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2022 FC 1070

Immigration Consultants of Canada Regulatory Council (*Applicant*)

v.

Kuldeep Bansal (*Respondent*)

INDEXED AS: IMMIGRATION CONSULTANTS OF CANADA REGULATORY COUNCIL V. BANSAL

Federal Court, Go J.—By videoconference, June 21; Toronto, July 19, 2022.

Citizenship and Immigration — Immigration Consultants — Regulation — Application for judicial review of decision of applicant's Discipline Committee (Discipline Committee) (1) lifting suspension of respondent's license pending outcome of disciplinary proceedings against respondent and (2) allowing him to practice under supervision — Respondent is regulated immigration consultant — Over last decade, he, his associated corporations faced numerous complaints, several court proceedings relating to his immigration consultancy practice — Applicant proceeded with several complaints — Brought urgent motion for interim suspension of respondent's license pending outcome of disciplinary proceedings, which motion granted — Defendant sought leave to judicially review decision — Matter settled, returned to Discipline Committee — Discipline Committee again suspending respondent's licence pending determination of underlying complaints — Respondent directed to stop soliciting business as immigration consultant — Respondent brought motion to lift suspension, proposed supervision with plan as alternative to suspension — Applicant brought cross-motion to continue suspension — Discipline Committee lifted suspension, allowed respondent to practice under supervision — On merits of underlying complaints, Discipline Committee found respondent committed professional misconduct; made no findings as to appropriate sanction that should apply — In case at bar, preliminary issues whether application for judicial review was premature; whether applicant precluded from raising adequacy of supervision on judicial review — Main issues whether decision of Discipline Committee to lift licence suspension reasonable; appropriate remedy — In accordance with applicant's By-Law, there was no internal appeal process for applicant — Decision was not interlocutory because, unlike other interim decisions or orders that arise from ongoing proceeding, Decision was complete in its rendering — Decision stood, would continue to do so, until final disposition of Discipline Committee following its findings of professional misconduct — Review of Decision not resulting in interference with internal administrative process of applicant's Discipline Committee nor would it result in fragmentation of administrative proceedings — Applicant not precluded from raising adequacy of supervision on judicial review — Applicant's central contention was that Decision lacked justification for whether supervision was appropriate in first place, as alternative to suspension — Therefore, nothing to preclude applicant from seeking judicial review of that aspect of Decision, given position it took consistently throughout proceedings before Discipline Committee — Determinative issue in this case was whether Discipline Committee made unreasonable Decision by failing to engage in analysis, provide adequate reasons for lifting

suspension of respondent's licence — Discipline Committee concluded in one sentence that panel found that practice restrictions would be sufficient to reduce risk of harm to public interest in administration of justice, risk of harm to public — Discipline Committee offered no chain of analysis to justify its decision to lift licence suspension, replace it with licence restrictions in matter that raised serious allegations of misconduct, concerns for public's confidence in profession, risk of harm to public —This rendered Decision unreasonable — On that basis alone, matter sent back for redetermination — As to appropriate remedy, decision from Court quashing Decision would have effect of removing restrictions on respondent's licence to practice but would not reinstate licence suspension as per previous decision — Thus, this was appropriate case to direct that restrictions set out in Decision remain in place while re-determination was underway — Application allowed.

This was an application for judicial review of a decision of the applicant's Discipline Committee (Discipline Committee) (1) lifting the suspension of the respondent's license pending the outcome of disciplinary proceedings against the respondent and (2) allowing him to practice under supervision.

The respondent is a regulated immigration consultant. Over the last decade, the respondent and his associated corporations have faced numerous complaints and several court proceedings relating to his immigration consultancy practice. Approximately 40 complaints against the respondent were filed with the applicant, a national regulatory body that oversees licensed immigration consultants. The applicant decided to proceed with six of these complaints. In July 2019, the applicant brought an urgent motion for an interim suspension of the respondent's license pending the outcome of the disciplinary proceedings. The respondent argued that the motion contained factual inaccuracies. The Discipline Committee granted an interim suspension in August 2019. The respondent sought leave to judicially review this decision, and after leave was granted, the matter was settled and returned to the Discipline Committee. On June 17, 2020, the Discipline Committee again decided to suspend the respondent's licence pending determination of the underlying complaints. The suspension was for six months, unless in the interim the panel hearing the complaints lifted, extended or varied it, or after three months the respondent brought a motion requiring the applicant to justify the continuation of the suspension and the panel hearing that motion lifted, extended or otherwise varied it. The Discipline Committee directed the respondent to stop soliciting business as an immigration consultant. While the respondent had proposed supervision as an alternative to suspension, he had put forward no supervision plan. The Discipline Committee rejected this request. In October 2020, the respondent brought a motion to lift his suspension. This time, he proposed another member of the applicant in good standing to be his supervisor. The applicant brought a cross-motion to continue the suspension. On December 17, 2020, the Discipline Committee lifted the suspension and allowed the respondent to practice under supervision (the Decision). The Discipline Committee's hearing on the merits of the underlying complaints ended in July 2021. It found that the respondent had committed professional misconduct while the hearing of the application for judicial review was underway. In particular, the Discipline Committee found that the respondent had breached the applicant's June 2012 Code of Professional Ethics by failing to maintain integrity and failing to serve honourably with respect to five of the six complainants. The Discipline Committee made no findings as to the appropriate sanction that should apply based on its findings on misconduct.

The preliminary issues were whether the application for judicial review was premature and whether the applicant was precluded from raising the adequacy of supervision on judicial review. The main issues were whether the decision of the Discipline Committee to lift the licence suspension was reasonable and what was the appropriate remedy.

Held, the application should be allowed.

