columbia (Information and Privacy Commissioner)*, 2002 BCCA 665 [*College of Physicians of BC*] at paras 28-33 and 89. The Applicant asserts that litigation privilege attaches to litigation strategy and opines that since the ICCRC is required to proceed in the public interest, the refusal to disclose "might suggest an

improper approach towards the prosecution." The Applicant submits that if the communications were administrative in nature as asserted by ICCRC counsel, then litigation privilege would not apply. Finally, the Applicant argues that the party claiming litigation privilege must describe the documents with enough particularity to indicate whether the dominant purpose of their creation was in contemplation of litigation, which was not done here: *Alberta v Suncore Inc*, 2017 ABCA 221 [*Suncore*] (leave to appeal to the SCC refused) at para 48.

[74] While the Panel could have provided more substantive reasons, I find that the Panel's decision to dismiss the Applicant's motion for disclosure was reasonable for the following reasons.

[75] As a starting point, the Applicant appears to have mischaracterized litigation privilege by submitting that it only attaches to litigation strategy, and consequently that 'administrative' communications are not covered. Contrary to the Applicant's assertion, the British Columbia Court of Appeal in *College of Physicians of BC* does not mention litigation strategy as being the only subject that attracts litigation privilege: see paras 28-33.

[76] As stated in *Suncore*:

> [37] Litigation privilege attaches to documents created for the dominant purpose of litigation: *Blank* at paras 59-60. This includes any document created for the dominant purpose of preparing for related litigation that "remains pending or may reasonably be apprehended": *Blank* at para 38.

[77] *Suncore* points to two SCC cases that guide the jurisprudence on litigation privilege: *Blank v Canada (Minister of Justice)*, 2006 SCC 39 [*Blank*] and *Lizotte v Aviva Insurance Company of Canada*, 2016 SCC 52 [*Lizotte*].

[78] As the SCC explained in *Lizotte*:

> [19] Litigation privilege gives rise to an immunity from disclosure for documents and communications whose dominant purpose is preparation for litigation. The classic examples of items to which this privilege applies are the lawyer's file and oral or written communications between a lawyer and third parties, such as witnesses or experts: J.-C. Royer and S. Lavallée, *La preuve civile* (4th ed. 2008), at pp. 1009-10.

[79] *Lizotte* clarifies that litigation privilege is a "class privilege" in that it gives rise to a presumption of inadmissibility for a class of communications where the conditions for its application are met, namely where the dominant purpose of the communications was the preparation for litigation: at paras 32-33 and 36, citing *Blank* at para 60. The SCC made clear in *Lizotte* that "any document that meets the conditions for the application of litigation privilege will be protected by an immunity from disclosure unless the case is one to which one of the exceptions to that privilege applies": at para 37.

[80] In other words, litigation privilege does not cover only litigation strategy, as the Applicant contends, but any communications and documents that were created with the dominant purpose of preparing for litigation. This definition, in my view, covers all the communications between ICCRC counsel and RHJ's counsel, be they administrative in nature or otherwise, so long as they were prepared for the ICCRC's proceedings against the Applicant.

[81] While not binding on me, I find additional support for my conclusion in two cases cited by the Respondent: *Law Society of Upper Canada v Kesavan*, 2012 ONLSAP 20 at para 46; *Law Society of Upper Canada v Dyment*, 2014 ONLSTA 26 [*Dyment*] at paras 52-53.

[82] As to what constitutes an exception to litigation privilege, the SCC explained in *Lizotte* at para 41:

> What must be done therefore is to identify, where appropriate, specific exceptions to litigation privilege rather than conducting a balancing exercise in each case. In this regard, the Court held in *Smith v. Jones*, 1999 CanLII 674 (SCC), [1999] 1 S.C.R. 455, that the exceptions that apply to solicitor-client privilege are all applicable to litigation privilege, given that solicitor-client privilege is the "highest privilege recognized by the courts" (para. 44). These include the exceptions relating to public safety, to the innocence of the accused and to criminal communications (paras. 52-59 and 74-86). They also include the exception to litigation privilege recognized in *Blank* for "evidence of the claimant party's abuse of process or similar blameworthy conduct" (para. 44).

