

Court File No: T-2492-23

FEDERAL COURT

e-document ID 1

BETWEEN:

Alexandre PAPOUCHINE

F I L E D	FEDERAL COURT COUR FÉDÉRALE	D E P O S E
	Nov. 24, 2023 24 nov 2023	
Josephine Chan		
Toronto, ON	1	

Applicant

and

COLLEGE OF IMMIGRATION AND CITIZENSHIP CONSULTANTS;
CANADA (MINISTER OF IMMIGRATION, REFUGEES AND CITIZENSHIP);
CANADA (ATTORNEY GENERAL)

Respondents

Notice of Application

TO THE RESPONDENT:

A PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the applicant. The relief claimed by the applicant appears below.

THIS APPLICATION will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court orders otherwise, the place of hearing will be as requested by the applicant. The applicant requests that this application be heard at **Toronto, Ontario**.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or a solicitor acting for you must file a notice of appearance in Form 305 prescribed by the *Federal Courts Rules* and serve it on the applicant's solicitor or, if the applicant is self-represented, on the applicant, WITHIN 10 DAYS after being served with this notice of application.

Copies of the *Federal Courts Rules*, information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO OPPOSE THIS APPLICATION, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

November 24 2023

ALICE PRODAN GIL
REGISTRY OFFICER
AGENT DU GREFFE

Issued by: _____

Address of local office: _____

TO: College of Immigration and Citizenship Consultants

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Department of Justice

Ontario Regional Office

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Application

This is application for judicial review in respect of the alleged failure of College of Immigration and Citizenship Consultants (hereafter "CICC") to follow the law in making administrative decisions in processing of licensing application of Alexandre Papouchine and in making multiple interlocutory decisions with final decision made on October 26, 2023, to commence a proceeding on a day and a time and place to be set by the Court, pursuant to s. 18 and 18.1 of the Federal Courts Act, R.S.C. 1985, c. F-7 as amended, seeking declaratory, prerogative and injunctive relief from the failure of CICC to process the Applicant's licensing application according to the law.

This is application for judicial review in respect of the alleged failure of Minister of Immigration, Refugees and Citizenship to develop mechanisms inside CICC and/or inside Ministry to:

a) Protect RCIC Candidates from possible violations of Human Rights of RCIC Candidates without need to seek such protection from Canadian Human Rights Commission;

b) Protect possible unlawful handling of licensing applications of RCIC Candidates without need to seek protection from Federal Court of Canada.

I seek opportunity to commence a proceeding on a day and a time and place to be set by the Court, pursuant to s. 18 and 18.1 of the Federal Courts Act, R.S.C. 1985, c. F-7 as amended, seeking declaratory, prerogative and injunctive relief from the failure of Minister to oversee establishing of such mechanisms.

The applicant makes application for:

(a) declarations that:

i) these issues to be evaluated together:

a) on basis of legal principle existing in Human Rights law that events with interval between them of less than one year to be evaluated together as one event, and as most of these issues were some way connected with my requests to accommodate disability; and/or

b) as most issues can be seen as interlocutory and outcome of exam dated October 26, 2023 may be seen as final decision,

ii) these issues will be sorted as some of them may go towards Canadian Human Rights Commission;

iii) that in handling of recent request for accommodation of disability CICC for exam taken on September 13, 2023 employees and/or officers were acting against the law, as such employees and/or officers took position that in which form request to accommodate disability created is more important than what is inside it, in other words employees and/or officers declined even to evaluate request to accommodate disability,

as employees and/or officers preferred form over substance of subject request;

iv) that in handling of recent request for accommodation of disability CICC employees and/or officers were acting against the law and specifically with discrimination in connection to disability, as I specifically asked CICC to accept request for accommodation of disability (created by Doctor) in non-standard form as accommodation of my disability, as I did not have enough money due to my disability to pay towards Doctor for creation of request to accommodate disability in new form recently designed by CICC;

v) that CICC was acting against the law by including into licensing exam taken on September 13, 2023 issues (exam questions) outside of approved scope of practice of RCIC licensees for moment of exam and later;

vi) that CICC was acting against the law by evaluating results of exams taken on September 13, 2023 on basis of issues (exam questions) included into licensing exam, which issues (exam questions) were outside of approved scope of practice of RCIC licensees for moment of exam and later;

vii) that CICC was acting against the law when it was making decision on issue what it "cut score" for licensing exams taken on September 13, 2023 by including into same competition group graduates of Queen's University and graduates of previously existing Immigration Practitioner Programs because "highly likely" this became similar to competition between participants of Olympic Games (graduates of Queen's University) and Paralympic Games (with IPP graduates including those with grounds protected by Human Rights law) competing at same time, and CICC "highly likely" know or ought to know about it. In simple words (as in my situation) this became competition between vulnerable candidates (with access to 6 month education) and those "who can afford" 12 months of education, and I was personally impacted by this situation.

I tried to raise it towards CICC but CICC was ignorant to issue.

