

Federal Court



Cour fédérale

Date: 20190820

Docket: IMM-3546-18

Citation: 2019 FC 1085

Ottawa, Ontario, August 20, 2019

PRESENT: The Honourable Mr. Justice Norris

BETWEEN:

MUHAMMAD AFZAL WATTO

Applicant

and

**IMMIGRATION CONSULTANTS OF
CANADA REGULATORY COUNCIL AND
MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondents

SUPPLEMENTARY JUDGMENT AND REASONS

[1] The applicant, Muhammad Afzal Watto, is an immigration consultant and a member of the Immigration Consultants of Canada Regulatory Council [ICCRC], one of the respondents in this matter. A discipline proceeding concerning a complaint made against Mr. Watto is pending before a three-member panel of the ICCRC's Discipline Committee. As provided for by the *ICCRC Discipline Committee Rules of Procedure*, two of the members of the panel are members

of the ICCRC. The third member of the panel is not a member of the ICCRC. Mr. Watto challenged the lawfulness of the composition of the panel seized with his case, arguing that the presence of a someone who is not a member of the ICCRC is inconsistent with section 158 of the *Canada Not-for-profit Corporations Act*, SC 2009, c 23 [CNFPCA], the statute under which the ICCRC is constituted. The panel rejected this argument. Mr. Watto applied for leave and judicial review of that decision. In a judgment and reasons released on July 30, 2019, I dismissed the application for judicial review (*Watto v Immigration Consultants of Canada Regulatory Council*, 2019 FC 1024).

[2] At the hearing of the application, it was agreed that counsel should have the opportunity to review the Court's judgment and reasons before making submissions with respect to whether any serious question of general importance should be certified under paragraph 74(d) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA].

[3] In my earlier reasons, I specifically invited the parties to address the implications, if any, of the recent enactment of the *College of Immigration and Citizenship Consultants Act* (being Division 15 of the *Budget Implementation Act, 2019, No. 1*, SC 2019, c 29) for whether any serious question of general importance arises in this case. The Act received Royal Assent on June 21, 2019, but it is not in force yet.

[4] Both Mr. Watto and the ICCRC provided helpful written submissions. No submissions were received from the Minister.

[5] Mr. Watto proposes for certification either of the following two questions:

Was the disciplinary panel correct in determining that it was properly constituted pursuant to section 158 of the *Canada Not-for-profit Corporations Act*, though it contained a non-member of the Immigration Consultants of Canada Regulatory Council?

Does section 158 of the *Canada Not-for-profit Corporations Act* allow non-members of a federal not-for-profit corporation to be involved in a disciplinary proceeding under the Act?

[6] The ICCRC opposes the certification of any questions.

[7] For the reasons that follow, I have concluded that no question should be certified.

[8] Under paragraph 74(d) of the *IRPA*, an appeal may be brought to the Federal Court of Appeal in respect of a decision on an application for judicial review under that Act only if, in rendering judgment, the judge certifies that “a serious question of general importance is involved” and states the question. This prerequisite has been interpreted to mean that a question warrants certification only if it “is dispositive of the appeal, transcends the interests of the parties and raises an issue of broad significance or general importance.” Further, the question cannot be in the nature of a reference or turn on the unique facts of the case or the judge’s reasons:

Lunyamila v Canada (Public Safety and Emergency Preparedness), 2018 FCA 22 at para 46;
Mudrak v Canada (Citizenship and Immigration), 2016 FCA 178 at para 16; *Lewis v Canada (Public Safety and Emergency Preparedness)*, 2017 FCA 130 at para 36.

[9] In my view, as a result of the enactment of the *College of Immigration and Citizenship Consultants Act*, neither of the questions proposed by Mr. Watto is a serious question of general importance, as required by paragraph 74(d) of the *IRPA*.

[10] Briefly, the Act creates a new body for the regulation of immigration and citizenship consultants. This body will replace the ICCRC, although the Act expressly provides that the ICCRC may apply to the Minister to continue under that Act and to assume the new roles defined by that Act (see section 84(1)). It also provides for the continuation before the College of any matter pending before the ICCRC, including matters related to complaints and discipline (see section 84(7)(i)). Crucially for present purposes, section 8 of the Act states expressly that the *Canada Not-for-Profit Corporations Act* “does not apply to the College.” While the Act is not yet in force, there appears to be no question that the ICCRC will be replaced by this new College.

[11] Since the Act is not in force yet, I am not satisfied that the questions raised by Mr. Watto are moot. At the very least, they are not moot yet. Nevertheless, I am satisfied that Parliament’s demonstrated intent to replace the ICCRC with a new body and its unequivocal statement that the *CNFPCA* does not apply to this new body have made largely irrelevant the question of whether, having regard to section 158 of the *CNFPCA*, a discipline panel hearing a complaint about an immigration consultant such as Mr. Watto may include someone who is not him or herself a member of the ICCRC. At the present time, this question fails to transcend the interests of the parties. Once the new Act comes into force, it will not be of interest even to them.

[12] The alternative question proposed by Mr. Watto is worded more broadly than the first formulation and thus avoids the immediate implications of the creation of the new College.

However, in my view, it effectively amounts to a reference on the meaning of section 158 of the *CNFPCA*, something which is not permitted under paragraph 74(d) of the *IRPA*.

[13] For these reasons, no question of general importance arises and none will be certified.

[14] Finally, to address an issue raised in correspondence from the ICCRC dated August 16, 2019, since this supplementary judgment now finally disposes of the application for judicial review, as of the date of this judgment, the stay of the discipline proceeding ordered by the Court on August 28, 2018, is no longer in force.

JUDGMENT IN IMM-3546-18

THIS COURT'S JUDGMENT is that

1. No question of general importance is stated.

“John Norris”

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: IMM-3546-18

STYLE OF CAUSE: MUHAMMAD AFZAL WATTO V IMMIGRATION
CONSULTANTS OF CANADA REGULATORY
COUNCIL ET AL

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: FEBRUARY 19, 2019

**SUPPLEMENTARY
JUDGMENT AND REASONS:** NORRIS J.

DATED: AUGUST 20, 2019

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