[83] I surmise from the Applicant's argument that he is of the opinion that an exception applied in this case because of the "abuse of process or similar blameworthy conduct" on the part of RHJ and her counsel. As such, it is important to examine what evidence, if any, the Applicant submitted to the Panel in support of his position, bearing in mind that he bore the onus to demonstrate a *prima facie* case that there was misconduct or impropriety on behalf of counsel for ICCRC or RHJ: *Blank* at para 45.

[84] The Applicant points to his "theory" that the Complaint was filed for an improper purpose, namely to extend RHJ's stay in Canada. On that basis, the Applicant argued before the Panel that the disclosure of communications between counsel would be relevant to this issue.

[85] I have reviewed the transcript of the Applicant's exchange with the Panel on this issue. At first, when asked by the Chair of the Panel the relevance of the communications, the Applicant replied that they were related to his defence of "improper purpose and bad faith and unclean hands." When reminded that these issues were not related to the Notice of Referral, the Applicant went back to the issue of the disclosure of RHJ's immigration file. The Applicant's position was that while the Discipline Committee ordered RHJ's file to be produced, more than half of the file was removed, and the person who facilitated that was RHJ's counsel. Therefore, the Applicant was entitled to view the communications between ICCRC counsel and RHJ's counsel.

[86] My review of the transcript confirms that the Applicant did not present any evidence to support his theory that RHJ's counsel engaged in improper conduct, other than the aforementioned letter of direction from the Law Society of Manitoba. Moreover, the Applicant did not establish the relevance of the communications with respect to the allegations of impropriety on the part of RHJ's counsel.

[87] In the absence of evidence for the alleged impropriety, I agree with the Respondent that the Panel reasonably found that the requested communications did not need to be produced as the Applicant failed to raise a "legally and factually tenable allegation" beyond mere speculation: *Speck v Law Society of Ontario*, 2020 ONLSTH 51 at para 34; *Law Society of Upper Canada v Sriskanda*, 2015 ONLSTH 186 at paras 63 and 85.

[88] Before this Court, the Applicant further argues that whether his theory would have ultimately prevailed is irrelevant to the issue of disclosure, because it was advanced on a good faith basis. The Panel still erred, argues the Applicant, because it took no steps to request or examine the documents that fell within the scope of the request, and simply accepted counsel's argument that the documents were privileged.

[89] With respect, the onus was on the Applicant to demonstrate a *prima facie* case that an exception applied. Good faith belief, on its own, was insufficient to discharge such a burden. Only after the Applicant made out a *prima facie* case of impropriety was the Panel required to assess the documents and determine if exceptions to litigation privilege apply: *Blank* at para 45.

[90] Even if RHJ's counsel did express negative opinions about the Applicant, such opinion remains that of a non-party to the proceedings, which is irrelevant: see *Dyment* at para 60.

[91] Finally, I also reject the Applicant's additional argument at the hearing that the Panel inappropriately mischaracterized his motion and ignored the scope of his request for all the communications "about this case." I find that the Panel committed no such error.

D. *Did the Panel err in its credibility analysis?*

[92] The Applicant argues that the Panel unreasonably preferred RHJ's evidence over his without conducting any credibility analysis and thus provided unjustified reasons for its decisions: *Vavilov* at para 98. The Applicant relies on *College of Physicians and Surgeons of Saskatchewan v Shamsuzzaman*, 2011 SKCA 41 [*Shamsuzzaman*], where the discipline

committee made no explicit credibility finding but accepted the complainant's testimony over that of Dr. Shamsuzzaman's without explaining its basis for doing so. The reviewing court concluded that the reasons were inadequate: at paras 46-48.

[93] The Applicant also cites *Law Society of Upper Canada v Neinstein*, 2010 ONCA 193 [*Neinstein*], where the reviewing court found that the reasons addressing the conflicting evidence constituted only a finding of "what" without explaining the "why": at paras 92 and 94. The Applicant submits that the Panel committed similar errors in this case by failing to explain its rejection of his evidence when making certain substantive findings in the Discipline Decision. The Applicant highlights the following conflicting evidence regarding these findings:

A. The Panel held that the Applicant failed to return RHJ's file upon her withdrawal. The Applicant's evidence was that he could not trace her electronic or physical file and therefore concluded that she removed her files from VisaMax's office. RHJ's evidence was that she only removed certain personal information from her work computer before she left.

