

Federal Court
of Appeal



Cour d'appel
fédérale

Date: 20120625

Docket: A-22-12

Citation: 2012 FCA 194

**CORAM: NOËL J.A.
EVANS J.A.
SHARLOW J.A.**

BETWEEN:

THE CANADIAN SOCIETY OF IMMIGRATION CONSULTANTS

Appellant

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

Heard at Toronto, Ontario, on June 25, 2012.

Judgment delivered from the Bench at Toronto, Ontario, on June 25, 2012.

REASONS FOR JUDGMENT OF THE COURT BY:

EVANS J.A.

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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Toronto, Ontario, on June 25, 2012)

EVANS J.A.

[1] This is an appeal by the Canadian Society of Immigration Consultants (Society) from a decision of the Federal Court, reported at 2011 FC 1435, 3 Imm. L.R. (4th) 175. In that decision, Justice Martineau dismissed an application for judicial review in which the Society impugned the validity of regulations made by the Governor-in-Council and by the Minister of Citizenship and

Immigration (Minister) removing the Society as the regulator of immigration consultants and replacing it with the Immigration Consultants of Canada Regulatory Council (Council).

[2] The Judge certified the following question for appeal under paragraph 74(d) of the *Immigration and Refugee Protection Act*, S.C. 2011, c. 27 (IRPA):

Are the Regulations Amending the Immigration and Refugee Protection Regulations (SOR/2011-129), the Order Fixing June 30, 2011 as the Day on which Chapter 8 of the Statutes of Canada, 2011, Comes into Force (SI/2011-57) and/or the Regulations Designating a Body for the Purposes of Paragraph 91(2)(c) of the Immigration and Refugee Act (SOR/2011-142) ultra vires, illegal and/or invalid in law?

[3] The Society argues that despite the broad discretion conferred by IRPA on the Governor-in-Council and the Minister, a regulator cannot be removed unless the Minister has found that it has failed to perform its statutory mandate of regulating immigration consultants in the public interest. The basis of the argument is that the statutory scheme envisages that the regulator of immigration consultants will be independent of the Minister, so that when representing clients in disputes with the Minister immigration consultants can act without fear of regulatory reprisal. The Society alleges that the Minister made no findings of regulatory failure by the Society and that the regulations removing it as regulator and designating the Council are therefore invalid.

[4] We do not accept this argument. In our view, it was open to the Minister on the material before him to conclude that public confidence in the Society as the regulator of immigration consultants had eroded and that it was in the public interest to designate another non-governmental entity to act as the regulator under the new statutory scheme introduced in 2011 by Bill C-35. The Minister was charged with making an important public policy decision on a matter affecting the integrity of the administration of immigration and refugee law.

[5] In the circumstances of this case, replacing one non-governmental regulator by another did not directly or indirectly so impinge on the independence of immigration consultants and their regulation in the public interest as to warrant reading in the limitation on the regulation-making powers of the Governor-in-Council and the Minister that the Society urged upon us.

[6] The Society also argued that the process leading to the enactment of the regulations was procedurally unfair and did not meet the standard of being “fair and open” as promised by the Minister.

[7] We disagree. In our opinion, even if the duty of fairness and the doctrine of legitimate expectations applied here – which we do not decide – the Society had ample opportunities at different stages of the process to make submissions and to respond to the various dissatisfactions that had been expressed about its performance, particularly by witnesses who appeared before the House of Commons Standing Committee on Citizenship and Immigration when it was investigating the regulation of immigration consultants in 2008.

[8] The fact that the Society subsequently failed to dispel the Minister’s view that the public had lost confidence in the Society, and that it was not regarded as having adequately addressed those concerns in any of its submissions during the selection process, was not attributable to any shortcoming in the process for selecting the regulator. Given the public policy nature of the decision to replace the Society and the identity of the decision-makers entrusted by Parliament with the task (the Governor-in-Council and the Minister), we are not satisfied that any breach of the duty of procedural fairness occurred that would warrant invalidating the regulations.

[9] Similarly, we are not persuaded that the regulations are invalid on the ground that a reasonable person who was informed and had thought the matter through in a practical manner would believe that the Minister had a closed mind, assuming that this is a basis for impugning these regulations, a matter that we need not decide. The record indicates that officials of the Minister had serious reservations about the Society's ability to act as regulator in view of the history of complaints and the Society's response to them. However, this does not establish that, having set up a selection process, the Minister was not, or would not appear to the reasonable observer to be, open to persuasion that the Society should remain as the regulator.

[10] For these reasons, the appeal will be dismissed. Counsel for the Minister conceded that there are no special circumstances for the award of costs and none will be awarded.

"John M. Evans"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:

A-22-12

(APPEAL FROM A JUDGMENT AND SUPPLEMENTARY JUDGMENT OF THE HONOURABLE MR. JUSTICE MARTINEAU DATED DECEMBER 8, 2011 AND JANUARY 9, 2012, DOCKET NO. IMM-5039-11)

STYLE OF CAUSE:

THE CANADIAN SOCIETY OF
IMMIGRATION CONSULTANTS
v. THE MINISTER OF
CITIZENSHIP AND
IMMIGRATION

PLACE OF HEARING:

Toronto, Ontario

DATE OF HEARING:

June 25, 2012

REASONS FOR JUDGMENT OF THE COURT BY:

(NOËL, EVANS & SHARLOW
JJ.A.)

DELIVERED FROM THE BENCH BY:

EVANS J.A.

APPEARANCES:

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