As a general rule, interlocutory rulings should not be challenged until the tribunal's proceedings have been completed. As an exception to the general principle of non-interference with ongoing administrative processes, a court may review an interlocutory decision in "exceptional circumstances", but the threshold is high. In this case, the applicant submitted that the Decision was not an interlocutory decision for jurisdictional purposes with respect to judicial review. In accordance with the applicant's By-Law, there is no internal appeal process for the applicant. That process is only available for the member. The lack of an internal appeal process was a factor that weighed

against finding the Decision as an interlocutory one. Nevertheless, the Decision's provision for a six-month review was a relevant factor to be considered. A review of the Discipline Committee's order (one of ten orders) enabling the applicant to bring a motion to review the Decision was examined. The order allowed a review of the Decision only under specific conditions. There was no provision for the applicant to seek an internal review of the Decision itself. Thus, there was no internal review mechanism available to the applicant under the applicant's By-Law nor did the order in the Decision enabling the applicant to bring a motion to review within six months amount to an alternative remedy for the applicant to review the merits of the Decision. The Decision was not interlocutory because, unlike other interim decisions or orders that arise from an ongoing proceeding, the Decision was complete in its rendering. The Decision stood, and would continue to do so, until the final disposition of the Discipline Committee following its findings of professional misconduct. The applicant's disciplinary process had continued to proceed notwithstanding the filing of the judicial review application. A review of the Decision did not result in interference with the internal administrative process of the applicant's Discipline Committee nor would it result in the fragmentation of the administrative proceedings.

With respect to the applicant being precluded from raising the adequacy of supervision on judicial review, the respondent argued that because the applicant's submissions on the law were inadequate and because the applicant did not challenge the respondent's evidence on the adequacy of the practice restrictions, it was precluded from challenging the adequacy of the practice restrictions on judicial review. The respondent's submission was misleading. The applicant pointed out that it had argued before the Discipline Committee that the complaints against the respondent raised serious issues of integrity. A review of the materials confirmed the applicant's position. In its factum supporting its motion for interim suspension, the applicant had argued that interim suspension was the appropriate measure and that practice restrictions were not enough in cases alleging lack of integrity on the part of the immigration consultant. The applicant was not challenging the Decision based on the suitability of the supervisor or the conditions of the practice restrictions. Its central contention was that the Decision lacked justification for whether supervision was appropriate in the first place, as an alternative to suspension. Therefore, there was nothing to preclude the applicant from seeking judicial review of that aspect of the Decision, given the position it took consistently throughout the proceedings before the Discipline Committee.

The determinative issue in this case was whether the Discipline Committee made an unreasonable decision by failing to engage in an analysis and provide adequate reasons for lifting the suspension of the respondent's licence. The Discipline Committee devoted much of its analysis responding to the respondent's arguments that the conditions had changed since the order of June 17, 2020, to suspend his licence. The Discipline Committee addressed the respondent's submissions. It concluded in one sentence that the panel found that practice restrictions would be sufficient to reduce the risk of harm to the public interest in the administration of justice and risk of harm to the public. Given the brevity of this conclusion, the applicant rightly submitted that in deciding to lift the suspension, the Discipline Committee failed to conduct any analysis as to why supervision would be sufficient "to reduce the harm of the public interest in the administration of justice and risk of harm to the public." The Discipline Committee cited no case law, quoted no evidence, gave no response to the applicant's arguments, and made no attempt to link its conclusion to its own finding that the alleged misconduct remained serious and there were reasonable grounds to believe that a member of the public could be harmed. 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. Here, the Discipline Committee offered no chain of analysis, rational or otherwise, to justify its decision to lift the licence suspension and replace it with licence restrictions in a matter that raised serious allegations of misconduct. In conclusion, the Discipline Committee's failure to engage in any analysis and provide adequate reasons for lifting the suspension of the respondent's licence to practice, in the face of the Committee's acknowledged serious allegations of misconduct and concerns for the public's confidence in the profession and risk of harm to the public, rendered the Decision unreasonable. On that basis alone, the matter needed to be sent back for redetermination.

As to the appropriate remedy, the only remedy the applicant sought was an order quashing the Decision and remitting the matter back for reconsideration, without addressing the practical effect of

quashing the Decision. A decision from the Court quashing the Decision would have the effect of removing the restrictions on the respondent's licence to practice but would not reinstate the licence suspension as per the June 17, 2020 decision. This was an appropriate case to direct that the restrictions set out in the Decision remain in place while the re-determination was underway, until either the Discipline Committee rendered a new decision regarding the appropriate interim sanction to be imposed on the respondent's practice or until the Discipline Committee rendered a final decision on sanction pursuant to its June 21, 2022 findings of misconduct against the respondent, whichever came first.

STATUTES AND REGULATIONS CITED

Federal Courts Act, R.S.C., 1985, c. F-7, s. 18.1(3)(b).

ICCRC By-Law, ss. 20.7-20.9, 28.2(d), 30.8, 30.10, 32.1, 39.5.

Immigration and Refugee Protection Act, S.C. 2001, c. 27, s. 72.

CASES CITED

APPLIED:

Canada (Minister of Citizenship and Immigration) v. Vavilov, 2019 SCC 65, [2019] 4 S.C.R. 653; *Watto v. Immigration Consultants of Canada Regulatory Council*, 2018 FC 890.

CONSIDERED:

Congrégation des témoins de Jéhovah de St-Jérôme-Lafontaine v. Lafontaine (Village), 2004 SCC 48, [2004] 2 S.C.R. 650; *Olah v. Canada (Immigration, Refugees and Citizenship)*, 2017 FC 899; *Zhu v. Canada (Citizenship and Immigration),* 2020 FC 980; *Dugré v. Canada (Attorney General)*, 2021 FCA 8; *Benito v. Immigration Consultants of Canada Regulatory Council*, 2019 FC 1628; *Zhang v. Canada (Public Safety and Emergency Preparedness)*, 2021 FC 746; *Pharmascience Inc. v. Binet,* 2006 SCC 48, [2006] 2 S.C.R. 513.

REFERRED TO:

Baker v. Canada (Minister of Citizenship and Immigration), [1999] 2 S.C.R. 817; *Novakova v. Canada (Citizenship and Immigration),* 2020 FC 110; *Zündel v. Canada (Human Rights Commission) (C.A.)*, 2000 CanLII 17138 (F.C.A.), [2000] 4 F.C. 255 *Canada (Border Services Agency) v. C.B. Powell Limited*, 2010 FCA 61, [2011] 2 F.C.R. 332; *Herbert v. Canada (Attorney General)*, 2022 FCA 11; *Khan v. Immigration Consultants of Canada Regulatory Council*, 2021 FC 381; *Alberta (Information and Privacy Commissioner) v. Alberta Teachers' Association*, 2011 SCC 61, [2011] 3 S.C.R. 654; *Finney v. Barreau du Québec,* 2004 SCC 36, [2004] 2 S.C.R. 17; *Rohringer v. Royal College of Dental Surgeons of Ontario,* 2017 ONSC 6656 (CanLII); *Canada (Citizenship and Immigration) v. Tennant*, 2019 FCA 206, [2020] 1 F.C.R. 231.