B. The Panel rejected the Applicant's evidence that he was not involved in the establishment of Westcan and only provided some general business advice. RHJ testified that the Applicant was deeply involved in the running of the business. The Applicant testified that he was not involved with the $60,000 investment and was uncomfortable about it.

[94] The Applicant asserts that the lack of credibility analysis in making these evidentiary findings was particularly troubling based on RHJ's admission of having lied to the Applicant during the original immigration process and having been found to have made a misrepresentation in her permanent residency application.

[95] I reject the Applicant's submissions.

[96] The Respondent argues, and I agree, that the Panel did not have to perform a credibility analysis with respect to the Applicant's failure to return RHJ's file to her after withdrawal. The release the Applicant asked RHJ to sign, as well as his own acknowledgment that he tied the return of RHJ's file to her signing of the release, speak for themselves. Indeed, the Applicant acknowledged that he ought not to have done so and that had RHJ not demanded the return of the $60,000 investment, he would have looked harder for her file.

[97] With respect to the dispute over the Applicant's ability to retrieve the files that may have been removed by RHJ, the Applicant's own evidence stated that all files were backed up on a hard drive, and that he was able to retrieve RHJ's file after the ICCRC requested him to do so. As such, it was reasonable to conclude, without a credibility analysis, that the Applicant failed to return RHJ's file to her upon withdrawal in violation of the Code.

[98] Regarding the Applicant's involvement in Westcan, the Respondent maintains that the evidence squarely supported that he was involved in and had knowledge of Westcan and the use of the $60,000 investment. The Respondent notes that if this were not the case, the Applicant would have told RHJ to speak to BL regarding the return of the $60,000 – rather, he responded to RHJ by sending her the release.

[99] I am not entirely in agreement with the Respondent on this point. I find that the Panel did not reject the Applicant's evidence that he was not involved with the $60,000 investment and was uncomfortable about it. The Panel did not make any specific findings as to the Applicant's actual involvement in Westcan; rather it found, on a balance of probabilities, that the Applicant

"was well aware of the $60,000 investment and part of the reason for the formation of the company was immigration related." The Panel went on to find that the Applicant's girlfriend "benefitted from the arrangement", as did he, in providing immigration advice to a client. The Panel did not find that the Applicant provided business advice to his clients, nor did it conclude the Applicant was "deeply involved" in the running of the business, pursuant to RHJ's evidence.

[100] As such, the Panel's findings were based the Applicant's own evidence.

[101] The only incidence where the Panel appeared to prefer RHJ's evidence over that of the Applicant's was with respect to whether RHJ removed her files from VisaMax. However, while the Panel did essentially prefer RHJ's evidence over his, it did so with some analysis. The Panel also noted the lack of persuasive evidence to support the Applicant's position that he was prejudiced in responding to the Complaint as a result of not obtaining some files from outside agencies, which led to its finding that the Applicant breached the Code by failing to return the file that "he had in his possession." Ultimately, the Panel's conclusion that the Applicant breached the Code was not dependent on any finding with respect to files that were removed, but on the fact that the Applicant did not return the files he did have in his possession.

[102] Even though the Panel's credibility analysis was limited, I find that it was nonetheless more fruitful than that which was found unreasonable in *Neinstein*, where the hearing panel simply made a "generic finding" without any analysis whatsoever with respect to Mr. Neinstein's evidence: at para 90.

[103] Finally, I find the Applicant's reliance on *Shamsuzzaman* misplaced. In that case, the lack of explanation on why the committee rejected Dr. Shamsuzzaman's evidence was one of two issues that only cumulatively became determinative of the case: see *Shamsuzzaman* at para 48. The court in *Shamsuzzaman* specifically noted that "I am not certain that each of the above errors taken alone would meet the high threshold for intervention based on the standard of review of reasonableness": at para 48. As such, the error that the Applicant seeks to rely on, which was not determinative in *Shamsuzzaman*, does not support his argument that the lack of credibility analysis before accepting RHJ's evidence over his amounts to a reviewable error.

