Federal Court Cour fédérale

Date: 20120525

Docket: IMM-8301-11

Citation: 2012 FC 635

Ottawa, Ontario, May 25, 2012

PRESENT: The Honourable Madam Justice Snider

BETWEEN:

DEVINDER SANDHU AND
PARVINDER SANDHU

Applicants

and

THE CANADIAN SOCIETY OF
IMMIGRATION CONSULTANTS

Respondents

REASONS FOR JUDGMENT AND JUDGMENT

[1] The Applicants, Mr. Devinder Sandhu and Mr. Parvinder Sandhu, are immigration consultants who provide services to persons with respect to immigration matters. They bring this application for judicial review of a decision (the Decision) of a member of the Discipline Council of the Canadian Society of Immigration Consultants (the Member), communicated to the Applicants on November 1, 2011. In her decision, the Member concluded that the Canadian Society of Immigration Consultants (the Society, or the Respondent) has jurisdiction to continue disciplinary proceedings concerning the Applicants, in spite of legislative changes to the

Immigration and Refugee Protection Act, SC 2001, c 27 [*IRPA*] and the *Immigration and Refugee Protection Regulations*, SOR/2002-227 [*Regulations*] that removed the Society as the federal regulator of immigration consultants. The Applicants are or were members of the Society.

[2] In this application, the Applicants seek the following remedies:

1. an order for a writ of *certiorari* quashing the Member's decision that the Society continues to have jurisdiction pursuant to s. 13.1 of the *Regulations*;

2. an order for a writ of prohibition prohibiting the Respondent from taking any further actions in these matters or any matter under s. 13.1 of the *Regulations*;

3. a declaration that the Society has no jurisdiction in these matters; and

4. costs of these proceedings.

[3] The preliminary and, in my view, dispositive issue in this application is whether the Society is a "federal board, commission or other tribunal" within the meaning of s. 2 of the *Federal Courts Act*, RSC 1985, c F-7 [*FC Act*]. Quite simply, if the Society does not fall within the definition of "federal board, commission or other tribunal", this Court has no jurisdiction with respect to this matter.

[4] The Federal Court's jurisdiction extends only to review the actions and decisions of tribunals that fall within the definition of "federal board, commission or other tribunal". That term is defined in s. 2 of the *FC Act*:

"federal board, commission or other tribunal" means any body, person or persons having, exercising or purporting to exercise jurisdiction or powers conferred by or under an Act of Parliament or by or under an order made pursuant to a prerogative of the Crown, other than the Tax Court of Canada or any of its judges, any such body constituted or established by or under a law of a province or any such person or persons appointed under or in accordance with a law of a province or under section 96 of the *Constitution Act, 1867*	« office fédéral » Conseil, bureau, commission ou autre organisme, ou personne ou groupe de personnes, ayant, exerçant ou censé exercer une compétence ou des pouvoirs prévus par une loi fédérale ou par une ordonnance prise en vertu d'une prérogative royale, à l'exclusion de la Cour canadienne de l'impôt et ses juges, d'un organisme constitué sous le régime d'une loi provinciale ou d'une personne ou d'un groupe de personnes nommées aux termes d'une loi provinciale ou de l'article 96 de la *Loi constitutionnelle de 1867*.

[5] There is no question that the Court had jurisdiction to judicially review a decision of the Society while it was the organization specifically identified in the *Regulations*. In *Onuschak v Canadian Society of Immigration*, 2009 FC 1135 at para 24, 357 FTR 22 [*Onuschak*], Justice Harrington explained that,

> There can be little doubt that this Court would have jurisdiction to judicially review a decision of the Society depriving Ms. Onuschak of membership therein, or terminating her membership. The effect of such a decision would be to prevent Ms. Onuschak from representing paid clients in federal immigration proceedings. The Society derives its authority in this regard from section 91 of IRPA and section 13.1 of [the *Regulations*]. When exercising that authority, the Society is clearly "exercising jurisdiction or powers conferred by or under an Act of Parliament" – and therefore is [a] federal board, commission, or tribunal for those purposes.

[6] However, the mandate of the Society changed on June 30, 2011, when amendments to *IRPA* came into force, revoking the Society's status as regulator and giving the Immigration Consultants of Canada Regulatory Council that designation. Thus, prior to June 30, 2011, the Society was the self-regulatory body of immigration consultants in Canada designated pursuant to s. 91(5) of *IRPA* and s. 13.1 of the *Regulations*. As such, the Applicants were required to be members of the Society to represent persons with respect to matters arising under *IRPA* or the *Regulations*. After June 30, 2011, the Society was not longer the regulator designated under *IRPA*.

[7] It is important to note that, in the amendments to *IRPA* and the *Regulations*, Parliament provided no direction or transitional provisions with respect to discipline matters that had been commenced under the pre-June 30 regime.