This issue to be evaluated through prism of situation that Queen's University:

a) has arranged with CICC that Queen's University has exclusive rights in Canada to provide education for RCIC Candidates in English (decision that University will have exclusive rights seems was made on initiative of CICC but it was accepted by University);

b) did not make arrangements with Province of Ontario that prospective students can seek OSAP to pay for education at University. By avoiding to make such arrangements for OSAP, University "highly likely" excluded from prospective students those in poverty due to disability, on social assistance and/or other grounds protected by Human Rights law. I ask to consider that this Court has power to "read in" into Human Rights law grounds that not already there;

viii) that today's date requirement of CICC to write exam "closed book" highly likely has very poor connection with CICC's own declaration which specific competences specifically subject exam has to evaluate, and as such this approach is error in law. Specifically burden is on Respondent to prove that capacity to pass "closed book" exam is *bona fide* competence to work as RCIC.

ix) that today's date requirement of CICC to write exam "closed book" highly likely has adverse discriminatory effect, and as such this approach is error in law. Specifically burden is on Respondent to prove that capacity to pass "closed book" exam is *bona fide* competence to work as RCIC.

x) that denial by CICC of applicant's request to accommodate his disability during exam taken on December 14, 2022 exclusively because of absence of document signed by doctor was unreasonable due to situation in province (excessive load on doctors due to effects of COVID-19 pandemic);

xi) that it was unreasonable for Immigration Consultants of Canada Regulatory Council (hereafter "ICCRC") (predecessor of CICC) to keep so strict requirement in the middle " on 2020-2021 that RCIC Candidates have duty to pass English test first and take EPE exam only after that, as 70% of English exams were that time "in person", which created high risk to health and life itself of RCIC Candidates, and it was very difficult to secure spot for online English test.

It is important to mention that those "in person" exams due to applicable directions of ICCRC were becoming about 2 times less expensive than online exams, which in its turn was creating adverse discriminatory effect with connection to COVID-19.

In my view this was preference of form of licensing procedure over substance.

On top of that I ask to consider that I was seeking accommodation of my disability (danger of COVID-19) in form of taking licensing exam first and English language after that but request for accommodation was declined.

Complaint about this was filed with CHRC about 1 year ago but did not go through yet.

xii) that previous issue on top of that "highly likely" includes failure to accommodate disability, including both procedural and/or substantive components, which is discrimination.

xiv) that CICC was acting against the law by declining my requests to accommodate disability, by failing to follow procedural and/or substantive components of accommodation of disability;

xv) to declare that as Applicant paid for exam taken on December 14, 2022, was present during exam, but as CICC failed to accommodate disability of applicant for purposes of taking this exam, CICC failed to provide opportunity to Applicant to take this exam the way that rights of Applicant given by laws of Canada would be protected by CICC, and it was CICC that violated rights of Applicant in relation to this exams taken on December 14, 2022;

xvi) to declare that as Applicant paid for exam taken on April 12, 2023, was present during exam, but as CICC failed to accommodate disability of applicant for purposes of taking this exam, CICC failed to provide opportunity to Applicant to take this exam the way that rights of Applicant given by laws of Canada would be protected by CICC, and it was CICC that violated rights of Applicant in relation to this exam taken on April 12, 2023;

xvii) to declare that as Applicant paid for exam taken on September 13, 2023, was present during exam, but as CICC failed to accommodate disability of applicant for

purposes of taking this exam, and/or as CICC was acting against the law in preparing questions for this one exam and/or in evaluating answers for that exam, CICC failed to provide opportunity to Applicant to take this exam the way that rights of Applicant given by laws of Canada would be protected by CICC, and it was CICC that violated rights of Applicant in relation to this exam taken on September 13, 2023;

(b) An order (in the nature) of mandamus and/or certiorari:

- i) to quash existing results of exam dated October 26, 2023 for exam taken on September 13, 2023 as CICC failed to follow law in preparing questions for exam;
- ii) to quash existing results of exam dated October 26, 2023 for exam taken on September 13, 2023 as CICC failed to follow law evaluating results of exam after exam was taken;
- iii) to quash existing results of exam for exam taken on December 14, 2022 as CICC failed to follow law in handling of request of Applicant to accommodate applicant's disability for purposes of taking this exam;
- iv) to quash existing results of exam dated October 26, 2023 for exam taken on September 13, 2023 as CICC failed to follow law in handling of request of Applicant to accommodate applicant's disability for purposes of taking this exam;
- v) to quash existing results of exam dated May 27, 2023 for exam taken on April 12, 2023 as CICC failed to follow law in handling of request of Applicant to accommodate applicant's disability for purposes of taking this exam;
- vi) to pay towards Applicant monetary compensation equivalent to average statistically supported income of RCIC until moment applicant will receive RCIC license from CICC;
- vi) to consider that applicant passed exam taken on December 14, 2022 or on April 12, 2023 or on September 13, 2023 as any other decision will have prejudicial effect on applicant,
or, alternatively order towards CICC,
 - a) to pay to Applicant funds to pay tuition and other relevant expenses for training at Queen's University and living expenses for length of training;
 - b) to pay to Applicant funds for taking as many exams in English as needed; and
 - c) to arrange that Applicant can take up to 3 RCIC licensing exams with CICC on expense of CICC.
- vii) to direct CICC to arrange that any future CICC licensing exams include only questions within scope of practice of licensees;
- viii) to direct CICC to arrange procedure that if inside any future CICC licensing exams will be included questions outside of scope of practice of licensees, CICC will have working transparent procedure to exclude those questions from exam after exam taken without negative impact on candidate;