E. *Did the Panel unreasonably found that the Applicant preferred his own interests over RHJ and ZC with respect to the business arrangement and $60,000 investment?*

[104] The Applicant challenges the Panel's substantive finding that he breached the Code by committing the allegations set out in Particular 6, namely by preferring his own interests over those of RHJ and ZC when he facilitated and/or encouraged ZC to enter into a business arrangement with BL and to provide the $60,000 investment to BL. The provisions of the Code at issue are Articles 3.1 and 4.1:

> **Article 3.1**
>
> An ICCRC member has a duty to provide immigration services honourably, and to discharge all responsibilities to Clients, government agencies, the Board, colleagues, the public and others affected in the course of the Member's practice with integrity.
>
> **Article 4.1**
>
> An ICCRC member shall act in such a way as to maintain the integrity of the profession of immigration practice.

[105] While Particular 6's allegation was that the Applicant "facilitated and/or encouraged" the impugned actions, the Applicant points out that the Panel never made such a finding. The Applicant points to the portion of his testimony that the Panel relied on, where he stated that he may have supplied some general business advice regarding Westcan but had no part in the $60,000 investment. Based on this evidence, the Applicant submits that the Panel made a "leap" in its reasoning.

[106] Further, the Applicant argues that even if the Panel made a finding that he facilitated or encouraged the business arrangement, which he maintains he did not, the Panel failed to conduct any analysis on how these findings constituted a violation of Articles 3.1 and 4.1 of the Code, and failed to apply any legal test as to what constitutes a conflict of interest under these provisions.

[107] Finally, the Applicant points out that the wording of Particular 6 ignored principles of corporate law by stating that the $60,000 was paid to BL herself, where the bank draft was actually made to Westcan.

[108] I am not persuaded by the Applicant's arguments.

[109] My review of the Discipline Decision confirms that the Panel did conduct some analysis of how the Applicant's conduct amounted to a conflict of interest. The Panel reviewed the undisputed evidence that the Applicant developed a "close personal relationship" with RHJ and ZC and that both the Applicant and/or BL benefitted from the business relationship and

investment. In the Applicant's case, the Panel found that he benefitted in "providing immigration advice to a client", a finding amply supported by the evidence before the Panel.

[110] The Panel acknowledged the Applicant's assertions that his clients misled him, but found nonetheless that he "still had a professional responsibility to these clients." By losing his "professional eye", the Panel found that the Applicant placed himself in a conflict of interest situation and did not take the necessary steps to resolve the conflict by acting with integrity, as required by Articles 3.1 and 4.1. The Applicant has failed to demonstrate any reviewable errors with respect to these findings.

[111] I also reject the Applicant's submission that the Panel erred by disregarding corporate law and that there was no equitable ground to lift the corporate veil in the context of this case. I agree with the Respondent that it was unnecessary for the Panel to lift the corporate veil when making a finding of misconduct in this context. The undisputed evidence confirms that the Applicant's girlfriend, BL, the sole director of Westcan, received and deposited the bank draft. The evidence further confirms that BL and ZC entered into a business venture and that BL had full control over the money. These facts speak for themselves. That the Panel did not specifically name Westcan, as opposed to BL, as the recipient of the $60,000 sum was a mere technicality, and did not impugn the overall reasonableness of its findings in view of the evidence before it.

F. *Did the Panel exhibit a reasonable apprehension of bias?*

[112] The Applicant submits that the Panel exhibited a reasonable apprehension of bias throughout the decision-making process. The Applicant submits that when determining whether

a decision-maker's conduct gives rise to a potential claim for bias, the reviewing court must conduct a "fact specific inquiry" that assesses the record in its totality from the perspective of a reasonable observer: *Chippewas of Mnjikaning First Nation v Chiefs of Ontario*, 2010 ONCA 47 at para 230 [*Chippewas*]. The Applicant further relies on the definition of bias affirmed by the SCC in *Wewaykum Indian Band v Canada*, 2003 SCC 45 at para 58:

> … a leaning, inclination, bent or predisposition towards one side or another or a particular result. In its application to legal proceedings, it represents a predisposition to decide an issue or cause in a certain way which does not leave the judicial mind perfectly open to conviction. Bias is a condition or state of mind which sways judgment and renders a judicial officer unable to exercise his or her functions impartially in a particular case.

[113] The Applicant argues that the conduct of the Panel in refusing to allow the Applicant to cross-examine RHJ, cutting the Applicant's testimony short, and demonstrating a hostile or dismissive tone towards the Applicant, clearly gave rise to a reasonable apprehension of bias. The Applicant argues that the Panel exhibited bias in depriving him the opportunity to provide complete answers and breached procedural fairness.