APPLICATION for judicial review of a decision of the Discipline Committee of the applicant to lift the suspension of the respondent's license pending the outcome of disciplinary proceedings against the respondent and allow him to practice under supervision. Application allowed.

APPEARANCES

Barbara Jackman for applicant.

Mark Nohra for respondent.

Immigration Consultants of Canada Regulatory Council, Burlington, and *Jackman & Associates*, Toronto, for applicant.

Nohralaw and *Martin + Associates*, Vancouver, for respondent.

The following are the reasons for judgment and judgment rendered in English by

GO J.:

I. Overview

[1] The respondent, Mr. Kuldeep Bansal, is a regulated immigration consultant. Over the last decade, Mr. Bansal and his associated corporations have faced numerous complaints and several court proceedings relating to his immigration consultancy practice.

[2] Several common themes run through the various allegations and complaints against Mr. Bansal: a) clients having paid thousands of dollars for which no receipt was given and often no retainer signed; b) clients being promised a job in Canada and/or permanent residence, but no approved job offer materialized, or the job offer disappeared, or a different job was given, by the time clients arrived in Canada; and c) no money was refunded or only a partial refund was given despite requests that it be returned in full.

[3] Approximately 40 complaints against Mr. Bansal were filed with the applicant, the Immigration Consultants of Canada Regulatory Council (ICCRC)—now the College of Immigration and Citizenship Consultants (College)—a national regulatory body that oversees licensed immigration consultants.

[4] About 30 of these complaints were dismissed, while 10 were investigated. ICCRC decided to proceed with six of these complaints.

[5] *The Globe and Mail* published an article dated April 5, 2019, covering a variety of allegations against immigration consultants offering employment services. Mr. Bansal was named in the article and said to have garnered up to $5 million dollars a year by collecting money from overseas clients in exchange for “guaranteed” jobs and, in some cases, eventual permanent residence status while failing to deliver on these promises or refund the money paid.

[6] In July 2019, the ICCRC brought an urgent motion for an interim suspension of Mr. Bansal’s license pending the outcome of the disciplinary proceedings. Mr. Bansal argued that the motion contained factual inaccuracies. The Discipline Committee of the ICCRC (Discipline Committee) granted an interim suspension in August 2019. Mr. Bansal sought leave to judicially review this decision, and after leave was granted, the matter was settled and returned to the Discipline Committee.

[7] On June 17, 2020, the Discipline Committee again decided to suspend Mr. Bansal’s licence pending determination of the underlying complaints. The suspension was for six months, unless in the interim the panel hearing the complaints lifted, extended or varied it, or after three months Mr. Bansal brought a motion requiring the

ICCRC to justify the continuation of the suspension and the panel hearing that motion lifted, extended or otherwise varied it. The Discipline Committee was concerned that Mr. Bansal had continued to practice as a consultant when he had undertaken not to practice, as he was advertising his consulting business on an active website. The Discipline Committee thus directed Mr. Bansal to stop soliciting business as an immigration consultant, either directly or through a company he controls, and to remove any reference to services he might offer as an immigration consultant from any website that he, or a company he controls, operates. The Discipline Committee was also concerned about his credibility and his failure to cooperate with the ICCRC investigation. While Mr. Bansal had proposed supervision as an alternative to suspension, he had put forward no supervision plan. The Discipline Committee rejected this request as it found that suspension was necessary to protect the public from harm and address public confidence in the profession.

[8] In October 2020, Mr. Bansal brought a motion to lift his suspension. This time, he had proposed another member of the ICCRC in good standing to be his supervisor. ICCRC brought a cross-motion to continue the suspension. On December 17, 2020, the Discipline Committee lifted the suspension and allowed Mr. Bansal to practice under supervision (the Decision). ICCRC now seeks judicial review of this decision pursuant to section 72 of the *Immigration and Refugee Protection Act*, S.C. 2001, c. 27.

[9] Before the date of the hearing, I asked the parties for submissions on whether the Decision under review is an interlocutory decision, and if yes, whether the Court should dismiss the judicial review application due to prematurity.

[10] For reasons that follow, I find the Decision is not interlocutory. Further, I grant the application as I conclude that the Discipline Committee failed to engage in any analysis as to why or how practice supervision might achieve the protection of the public.

II. Complaint Proceedings since the Decision

[11] The Discipline Committee's hearing on the merits of the underlying complaints ended in July 2021.

[12] On June 21, 2022, at the start of the hearing of this application, counsel for the applicant alerted the Court about the possible release of the Discipline Committee's decision later that day which may render the herein application moot.

[13] As it turns out, the Discipline Committee did release its decision finding Mr. Bansal has committed professional misconduct while the hearing of the herein application was underway. It is not necessary to give a detailed summary of the 116-page decision. Suffice to say the Discipline Committee found some, but not all, of the allegations were made out against Mr. Bansal. Among its key findings, the Discipline Committee found Mr. Bansal has breached the ICCRC's June 2012 Code of Professional Ethics by failing to maintain integrity and failing to serve honourably with respect to five of the six complainants, as well as failing to provide a retainer agreement in the sixth complaint.

[14] The Discipline Committee made no findings as to the appropriate sanction that should apply based on its findings on misconduct, and ordered the parties to make

submissions on the issue of sanction over the course of several months, with the last submission date being September 9, 2022, for the reply from the College.

[15] Given that the Discipline Committee's decision on June 21, 2022, does not address the issue of sanction, the Court is of the view that the release of the Committee's decision does not render the herein application moot. The parties did not express any opposition to the Court's conclusion in this regard, though they were given an opportunity to do so.