[8] The situation involving the Applicants crossed over the time period of the legislative amendments. In December 2010, the Discipline Council of the Society commenced proceedings against the Applicants. A pre-hearing conference took place on February 25, 2011, but was adjourned and completed in May 2011. The second pre-hearing conference was held on August 31, 2011. At that conference, counsel for the Applicants asked that the matter be adjourned so as to determine whether the Society continued to have jurisdiction to proceed, given that it was no longer the designated regulator for immigration consultants. Thus, while the proceedings against the Applicants were commenced while the Society was the regulator of immigration consultants, it has been continued after the legislative amendments were in place that removed the Society as the federal regulator of immigration consultants.

[9] In her Decision, the Member found that the Society retained jurisdiction to continue the disciplinary proceedings against the Applicants and recommended that a further pre-hearing conference be held. In reaching this conclusion, the Member reasoned that the “repeal” of the Society as the designated regulator did not affect the “obligation or liability” that the Applicants had incurred under the repealed legislation. Put differently, the Member concluded that “the changes to the legislation in July of this year did not change the status of the disciplinary proceedings commenced before July” and, accordingly, “the disciplinary proceeding may be continued as if the enactment had not been repealed” (emphasis added). With specific reference to the case before her, the Member noted that the disciplinary procedures had been “initiated well before the legislative changes”.

[10] The Member’s statement that the disciplinary proceedings may be continued can be interpreted, when read in isolation, to be a determination that the Society had continuing jurisdiction under *IRPA* to discipline its members. This, of course, is not the case. Contrary to the statement of the Member, the “repeal” of the Society as the designated regulator definitely did affect the obligations and liabilities of the Applicants with respect to *IRPA*. While the organization could continue the disciplinary proceedings under its contractual arrangements with its members or its by-laws, it could no longer hold itself out to be the regulator authorized under *IRPA*. This was clearly acknowledged by counsel for the Society during oral submissions. After June 30, 2011, the Society was not exercising jurisdiction or powers under *IRPA*, for the simple reason that it had no authority conferred by or under *IRPA*. The fact that the membership initially arose from the authority granted to the Society pursuant to s. 91 of *IRPA* and s. 13.1 of the *Regulations* does not give rise to a continuing legislative nexus once the amendments to *IRPA*

were made. It follows that, as of the date of the Decision, the Society was not exercising jurisdiction as a federal board, commission or other tribunal.

[11] A question remains as to whether the Member was purporting to exercise jurisdiction as part of the Society's former powers under *IRPA*. In spite of some of the Member's language, I do not believe that this was the case. Following her comments about *IRPA*, the Member continues her remarks by referencing the Society's continuing standing as a private corporation. The Member notes that, as members in good standing at the time the disciplinary procedures were initiated, the Applicants remained subject to its rules and regulations, which included remaining under the jurisdiction of the Disciplinary Council. Finally, the Member cites the decision of this Court in *Fridriksdottir v Canadian Society of Immigration Consultants*, 2011 FC 910, 100 Imm LR (3d) 213, and observes that it did not "necessarily limi[t] [the Society's] function and powers as [a] corporate body". The Member makes it clear that her authority arises from the Applicants' membership in the Society.

[12] Counsel for the Society was very clear that the Society understands and accepts that it is no longer the regulator of immigration consultants under *IRPA* or the *Regulations*. In other words, the Society is not holding itself out or purporting to be the regulator authorized under *IRPA*. The Society acknowledges that, in the current contractual relationship with its members, any actions to enforce its rights and obligations would be a matter of provincial superior court jurisdiction.

[13] In my view, the Society, because of the change in the legislation, is no longer a federal board, commission or other tribunal. In continuing the discipline hearings of the Applicants, the Society is not exercising or purporting to exercise jurisdiction or powers conferred by or under an Act of Parliament. The Federal Court has no mandate to hear this matter or to grant any remedy to the Applicants.

[14] The Applicants ask that I certify the following question in this matter:

> Does the Society have continuing jurisdiction under s. 91 of *IRPA* to discipline its former members?

[15] If I have no jurisdiction to hear this judicial review, it follows that I have no mandate to certify a question of general importance. In any event, as conceded by the Society, the Society's mandate to discipline its members (or former members) no longer arises from the provisions of *IRPA*; rather, it is a matter of private law. Given this concession by the Society, the question does not arise on the facts of this case.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that:

1. the application for judicial review is dismissed; and

2. no question of general importance is certified.

"Judith A. Snider"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-8301-11
STYLE OF CAUSE:	DEVINDER SANDHU AND PARVINDER SANDHU v THE CANADIAN SOCIETY OF IMMIGRATION CONSULTANTS
PLACE OF HEARING:	TORONTO, ONTARIO
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