[114] Having reviewed the transcript of the Discipline Hearing, I find that the Applicant has failed to demonstrate that the Panel exhibited a reasonable apprehension of bias.

[115] In addition to the Ontario Court of Appeal [ONCA]'s instruction in *Chippewas* at para 230 that the reviewing court must conduct a "fact-specific inquiry", the ONCA further noted at para 231:

> An examination of whether a trial judge has unduly intervened in a trial must begin with the recognition that there are many proper reasons why a trial judge may intervene by making comments,

> giving directions or asking questions during the course of a trial. A trial judge has an inherent authority to control the court's process and, in exercising that authority, a trial judge will often be required to intervene in the proceedings.

[116] As already noted above, I conclude that the Panel's ruling with respect to the Applicant's attempt to cross-examination of RHJ on the redacted/missing files was reasonable and did not breach procedural fairness. By the same token, this ruling did not give rise to a reasonableness apprehension of bias.

[117] While the Applicant points to a number of exchanges between him and the Panel as examples of bias, I agree with the Respondent that the impugned conduct of Panel, when viewed in the context of the entire proceedings, demonstrate that an earnest and fair exchange took place between the Panel and the Applicant.

[118] I note that the Applicant was self-represented at the time of the Discipline Hearing. There were a number of instances where the Panel had to remind the Applicant that his cross-examination of witnesses must raise facts and issues relevant to the Notice of Referral allegations. I find these comments were made to ensure that the hearing remained focused, pursuant to the Panel's authority to control its process, and did not amount to a reasonable apprehension of bias: *Chippewas* at para 231.

[119] I also agree with the Respondent that the Panel assessed the Complaint fully and fairly. I note that the Applicant turned to the Panel and/or ICCRC counsel on a number of occasions for assistance throughout the proceedings, which was forthcoming.

[120] I further note that the Panel declined to make findings of misconduct relating to the serious allegations surrounding RHJ's unpermitted work for VisaMax and the fees the Applicant charged her. While the Panel found no evidentiary basis to allow the Applicant to question RHJ about the alleged removal of her documents, it invited him to raise it in evidence in a manner that he suggested.

[121] Finally, I find the cases cited by the Applicant distinguishable on the facts. In *Chippewas*, the ONCA described the trial judge's interventions and numerous comments as "ill chosen" but found nevertheless that isolated expressions of impatience by a trial judge could not alone overcome the strong presumption that judges have conducted themselves fairly and impartially: at para 243. In this case, the intervention made by the Panel did not come anywhere near the degree of intervention exhibited by the trial judge in *Chippewas*.

[122] Overall, while there were indeed moments during which the Chair expressed some frustration with the Applicant, and while the Panel did dismiss the Applicant's motion, I find that these interventions and rulings were carried out in a manner consistent with the Discipline Committee's inherent authority to control its process and did not rise to the level of reasonable apprehension of bias.

G. *Did the lapse of time between the Complaint and the Sanctions Decision constitute an abuse of process and breach procedural fairness?*

[123] The Applicant argues that the delay between the time the Complaint was brought in 2017 and the final Sanctions Decisions in December 2021 constituted an inordinate delay resulting in

an abuse of process. The Applicant submits that abuse of process is a question of procedural fairness and that disciplinary bodies must "deal fairly with members whose livelihood and reputation are affected by such proceedings": *Law Society of Saskatchewan v Abrametz*, 2022 SCC 29 [*Abrametz*] at para 55.

[124] The Respondent contests that the Applicant cannot raise the issue of delay before the Court because it was not previously raised before the decision-maker: *Alberta (Information and Privacy Commissioner) v Alberta Teachers' Association*, 2011 SCC 61 [*Alberta*] at para 23. Without an application for fresh evidence, the Respondent submits that the Court should not entertain the Applicant's request that the Complaint be dismissed for delay. The Respondent argues, in the alternative, that the Applicant has not established that the delay amounted to an abuse of process based on the test set out in *Blencoe v British Columbia (Human Rights Commission)*, 2000 SCC 44.