III. Issues and Standard of Review

[16] ICCRC raises two central arguments:

a) that the Discipline Committee breached the duty of fairness in failing to address the appropriateness of practice supervision in light of its findings that the allegations against Mr. Bansal were serious, and in failing to provide reasons for this part of its decision; and

b) that the Discipline Committee ignored and/or misunderstood significant factors, namely the negative publicity Mr. Bansal has received, his prior non-compliance, and his responsibility for the delay in hearing the merits of the complaints.

[17] Mr. Bansal's two main contentions are:

a) that ICCRC is precluded from making submissions on the adequacy of the practice restrictions when it failed to make these arguments to the Discipline Committee, and

b) that the Decision is transparent, intelligible, and justified in light of a concession by ICCRC, the procedural history, and the evidentiary record.

[18] Mr. Bansal argues that the Decision is reviewable on a reasonableness standard, per *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, [2019] 4 S.C.R. 653 (*Vavilov*). ICCRC agrees that the standard of review is reasonableness with respect to the exercise of the Discipline Committee's discretion. However, ICCRC argues that the Decision's lack of reasons raises a procedural fairness issue, which is reviewable on a standard of correctness, citing *Vavilov*, at paragraphs 77–81 and *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817 (*Baker*), at paragraph 43.

[19] ICCRC also cites *Congrégation des témoins de Jéhovah de St-Jérôme-Lafontaine v. Lafontaine (Village)*, 2004 SCC 48, [2004] 2 S.C.R. 650, at paragraph 30, in which a municipality gave no reasons for denying a permit and the Supreme Court found that this failure to justify its decision breached procedural fairness. Additionally, ICCRC cites *Olah v. Canada (Immigration, Refugees and Citizenship)*, 2017 FC 899, at paragraphs 33–38, which quashed a pre-removal risk assessment decision based on a lack of analysis—but notably on reasonableness rather than on a procedural fairness ground.

[20] The question of whether reasons are adequate can have both a procedural and substantive aspect, according to *Vavilov*, at paragraph 81: “the provision of reasons for an administrative decision may have implications for its legitimacy, including in terms both of whether it is procedurally fair and of whether it is substantively reasonable.”

[21] Since *Vavilov*, however, this Court has often applied the reasonableness standard to reviewing adequacy of reasons: see for instance, *Novakova v. Canada (Citizenship and Immigration),* 2020 FC 110 and *Zhu v. Canada (Citizenship and Immigration),* 2020 FC 980 (*Zhu*).

[22] In *Zhu*, the applicant alleged that the officer in question unreasonably assessed the evidence and provided inadequate reasons. In finding that both issues attract a reasonableness standard of review, Justice Favel stated [at paragraph 12]:

> Despite the parties’ submissions to the contrary, the adequacy of the Officer’s reasoning goes to the substantive reasonableness of the Decision. A decision-maker’s reasoning may affect both the substantive reasonableness and the procedural fairness of a decision (see *Vavilov* at para 81). However, the way that the Applicant has framed his “procedural fairness” argument, claiming that the Decision lacked “justification” and that it was “not possible to understand why the Officer rejected the Applicant’s experience”, indicates that it is an argument against the substantive reasonableness of the Decision. This is the same type of language used in *Dunsmuir*, and now *Vavilov*, to describe an unreasonable decision (see *Vavilov* at para 81).

[23] Here, while the applicant frames the issue as one of duty of fairness in relation to the Discipline Committee’s failure to give reasons for lifting the suspension of Mr. Bansal’s licence, the substance of the applicant’s arguments, in my view, amount to a challenge to the adequacy of the Discipline Committee’s reasons. As such, I find no basis to rebut the presumed standard of reasonableness.

[24] 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 paragraph 85). The onus is on the applicant to demonstrate that the decision is unreasonable (*Vavilov*, at paragraph 100). To set aside a decision on this basis, “the reviewing court must be satisfied that there are sufficiently serious shortcomings in the decision such that it cannot be said to exhibit the requisite degree of justification, intelligibility and transparency” (*Vavilov*, at paragraph 100).

IV. Preliminary Issues

[25] As noted above, I asked the parties for their position on the issue of prematurity. In addition, Mr. Bansal argues ICCRC is precluded from making submissions on the adequacy of the practice restrictions. I will deal with these two preliminary issues before conducting my substantive review of the Decision.

Issue 1: Is the Judicial Review Premature?

[26] As a general rule, interlocutory rulings should not be challenged until the tribunal’s proceedings have been completed: *Zündel v. Canada (Human Rights Commission)*, 2000 CanLII 17138 (F.C.A.), [2000] 4 F.C. 255, at paragraph 10. As an exception to the general principle of non-interference with ongoing administrative processes, a court may review an interlocutory decision in “exceptional circumstances”,

but the threshold is high: *Canada (Border Services Agency) v. C.B. Powell Limited*, 2010 FCA 61, [2011] 2 F.C.R. 332 (*CB Powell*), at paragraph 33. Even jurisdictional issues do not warrant judicial review of interlocutory decisions, but rather only decisions whose consequences are so "immediate and radical" that they call into question the rule of law: *Dugré v. Canada (Attorney General)*, 2021 FCA 8, at paragraphs 35–36. An exception ought not to be made even in cases where the practical realities of allowing an interlocutory decision to go un-reviewed would cause hardship: *Herbert v. Canada (Attorney General)*, 2022 FCA 11, at paragraphs 7–19.

[27] In *Benito v. Immigration Consultants of Canada Regulatory Council*, 2019 FC 1628 (*Benito*), two immigration consultants sought judicial review of a decision of the Discipline Committee imposing an interim suspension of their right to act as immigration consultants. The respondent, ICCRC, argued that the judicial review should be dismissed for prematurity, as the administrative disciplinary process before the Discipline Committee remained in progress. Justice Gascon accepted ICCRC's argument and found the judicial review application to be premature, noting the following rationale for courts declining to review interlocutory decisions [at paragraph 19]:

> …When legislation sets out an administrative process consisting of a series of decisions and remedies, it must be followed to the end, barring exceptional circumstances, before the courts may be asked to intervene. The parties must exhaust all adequate remedial recourses when Parliament has given administrative decision-makers the authority to make decisions rather than courts of law: "… absent exceptional circumstances, courts should not interfere with ongoing administrative processes until after they are completed, or until the available, effective remedies are exhausted" (*CB Powell* at para 31). Therefore, the Applicants cannot by-pass the process established in the ICCRC disciplinary procedures by making an application for judicial review…

[28] After reviewing the case law, Justice Gascon concluded [at paragraph 23]:

> In the present case, as in *CB Powell*, there is an administrative disciplinary process at the ICCRC, and this process must be followed until completion, unless exceptional circumstances exist. In this administrative process, Parliament has assigned decision-making authority to the ICCRC and various administrative officials, not to the courts. Absent extraordinary circumstances, which are not present here, parties must exhaust their rights and remedies under this administrative process before pursuing a recourse to the courts, even on so-called "jurisdictional" issues relating to the Discipline Committee's power to act or on procedural fairness concerns. For all those reasons, the applications for judicial review must be dismissed for prematurity as the ordinary administrative process outlined in the ICCRC by-laws and rules ought to be followed, rather than this Court pre-empting the Discipline Committee's jurisdiction.