ix) to direct CICC to establish mechanism to pay towards licensing candidates monetary compensation for not being able to practice due to situation when licensing candidates failed to pass licensing exam due to mentioned above issues with exam questions outside of area of practice;

x) to direct CICC to establish mechanism to arrange monetary and other compensation towards licensing candidates for not being able to practice due to situation when licensing candidates failed to pass licensing exam due to non-relevant to practice questions inside exams;

xi) to direct CICC to establish mechanism to investigate possible failure to accommodate disability of licensing candidates, without need to seek assistance of Canadian Human Rights Commission and/or Federal Court.
It is expected that such mechanism would have power to make orders towards CICC to pay compensation towards licensing candidates where appropriate.

xii) to direct Minister of Immigration, Refugees and Citizenship to assist CICC in establishing of such mechanism;

xiv) to direct CICC to establish mechanism to investigate possible unlawful handling of licensing applications of RCIC Candidates without need to seek protection from Federal Court of Canada;

xv) to direct Minister of Immigration, Refugees and Citizenship to assist CICC in establishing of such mechanism;

(c) Applicable costs of this application and such further relief as Applicant may advise and this Court grant.

The grounds for the application are:

(a) that CICC is continued under section 84 or established under section 86 of ***College of Immigration and Citizenship Consultants Act S.C. 2019, c. 29, s. 292***, which is federal law;

(b) Section 71 (1) of *College of Immigration and Citizenship Consultants Act S.C. 2019, c. 29, s. 292*.

(c) that CICC is acting in Canada and as such has duty to follow laws of Canada;

(d) that decisions under review are administrative decisions by their nature and/or effect, and as such subject to appeal and/or reconsideration and/or review;

(e) that "highly likely" CICC employees and/or officials failed to follow law, and specifically made error in law while making those decisions;

(f) that there is no appeal process or other known to appellant mechanism to reconsider alleged unlawful actions of CICC employees and/or officials or, alternatively, CICC avoided to disclose such mechanism to applicant;

(g) that Minister of Immigration, Refugees and Citizenship is head of Ministry where potentially impacted persons could reasonably bring complaints about CICC actions and/or omissions if such possibility would exist;

(h) that CICC and it's employees and/or officials refused to exercise and otherwise exceeded jurisdiction in fulfilling their statutory and constitutional duties;

(i) that in so doing, the CICC made perverse and capricious findings, conclusions, and inferences without evidence and in total disregard of the evidence; and

(j) that the CICC officials are engaging in an abuse of process and engaging in misfeasance in public office.

(k) such further and other grounds as Applicant may advise and this Honourable Court permit.

This application will be supported by the following material:

- (a) the Affidavit of or on behalf of the Applicant;
- (b) the materials already filed including any record;
- (c) a memorandum of fact and law;
- (d) such further documentary and/or viva voce evidence as Applicant may advise and this Court permit.

THE APPLICANTS REQUEST, pursuant to Rules 317 and 318 of the Federal Courts Rules, that the CICC send a certified copy of the following material that is not in the possession of the Applicants but in the possession of the CHRC, to the Applicant, and to the Registry:

1. a copy of any and all documents, memos, personal records, electronic or otherwise, with respect to handling by CICC of the Applicants' request to accommodate his disability for licensing exam taken on September 13, 2023;
2. a copy of any and all documents, memos, personal records, electronic or otherwise, with respect to handling by CICC of the Applicants' request to accommodate his disability for licensing exam taken on April 12, 2023;

3. a copy of any and all documents, memos, personal records, electronic or otherwise, with respect to handling by ICCRC of the Applicants' request to accommodate his disability for licensing exam taken on December 14, 2022;

4. a copy of any and all documents, memos, personal records, electronic or otherwise, with respect to handling by CICC of the Applicant's request to exclude questions outside of possible scope of practice from results of exam taken on September 13, 2023;

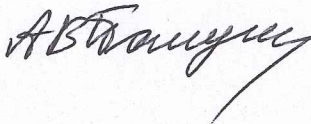
5. a copy of any and all documents, memos, personal records, electronic or otherwise, with respect to explaining what is "minimally proficient candidate" as it is applicable to "cut score" issue;

6. a copy of any and all documents, memos, personal records, electronic or otherwise, with respect to handling by ICCRC of the Applicants' request to take EPE exam first and English later in 2020-2021;

7. to provide detailed statistical information about income of RCICs.

THE APPLICANT proposes that this application be heard in Toronto in the English language.

Date: November 24, 2023



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