[125] The two questions before me are thus:

(i) Can the Applicant raise the issue of delay before this Court; and

(ii) If so, was there a delay which amounted to an abuse of process?

i) *Can the Applicant raise the issue of delay before this Court?*

[126] The Respondent points to the transcript of the April 27, 2020 hearing for the Applicant's second motion to dismiss. When asked by the Discipline Committee whether the Applicant's position is not that he was "advancing delay as a stand-alone separate ground for [his] motion" and confirming that the "principal reason for requesting the dismissal is that the ICCRC has

failed to adhere to three previous orders to disclose", the Applicant's then counsel answered in the affirmative. The Respondent also points to portions of the transcript where ICCRC counsel stated that the Applicant is "not actually pleading delay", and asserts that at no point did the Applicant's counsel interject.

[127] The Applicant submits that the Discipline Committee misapprehended the Applicant's argument when it stated in the May 20, 2020 Decision that counsel "is not pleading delay as grounds for the dismissal of this matter." The Applicant argues that his attempt to have the matter dismissed when the disclosure he requested was not forthcoming and which resulted in a substantial delay ought to have been allowed.

[128] Having reviewed the transcript, I agree with the Respondent that the Applicant's then counsel did not plead delay as a standalone ground to support the Applicant's motion to dismiss. Rather, counsel argued delay as a form of prejudice resulting from the failure of ICCRC to disclose RHJ's immigration files.

[129] In addition to the above-noted exchange, I also note that counsel for ICCRC made a similar argument that the Applicant did not plead delay in his notice of motion and ought not be permitted to do so at the hearing. In reply, counsel for the Applicant again focused on the ICCRC's alleged failure to follow the order to disclose and did not directly address the ICCRC's submission to not consider delay as a standalone ground for dismissal.

[130] In light of the submissions, or the lack thereof, advanced by the Applicant's then counsel, I reject the Applicant's assertion that the Discipline Committee misapprehended his position on whether he argued delay as a ground to dismiss the Complaint.

[131] I will however exercise my discretion to consider the Applicant's argument of delay in this application: *Alberta* paras 22-23 and 26. The issue of delay and/or prejudice to the Applicant was raised with the Discipline Committee, *albeit* being part of the motion to dismiss based on the lack of disclosure. I also have the benefit of a full record and submissions of both parties on this issue.

ii) *Was there a delay which amounted to an abuse of process?*

[132] The test to establish whether a delay amounted to an abuse of process set out by the SCC in *Blencoe*, as affirmed in *Abrametz* at para 43, is:

A. The delay must be inordinate;

B. The delay itself must have caused significant prejudice; and

C. When the first two requirements are met, the reviewing Court should assess whether abuse of process is established.

[133] In determining whether the delay was inordinate, the Court should consider factors such as the nature and purpose of the proceedings, the length and causes of the delay, and the complexity of the facts and issues in the case: *Abrametz* at para 51.

[134] The Applicant asserts that an abuse of process occurred as the delay was inordinate. The parties do not contest the nature and purpose of the proceedings. The Applicant submits that this case was not complex as it involved allegations raised by one person.

[135] With respect to the causes of the delay, the Applicant faults the time it took for the parties involved to produce RHJ's immigration files that he requested. The Applicant claims that the delay caused significant prejudice because the Complaint has resulted in various negative consequences on his career, reputation, relationships and wellbeing.

[136] Finally, for a delay to amount to an abuse of process, it must be manifestly unfair to a party or bring the administrative of justice into disrepute: *Abrametz* at para 43. The Applicant argues that his good faith effort to obtain the disclosure of RHJ's immigration files and subsequent attempts to have the matter dismissed when such disclosure was not forthcoming were reasonable. Highlighting the "[p]articularly troubling" delay between the Discipline Decision on March 1, 2021 and the Sanctions Decision on December 3, 2021, the Applicant submits that the inordinate delay has caused him substantial prejudice, and is therefore manifestly unfair and brings the administration of justice into disrepute: *Abrametz* at para 72.

[137] I am not persuaded by the Applicant's submissions for the following three reasons.

[138] First, I agree with the Respondent that the Applicant has mischaracterized what occurred with respect to the disclosure of RHJ's immigration files.

[139] Specifically, I agree with the Respondent that the ICCRC discharged its disclosure obligations when it disclosed all relevant materials in its possession to the Applicant by July 2018. The issue surrounding the production of RHJ's complete immigration files from the Governments of Canada and Manitoba related to third-party record production, which the ICCRC was to facilitate. The delay associated with the third-party record production was attributable partly to the Governments in question and partly to RHJ, who chose not to name the ICCRC investigator as her designated representative.