[29] I note however in *Zhang v. Canada (Public Safety and Emergency Preparedness)*, 2021 FC 746 (*Zhang*), at paragraphs 14–22, Justice Ahmed found that the judicial review was not premature because the remedial capacity of the administrative appeal was not equivalent.

[30] In this case, ICCRC submits that the Decision is not an interlocutory decision for jurisdictional purposes with respect to judicial review.

[31] ICCRC contends there is a distinction between decisions that are interlocutory to the proceeding—such as a ruling on evidence to be admitted, a challenge to a summons to produce evidence, or the standard to be applied in reaching the ultimate decision—and decisions that are rooted in a separate statutory power of decision-

making. ICCRC submits the latter includes a decision to suspend a license (or not) pending the outcome of a disciplinary proceeding. The latter type of decisions, ICCRC argues, is complete in its rendering and subject to review, provided there is no other administrative remedy available to the aggrieved party.

[32] On this point, ICCRC submits that it has no internal appeal process, as the ICCRC By-Law 2020-1 Dec 17, 2020, provides for an internal appellate remedy for the member but not for the ICCRC (citing Rules 20.7-20.9, 28.2(d), 32.1, 39.5).

[33] ICCRC also refers to *Benito*, at paragraphs 19–20, seemingly to make the point that judicial review is only premature if an administrative remedy is available to the applicant. This passage, however, states that the applicants should have followed not only "the internal appeal mechanism available to them" but also "the ICCRC disciplinary process" (*Benito*, at paragraph 20).

[34] ICCRC further argues that judicially reviewing the Decision does not interfere with the disciplinary process, given that the hearing into the complaints will continue whether or not Mr. Bansal's licence is suspended.

[35] Initially Mr. Bansal did not take a clear position on the issue of prematurity. He only challenged the ICCRC's inconsistency with its own previous position when he sought judicial review of two of the Discipline Committee's orders. One of these two judicial review applications concerned Mr. Bansal's interim suspension, while the other dealt with the Discipline Committee's denial of Mr. Bansal's abuse of process motion. In both instances, ICCRC raised the argument of prematurity. The Court denied leave with respect to the former application, and held the latter one in abeyance until a decision is released by the Discipline Committee on the merits of the allegations. While Mr. Bansal argued the ICCRC's submission that the ICCRC By-Law provides for an internal appellate remedy for members like himself is inconsistent with its past position, he did not appear to dispute ICCRC's position that it does not have an internal appeal process.

[36] In a subsequent letter to the Court, Mr. Bansal submitted that the Decision is interlocutory because it contains an order that states:

> The ICCRC may bring a motion to review this Interim Order if the conditions are not fulfilled or the hearing of the complaints, penalties and costs are not completed within six months of the date of the Order.

[37] In view of the above order, Mr. Bansal now submits that the Decision gives the ICCRC the ability to review the order internally after six months. While the ICCRC has so far chosen not to do so, another remedy exists within the tribunal process as per this order.

[38] I find, as per the ICCRC By-Law, that there is no internal appeal process for the ICCRC. That process is only available for the member. This explains, in my view, the different positions taken by the ICCRC with respect to Mr. Bansal's judicial review applications and the herein application. The lack of an internal appeal process is a factor that weighs against finding the Decision as an interlocutory one: *Benito*, at paragraph 19 and *Zhang*, at paragraph 22.

[39] However, I also agree with Mr. Bansal that the Decision's provision for a six-month review is a relevant factor to be considered, as per *Khan v. Immigration*

Consultants of Canada Regulatory Council, 2021 FC 381, at paragraphs 14–16 and *Benito*, at paragraph 20.

[40] I note the Discipline Committee's order enabling the ICCRC to bring a motion to review the Decision is the last of ten orders within the Decision. Of the other nine orders, seven of them impose restrictions on Mr. Bansal's practice, while the remaining two require the proposed supervisor to comply with the ICCRC Code of Professional Ethics and report to the Compliance Department of the ICCRC on Mr. Bansal's practice. Viewed in the context of these orders, I find the Discipline Committee has made clear that ICCRC may review the Decision ***only*** if any one of the nine conditions are not fulfilled, or if the hearing of the complaints, penalties and costs are not completed within six months. In other words, there is no provision for the ICCRC to seek an internal review of the Decision itself, even if the ICCRC believes the Decision contains legal errors, or is otherwise unreasonable.

[41] I thus find that there is no internal review mechanism available to the applicant under the ICCRC By-Law, nor does the order in the Decision enabling the ICCRC to bring a motion to review within six months amount to an alternative remedy for the ICCRC to review the merits of the Decision.

[42] In addition, I agree with the ICCRC that the Decision is not interlocutory because, unlike other interim decisions or orders that arise from an ongoing proceeding, the Decision is complete in its rendering. The Decision stands, and will continue to do so, until the final disposition of the Discipline Committee following its findings of professional misconduct. Even then, the Discipline Committee will be rendering a new and separate decision regarding the appropriate penalty to be imposed on Mr. Bansal going forward. The final disposition is independent of the interim sanction, including any restrictions on practice, imposed by the Decision. Most notably, the Discipline Committee's authority to issue an interim order is found in section 30.8 of the ICCRC By-Law, while its authority to order sanctions after a finding of an offence comes under section 30.10, a completely separate provision reflecting a different set of criteria.

