

Federal Court



Cour fédérale

**Date: 20210429**

**Docket: IMM-1767-21**

**Citation: 2021 FC 381**

**Holyrood, Newfoundland and Labrador, April 29, 2021**

**PRESENT: The Honourable Madam. Justice Heneghan**

**BETWEEN:**

**MUMTAZ KHAN**

**Applicant**

**and**

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

**Respondents**

**ORDER AND REASONS**

[1] By an Order issued on March 15, 2021, a Discipline Committee of the Immigration Consultants of Canada Regulatory Council (the “ICCRC” or the “Respondent”) suspended Mr. Mumtaz Khan’s licence to practice as an immigration consultant for the period of 6 months. Reasons for the Order were provided on April 1, 2021.

[2] On March 16, 2021, the Applicant commenced an Application for Leave and Judicial Review pursuant to the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27 (the “Act”), in the following terms:

An order setting aside the decision of the Discipline Committee of the Immigration Consultants of Canada Regulatory Council and referring the matter back for redetermination by a differently constituted panel of the Discipline Committee of the Immigration Consultants of Canada Regulatory Council.

[3] On April 14, 2021, the Applicant filed a Motion to stay the operation of the Order, seeking the following relief:

An order that Discipline Committee Immigration Consultants of Canada Regulatory Council’s order (15 March 2021) be stayed pending Judicial Review of the underlying Application for Leave and Judicial Review of the decision of the Discipline Committee suspending the Applicant’s license to practise as an immigration consultant, and if leave is granted, until such time as the judicial review is finally disposed of by this Court.

[4] The Applicant filed his affidavit sworn on March 8, 2021, in support of his Motion for a stay. He is a licenced immigration consultant and has practiced as such since April 5, 2002. He describes the effect the suspension will have on his income, including potential bankruptcy. He refers to reputational harm and the negative effects of his suspension upon family members.

[5] The Respondent is the regulatory body designated by the Government of Canada to oversee immigration professionals in the public interest.

[6] The Minister of Citizenship and Immigration (the “Minister”) is a Respondent to the Application for Leave and Judicial Review. He advised that he would not participate in the Motion for a stay.

[7] In order to obtain a stay of the Order, the Applicant must meet the tri-partite and conjunctive test set out in *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311 (S.C.C.), that is, a serious issue for trial arising from the underlying application for leave and judicial review, that irreparable harm will result if the relief sought is denied, and that the balance of convenience lies in favour of the moving party.

[8] Both the Applicant and the Respondent addressed these three elements.

[9] In its submissions, the Respondent raised a preliminary objection to the Applicant’s Motion for a stay, noting that the Order of March 15, 2021 allows the Applicant to present a motion before the Discipline Committee for amendment or variation of the Order.

[10] The Respondent argues that there are no exceptional circumstances to justify involvement by the Court at this time, when the Applicant has not pursued this alternative course of action and when there is a continuing administrative proceeding underway.

[11] Upon the hearing of the Motion and before hearing the submissions of Counsel for the parties, Counsel were provided with the recent decision of the Federal Court of Appeal in *Lin v.*

*Canada (Public Safety and Emergency Preparedness); Cheng v. Canada (Public Safety and Emergency Preparedness)*, 2021 FCA 81, and were asked to address the issue of prematurity.

[12] In *Lin, supra*, the Federal Court of Appeal said the following at paragraph 5:

The general rule is that judicial review should not be brought until all available and adequate administrative recourses are pursued: *Canada (Border Services Agency) v. C.B. Powell Limited*, 2010 FCA 61, [2011] 2 F.C.R. 332; *Canada (National Revenue) v. JP Morgan Asset Management (Canada) Inc.*, 2013 FCA 250, [2014] 2 F.C.R. 557 at para. 84; *Dugré v. Canada (Attorney General)*, 2021 FCA 8; and in the immigration context, see *Sidhu v. Canada (Minister of Citizenship and Immigration)*, 2002 FCT 260, 19 Imm. L.R. (3d) 113, cited with approval in *Somodi v. Canada (Citizenship and Immigration)*, 2009 FCA 288, [2010] 4 F.C.R. 26 at para. 19. Buttressing this is the prohibition in para. 72(2)(a) of the *Immigration and Refugee Protection Act* that forbids judicial review until all administrative appeals are exhausted.

[13] The fact that the Federal Court of Appeal heard an appeal about a referral to the Immigration Division, does not render its opinion about prematurity irrelevant or inapplicable to the present matter, which arises in the context of disciplinary action.

[14] In my opinion, the general principle about prematurity, in the face of a continuing administrative process which could yield a remedy, applies in the present case.

[15] The Order of March 15, 2021 specifically provides that the Applicant can seek relief from the interim suspension by presenting a motion to the Discipline Committee:

1. That the Respondent's registration as an Immigration Consultant be suspended until one of the following events has occurred:

a) A period of 6 months from the date of this Order has elapsed without the interim suspension being amended as set out in subparagraphs b) or c) below,

b) The Respondent brings a motion after 3 months from the date of this order requiring the ICCRC to justify the continuation of the suspension and the Discipline Committee panel hearing that motion lifts this suspension, extends it or otherwise varies it, or

c) The Discipline Committee panel hearing the current complaints against the Respondent lifts this suspension, extends it or otherwise varies it.

[16] There is no evidence that the Applicant has done so. In my opinion, the availability of that remedy means that he has failed to show that a serious issue for trial arises from his present Application for Leave and Judicial Review.

[17] In the absence of a serious issue for trial, the motion for a stay must fail. It is not necessary for me to address the elements of irreparable harm and balance of inconvenience.

**ORDER in IMM-1767-21**

**THIS COURT'S ORDER is that** the Motion is dismissed.

“E. Heneghan”

---

Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

**DOCKET:** IMM-1767-21

**STYLE OF CAUSE:** MUMTAZ KHAN v IMMIGRATION CONSULTANTS  
OF CANADA REGULATORY COUNCIL AND THE  
MINISTER OF CITIZENSHIP AND IMMIGRATION

**HEARING HELD BY VIDEOCONFERENCE ON APRIL 26, 2021 FROM  
HOLYROOD, NEWFOUNDLAND AND LABRADOR (COURT) AND TORONTO,  
ONTARIO (PARTIES)**

**ORDER AND REASONS:** HENEGHAN J.

**DATED:** APRIL 29, 2021

**APPEARANCES:**

Nastaran Roushan FOR THE APPLICANT

Anna Wong FOR THE RESPONDENT  
Adel Mian (IMMIGRATION CONSULTANTS OF CANADA  
REGULATORY COUNCIL)

**SOLICITORS OF RECORD:**

Nastaran Roushan FOR THE APPLICANT  
Barrister and Solicitor  
Toronto, Ontario

Anna Wong FOR THE RESPONDENT  
Adel Mian (IMMIGRATION CONSULTANTS OF CANADA  
REGULATORY COUNCIL)  
Immigration Consultants of  
Canada Regulatory Council  
Burlington, Ontario

Attorney General of Canada FOR THE RESPONDENT  
Toronto, Ontario (THE MINISTER OF CITIZENSHIP AND  
IMMIGRATION)