[140] Second, I am not convinced that there has been an inordinate delay in this matter. While I agree with the Applicant that the Complaint itself was not complex, the third-party record production pursued by the Applicant added to the complexity and the length of the proceedings.

[141] The Complaint was filed in August 2017. The Notice of Referral was issued less than a year later in June 2018. The Applicant brought two motions to dismiss the Complaint, the first one in May 2019 and the second one in February 2020. Both motions were brought on the basis of the non-disclosure of RHJ's complete immigration files. After the second motion was dealt with in May 2020, the Disciplinary Hearing began several months later in November 2020, with the Discipline Decision issued five months after that in March 2021, and the Sanctions Decision issued in December 2021.

[142] As already noted above, in my view, the cause of the delay was not attributable to the ICCRC, especially in light of the fact that it lacked the power to summons. I also note that while

the Applicant was within his right to seek to have the Complaint dismissed, his decision to do so necessarily prolonged the timeline of the processing of the matter.

[143] The third and final reason why I conclude that the delay did not amount to abuse of process is the fact that the Applicant fails to demonstrate any prejudice that results directly from the delay. As the SCC stated in *Blencoe* at para 133:

> …There must be more than merely a lengthy delay for an abuse of process; the delay must have caused actual prejudice of such magnitude that the public's sense of decency and fairness is affected. While Mr. Blencoe and his family have suffered obvious prejudice since the various sexual harassment allegations against him were made public, as explained above, I am not convinced that such prejudice can be said to result directly from the delay in the human rights proceedings.
>
> [Emphasis added]

[144] Here, I acknowledge that the Applicant may have suffered reputational loss, as he alleges. But the Applicant fails to demonstrate that such prejudice arose directly from the delay, if any, in the proceeding, rather than from the nature of the disciplinary proceeding itself, which was triggered by the filing of the Complaint.

[145] I also note that the Applicant has not been subject to any restrictions on his practice since the filing of the Complaint. As reflected in *Boldt* 2021, at the time when the Applicant sought a stay of the Decisions, he had about 60 active immigration clients, and had several people under his employ.

[146] The Applicant cites two decisions in asking the Court to exercise its discretion not to send the matter back for redetermination, even if it finds that the delay did not amount to an abuse of process: *Ganeswaran v Canada (Citizenship and Immigration)*, 2022 FC 1797 [*Ganeswaran*] and *D'Errico v Canada (Attorney General)*, 2014 FCA 95 [*D'Errico*].

[147] These cases are distinguishable on the facts. In *Ganeswaran*, there was a delay of ten years – with no explanation – before the respondent brought an application to vacate the applicants' refugee status: at para 61. In *D'Errico*, the administrative body that refused the applicant's disability benefits no longer existed by the time the Federal Court of Appeal decided the case: at para 27.

[148] Taking into account the Complaint and the nature of the proceeding, the cause of the delay, and the prejudice to the Applicant, I find that the Applicant fails to demonstrate that the delay was manifestly unfair or brought the administration of justice into disrepute.

## V. Conclusion

[149] The application for judicial review is dismissed with costs.

[150] I order the parties to provide submissions on costs by July 17, 2023.

**JUDGMENT in T-1890-21**

**THIS COURT'S JUDGMENT is that**:

1. This application for judicial review is dismissed with costs.

2. The parties will provide submissions on costs by July 17, 2023.

"Avvy Yao-Yao Go"
Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

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| **DOCKET:** | T-1890-21 |
| **STYLE OF CAUSE:** | DOUGLAS RANDAL BOLDT v COLLEGE OF IMMIGRATION AND CITIZENSHIP CONSULTANTS |
| **PLACE OF HEARING:** | WINNIPEG, MANITOBA (HYBRID) |
| **DATE OF HEARING:** | APRIL 18-19, 2023 |
| **JUDGMENT AND REASONS:** | GO J. |
| **DATED:** | JUNE 7, 2023 |

**APPEARANCES:**

| | |
|---|---|
| Todd C. Andres | FOR THE APPLICANT |
| Lisa Freeman<br>Justin Gattesco | FOR THE RESPONDENT |

**SOLICITORS OF RECORD:**

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