[43] Finally, as is made clear from the release of the final decision about Mr. Bansal's professional misconduct, the ICCRC disciplinary process has been proceeding notwithstanding the filing of the herein application. I find that the Court's review of the Decision does not result in interference with the internal administrative process of the ICCRC's Discipline Committee, nor will it result in the fragmentation of the administrative proceedings: *Watto v. Immigration Consultants of Canada Regulatory Council*, 2018 FC 890 (*Watto*), at paragraph 32.

Issue 2: Is ICCRC Precluded from Raising the Adequacy of Supervision on Judicial Review?

[44] Mr. Bansal argues that ICCRC is precluded from raising arguments on the adequacy of the practice restrictions because it did not raise these arguments before the Discipline Committee. As he submits, it is well established that parties ought not to raise an argument on judicial review that was not before the administrative decision maker: *Alberta (Information and Privacy Commissioner) v. Alberta Teachers' Association*, 2011 SCC 61, [2011] 3 S.C.R. 654, at paragraphs 22–26. Hearing this issue on judicial review, according to Mr. Bansal, would prejudice him, prevent the

administrative decision maker from making its views known, and deny the Court an adequate evidentiary record.

[45] According to Mr. Bansal, ICCRC did not present any argument in their written or oral submissions regarding the adequacy of the practice restrictions before the Discipline Committee, other than to submit that practice restrictions are insufficient when a member's conduct exhibits a lack of integrity.

[46] Mr. Bansal argues that because ICCRC's submissions on the law were inadequate and because ICCRC did not challenge his evidence on the adequacy of the practice restrictions, it is precluded from challenging the adequacy of the practice restrictions on judicial review.

[47] I am not persuaded by Mr. Bansal's argument. Rather, I agree with ICCRC that Mr. Bansal's submission is misleading.

[48] As ICCRC points out, it argued before the Discipline Committee that the complaints against Mr. Bansal raise serious issues of integrity, including fraudulent conduct. In ICCRC's view, such concerns do not lend themselves to supervision for quality of work product. Rather, in ICCRC's submission, these concerns put at issue public confidence in the disciplinary process for immigration consultants.

[49] My review of the materials confirms the ICCRC's position. In their factum dated March 18, 2020, in support of its motion for interim suspension, ICCRC argued that interim suspension was the appropriate measure and that practice restrictions were not enough in cases alleging lack of integrity on the part of the immigration consultant. Citing public confidence in the immigration consulting profession and a concern that the administration of justice would be put at significant risk, ICCRC argued that Mr. Bansal should not be permitted to continue practising.

[50] ICCRC took the same position in their cross motion to extend the interim suspension in November 2020, after Mr. Bansal brought a motion to have the ICCRC justify the continuation of the interim suspension order. Once again, ICCRC asserted that practice restrictions would not be enough in cases involving a lack of integrity, and that nothing short of an interim suspension of Mr. Bansal's license would adequately protect the public.

[51] Further, as will be seen in ICCRC's arguments detailed below, ICCRC is not challenging the Decision based on the suitability of the supervisor or the conditions of the practice restrictions. Their central contention before this Court is that the Decision lacked justification for whether supervision is appropriate in the first place, as an alternative to suspension.

[52] The main issue before me is the reasonableness of the Discipline Committee's decision to lift the interim suspension. Whether or not ICCRC presented any specific submission before the Discipline Committee challenging the adequacy of the supervision plan is of no consequence because that is not the issue in this application.

[53] I see nothing to preclude the ICCRC from seeking judicial review of that aspect of the Decision, given the position the ICCRC took consistently throughout the proceedings before the Discipline Committee. Other than his bold assertion, Mr. Bansal

has presented no evidence as to how he is prejudiced by virtue of permitting ICCRC's argument to be heard.

V. Analysis

Was the Decision of the Discipline Committee to Lift the Licence Suspension Reasonable?

[54] In my view, the determinative issue in this case is whether the Discipline Committee made an unreasonable decision by failing to engage in an analysis and provide adequate reasons for lifting the suspension of Mr. Bansal's licence.

[55] The Discipline Committee devoted much of its analysis responding to Mr. Bansal's arguments that the conditions had changed since the order of June 17, 2020, to suspend his licence, especially in regard to the "four legs" on which the previous panel founded its decision. Mr. Bansal's submissions were addressed in the Decision and are summarized here:

- The panel's decision on a preliminary motion ruled that the judicial and administrative findings in the cases in Alberta and British Columbia were inadmissible as *prima facie* evidence of professional misconduct because he was not a party to these proceedings and the issues were different;
- The ICCRC has decided not to proceed on four of the complaints;
- The previous panel's ruling that Mr. Bansal was uncooperative during the investigation relied heavily on the allegations made by one investigator but was not supported by the witness evidence form submitted for the hearing on the merits;
- The *Globe and Mail* article, also relied on by the previous panel, should be excluded as inadmissible hearsay as it contains inaccuracies.

[56] The Discipline Committee rejected all of Mr. Bansal's submissions, finding that:

- Mr. Bansal's characterization of the cases in Alberta and British Columbia was not entirely accurate as individuals who gave evidence in those proceedings may still provide evidence at the hearing on the merits;
- The Committee agreed with the ICCRC that the remaining complaints are related to a similar pattern that caused concern for the previous panel and has not changed in any significant manner;
- The investigator in question had, by that point, not been subject to cross-examination and the panel was not able to completely dismiss the previous panel's finding on Mr. Bansal's non-cooperation with the investigation; and
- Any inaccuracies in the *Globe and Mail* article do not change the purpose relied on by the previous panel, namely, "the question for the panel is not whether the allegations are correct but whether they are evidence of what the public may have read about the profession of Immigration Consultants generally and Mr. Bansal in particular."

[57] The Discipline Committee then concluded:

> This panel finds that the alleged misconduct remains serious and there are reasonable grounds to believe that there may be harm to a member of the public, and/or the public's confidence in the profession of Immigration Consultant may be undermined if the Member is allowed to practice without some restriction or conditions.

[58] The Discipline Committee went on to note that the previous panel considered increased supervision by the ICCRC or supervision by another immigration consultant but rejected it as an option. The previous panel found "no evidence that the ICCRC had the resources to provide the degree of oversight that would be required" and "no evidence that another Immigration Consultant would be willing to undertake the degree of regular review of the Member's activities that would be necessary."

[59] The Discipline Committee then noted that Mr. Bansal has provided an affidavit from the proposed supervising consultant. The Discipline Committee summarized the experiences of the proposed supervisor, his willingness to review Mr. Bansal's practice and his knowledge about the complaints against Mr. Bansal. After this brief description of the proposed supervisor, the Committee concluded, in one sentence:

> The panel finds that practice restrictions will be sufficient to reduce the risk of harm to the public interest in the administration of justice and risk of harm to the public.

[60] In light of the brevity of the above-quoted paragraph, I agree with the ICCRC that in deciding to lift the suspension, the Discipline Committee has failed to conduct any analysis as to why supervision would be sufficient "to reduce the harm of the public interest in the administration of justice and risk of harm to the public." The Discipline Committee cited no case law, quoted no evidence, gave no response to ICCRC's arguments, and made no attempt to link its conclusion to its own finding that "the alleged misconduct remains serious and there are reasonable grounds to believe that there may be harm to a member of the public."

[61] As the Supreme Court of Canada explained in *Vavilov* [at paragraph 79]:

> …Reasons explain how and why a decision was made. They help to show affected parties that their arguments have been considered and demonstrate that the decision was made in a fair and lawful manner. Reasons shield against arbitrariness as well as the perception of arbitrariness in the exercise of public power: *Congrégation des témoins de Jéhovah de St-Jérôme-Lafontaine*, at paras. 12-13. As L'Heureux-Dubé J. noted in *Baker*, "[t]hose affected may be more likely to feel they were treated fairly and appropriately if reasons are given": para. 39, citing S. A. de Smith, J. Jowell and Lord Woolf, *Judicial Review of Administrative Action* (5th ed. 1995), at pp. 459-60. And as Jocelyn Stacey and the Hon. Alice Woolley persuasively write, "public decisions gain their democratic and legal authority through a process of public justification" which includes reasons "that justify [the] decisions [of public decision makers] in light of the constitutional, statutory and common law context in which they operate": "Can Pragmatism Function in Administrative Law?" (2016), 74 *S.C.L.R.* (2d) 211, at p. 220.

[62] 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*, paragraph 85). Here, the Discipline Committee offered no chain of analysis, rational or otherwise, to justify its decision to lift the licence suspension and replace it with licence restrictions in a matter that raises serious allegations of misconduct.

[63] The ICCRC points out a number of flaws in the Discipline Committee's lack of analysis. It submits, among other things, that the panel is not relieved from its obligation to assess the appropriateness of supervision in light of the nature of the serious outstanding allegations, regardless of the previous panels' consideration on supervision as a possibility, the strength of the evidence before the panel, and the law to be applied to the exercise of discretion. I need not consider these arguments because the Decision is so devoid of any reasoning that it would be impossible to know if any of these factors were in fact considered by the Discipline Committee.

[64] By the same token, I also reject Mr. Bansal's submission that the Decision dealt appropriately with parties' submissions and that the Decision was based on the procedural history of the motion, the factual record before the Discipline Committee, and the regulatory scheme mandating the least restrictive measures. Further, in Mr. Bansal's view, the order imposing conditions is tailored to his practice and responsive to the pending allegations.

[65] None of the "reasons" that Mr. Bansal offers now are reflected in the Decision. As the ICCRC submits, it is not the role of the respondent or the Court to rewrite the reasons of the Discipline Committee. In ICCRC's view, Mr. Bansal's arguments supplement the reasons given in the Decision. I agree.

[66] In conclusion, the Discipline Committee's failure to engage in any analysis and provide adequate reasons for lifting the suspension of Mr. Bansal's licence to practice, in the face of the Committee's acknowledged serious allegations of misconduct and concerns for the public's confidence in the profession and risk of harm to the public, rendered the Decision unreasonable.

[67] On that basis alone, this matter needs to be sent back for redetermination.

Obiter Comments

[68] At the hearing, the parties debated over the legal requirements for imposing licence suspension in cases where there are serious allegations of misconduct involving integrity, honesty, and trust. On the one hand, the ICCRC argued that once the regulatory body has demonstrated that there are reasonable grounds to believe the member has engaged in serious misconduct, the requirement for licence suspension is met and the burden falls on the member to put forward an alternative plan that would ensure the protection of the public. Mr. Bansal, on the opposite end of this debate, submitted that the law does not support the imposition of an outright suspension. Instead, professional bodies have to consider, as a starting point, the least restrictive measures possible.

[69] The ICCRC has asked this Court to weigh in on the question of who bears the onus of demonstrating whether restrictions on practice are appropriate, after the ICCRC has made out a case of serious allegations on reasonable grounds.

[70] Having considered the parties' submissions, I must decline the ICCRC's request, as I do not find this an appropriate case to opine on this important question. While substantial submissions had been made by both parties to the Discipline Committee on the appropriate sanction to apply, the Discipline Committee, as shown above, failed to engage with the submissions made.

[71] Further, I am also not convinced the position that ICCRC now urges the Court to adopt was squarely put before the Discipline Committee. ICCRC did put forward a strong argument that suspension was the only appropriate sanction in cases of lack of integrity, but it never argued that the onus was shifted to Mr. Bansal to demonstrate otherwise, once the serious allegations have been made out on reasonable grounds.

[72] To the extent that any guidance may be given, I offer the following comments, as *obiter*, for the Discipline Committee to consider when it re-determines the appropriate interim sanction to be imposed on Mr. Bansal.

[73] Of paramount importance, is a professional regulatory body's mandate to protect public interests and reduce public harm, especially when a member is involved in serious allegations of dishonesty and a lack of integrity. As cited by the ICCRC, the Supreme Court of Canada noted in *Pharmascience Inc. v. Binet* 2006 SCC 48, [2006] 2 S.C.R. 513 (*Binet*), at paragraph 36:

> The importance of monitoring competence and supervising the conduct of professionals stems from the extent to which the public places trust in them. Also, it should not be forgotten that in the client-professional relationship, the client is often in a vulnerable position.

[74] Quoting from *Finney v. Barreau du Québec,* 2004 SCC 36, [2004] 2 S.C.R. 17, at paragraph 16, dealing with the importance of the obligations imposed by the state on the professional orders that are responsible for overseeing the competence and honesty of their members, the Supreme Court in *Binet* reiterated:

> The primary objective of those orders is not to provide services to their members or represent their collective interests. They are created to protect the public…

[75] The goal of public protection is also imbedded in the ICCRC's By-Law under section 30.8. This provision directs the Discipline Committee to order interim suspension or restrictions on a member's practice if the Committee finds it necessary "to protect the public", and, having given the parties a fair opportunity to present their case, is satisfied that "to deny the order applied for may result in harm to any member of the public."

[76] The protection of the public is of heightened importance in a case like this where the clients in question are people with no or precarious immigration status in Canada, and in some cases may be quite desperate to find a way to regularize their status. These vulnerable clients often put their faith in the immigration consultants—or lawyers, as the case may be—who they retain to help facilitate their pathway to Canada, where they seek a better life and greater opportunities for themselves and their families. The Supreme Court of Canada in *Binet* reminds regulatory bodies not to forget that the client is often the one in a vulnerable position in the client-professional relationship. That vulnerability, in my view, is often exacerbated by the client's socio-economic background including, but not limited to, their immigration status.

[77] In addition to protecting the public interest, the case law seems to suggest other factors may also be at play. While I reject Mr. Bansal's contention that the least restrictive measure is the "starting point" in determining the appropriate sanctions for members who are alleged to have engaged in professional misconduct, case law appears to suggest it is one of the relevant considerations: *Rohringer v. Royal College*

of Dental Surgeons of Ontario, 2017 ONSC 6656 (CanLII), at paragraph 69. As to how the public interest should be balanced against the member's circumstances, I will leave that question for the Discipline Committee to deliberate, based on parties' no doubt fulsome submissions to follow.

[78] My final comment concerns the timeliness of the decisions made by the Discipline Committee. As noted above, the final day of the hearing into the allegations against Mr. Bansal was in July 2021. It took the Discipline Committee almost a year to reach its conclusion with respect to the alleged misconduct. It is uncertain when the Discipline Committee will deliver its final decision on sanction.

[79] In the meantime, Mr. Bansal has been allowed to practice, based on the Decision that fails to convey to the public the reasons for lifting the suspension of his license. The Discipline Committee may very well have legitimate reasons for its conclusion that the sanction it imposed is sufficient to protect the public. However, its lack of reasoning, coupled with the delay in issuing a final disposition in this matter, may have resulted in an unintended consequence of undermining public trust in the administration of justice, and in the ability of the ICCRC, now the College, to serve as an important oversight for licensed immigration consultants.

[80] As Justice Norris commented in *Watto* at paragraph 32: "…the ICCRC and, indeed, the public at large have a legitimate interest in seeing the complaint against the applicant adjudicated and disposed of in a timely way…" I would add that Mr. Bansal too, has an interest in seeing this matter disposed of in a timely fashion.

VI. Remedy

[81] I note that the only remedy ICCRC seeks is an order quashing the Decision and remitting the matter back for reconsideration, without addressing the practical effect of quashing the Decision.

[82] As noted above, the June 17, 2020 decision from the Discipline Committee suspending Mr. Bansal's licence had a 6-month expiry unless it was amended. The Decision under review amended the June 17, 2020 decision by replacing the licence suspension with licence restrictions. A decision from this Court quashing the Decision would have the effect of removing the restrictions on Mr. Bansal's licence to practice, but would not reinstate the licence suspension as per the June 17, 2020 decision.

[83] Neither party addressed this conundrum either in their written representations or during oral submissions. However, as noted above, the decision on the merits of the complaints was released the same day as the hearing of this judicial review application. It thus became apparent that to quash the Decision under review without further directions from this Court would amount to allowing Mr. Bansal to practice without restrictions, despite a finding of serious misconduct against him.

[84] I note that paragraph 18.1(3)(b) of the *Federal Courts Act*, R.S.C., 1985, c. F-7 allows the Court to refer a matter back for re-determination "in accordance with such directions as it considers to be appropriate" [emphasis added].

[85] For the reasons set out below, I am satisfied that this is an appropriate case to direct that the restrictions set out in the Decision remain in place while the re-determination is underway, until either:

a) the Discipline Committee renders a new decision with regard to the appropriate interim sanction to be imposed on Mr. Bansal's practice, or

b) until the Discipline Committee renders a final decision on sanction pursuant to its June 21, 2022 findings of misconduct against Mr. Bansal,

whichever comes first.

[86] This direction would, firstly, maintain the status quo of placing Mr. Bansal's practice under supervision, instead of allowing him to practice without being subject to any additional oversight, so as to ensure the interest of public protection is met.

[87] Secondly, a direction of this nature is, in my view, most consistent with the general rule that the Court, on judicial review, should not substitute its view for that of the decision maker, unless certain conditions are met: *Canada (Citizenship and Immigration) v. Tennant*, 2019 FCA 206, [2020] 1 F.C.R. 231, at paragraphs 67–68.

[88] Thirdly, the direction would allow Mr. Bansal to continue his immigration practice as per the restrictions that he is already placed under, and thereby preserving his interests until a new interim decision or a final decision is made with respect to the appropriate sanction.

VII. Conclusion

[89] The application for judicial review is allowed and the matter is referred back for redetermination.

[90] The restrictions on Mr. Bansal's license set out in the Decision will remain in place while the re-determination is underway, until the Discipline Committee renders a new interim sanction on Mr. Bansal's practice, or until the Discipline Committee renders a final decision concerning Mr. Bansal's licence to practice, whichever decision comes first.

[91] At the hearing, the ICCRC made partial submissions on a proposed certified question concerning who bears the onus of showing supervision, as opposed to suspension of licence, would be adequate to protect the public in cases involving allegations of serious misconduct. Given this issue is not determinative of the herein application, it is not an appropriate question for certification.

JUDGMENT in IMM-6736-20

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is allowed.

2. The matter is referred back to the Discipline Committee for redetermination in accordance with the law.

3. The restrictions set out in the decision under review remain in place while the re-determination is underway, until the Discipline Committee renders a new decision with regard to the appropriate interim or final sanction to be imposed.

4. There is no question for certification.