

Federal Court



Cour fédérale

Date: 20211216

Docket: T-834-20

Citation: 2021 FC 1434

Toronto, Ontario, December 16, 2021

PRESENT: The Honourable Madam Justice Furlanetto

BETWEEN:

IMMIGRATION CONSULTANTS OF
CANADA REGULATORY COUNCIL

Plaintiff

and

CICC THE COLLEGE OF IMMIGRATION
AND CITIZENSHIP CONSULTANTS
CORP., NUHA NANCY SALLOUM,
AND RYAN DEAN

Defendants

AND BETWEEN:

CICC THE COLLEGE OF IMMIGRATION
AND CITIZENSHIP CONSULTANTS
CORP. AND NANCY SALLOUM

Plaintiffs By Counterclaim

and

HER MAJESTY THE QUEEN,
IN RIGHT OF CANADA

Defendant By Counterclaim

ORDER AND REASONS

[1] Since 2011, the Plaintiff, Immigration Consultants of Canada Regulatory Council [ICCRC], has been the designated national self-regulator of immigration and citizenship consultants in Canada. The *College of Immigration and Citizenship Consultants Act*, SC 2019, c 29, s 292 [College Act], which received Royal Assent on June 21, 2019 and came into force in December 2020, establishes a College of Immigration and Citizenship Consultants [the College] to be the self-regulatory body for immigration and citizenship consultants. On November 23, 2021, ICCRC became the College.

[2] The corporate Defendant was incorporated under the name CICC, The College of Immigration and Citizenship Consultants Corp [CICC] on October 25, 2019. The Defendant Ms. Salloum is the Chairwoman and Chief Operating Officer of CICC. The Defendant Mr. Dean is alleged to have been the Chief Executive Officer [CEO] and Managing Director of CICC from May 14, 2020 until he resigned on December 7, 2020.

[3] In this action, the Plaintiff takes issue with the Defendants' use of the name "The College of Immigration and Citizenship Consultants", with and without "CICC", in connection with CICC's business. It also takes issue with content posted on CICC's website and LinkedIn page that CICC is, or will become, the College and the regulator of immigration and citizenship consultants.

[4] In this motion for summary judgment, Mr. Dean seeks to remove himself as a party Defendant. In the statement of claim, the Plaintiffs assert that Mr. Dean, acting as CEO and Managing Director of CICC, sent a letter to ICCRC's members, dated June 25, 2020, notifying

them to join CICC as it transitions to be the regulatory body. The Plaintiff alleges that Mr. Dean is personally liable for wilfully, deliberately and knowingly acting in concert with CICC in breach of sections 7(a) and 9(1)(d) of the *Trademarks Act*, RSC 1985, c T-13 [TMA].

[5] Mr. Dean contends that there is no evidence that he conducted any act that could be a breach of the TMA.

[6] For the reasons that follow, I am unable to conclude that there is no genuine issue for trial as it relates to Mr. Dean personally. Further, I am of the view that the determination of the allegations against Mr. Dean will involve an assessment of the credibility of a number of factual witnesses and that the Court would benefit from those witnesses' live testimony. As such, the motion is dismissed.

I. Background

[7] This is not the only proceeding involving ICCRC and Mr. Dean. Mr. Dean was a former Director of ICCRC, but was removed from the Board of Directors several years ago. His membership was suspended by ICCRC shortly after he became involved with CICC. An internal disciplinary proceeding is currently ongoing. Mr. Dean asserts that this disciplinary proceeding is the reason he is named in the present action. ICCRC asserts that the disciplinary proceeding and Mr. Dean's former position with ICCRC is the impetus behind his alleged wilful and deliberate activities.

[8] The present action was commenced on July 28, 2020 and was quickly followed by an interlocutory injunction motion.

[9] On December 24, 2020, Justice Fuhrer granted an interlocutory injunction restraining the Defendants, including Mr. Dean, from:

- A. Using the business name and marks of CICC The College of Immigration and Citizenship Consultants Corp., The College of Immigration and Citizenship Consultants, the letters CICC, “The College Act”, or any other word or symbol suggesting that they are the College of Immigration and Citizenship Consultants established under the *College of Immigration and Citizenship Consultants Act*, in connection with their business, as a trademark or otherwise;
- B. Using the domain name cicc-lcic.com;
- C. Maintaining the LinkedIn listing <https://www.linkedin.com/company/the-college-of-immigration-and-citizenship-consultants-corp>; and
- D. Holding themselves out as the national regulator of immigration or citizenship consultants.

[10] In determining that the interlocutory injunction should be granted, Justice Fuhrer found that there was a serious issue to be tried with respect to, *inter alia*, sections 7(a) and 9(1)(d) of the TMA. As stated in her decision with respect to these provisions:

[69] ...I find it more likely than not, on a balance of probabilities, that ICCRC will be continued under the *College Act* as the federal or national regulator, of immigration consultants and citizenship consultants, under the name College of Immigration and Citizenship Consultants. In the meantime, ICCRC remains the mandated national regulator under its current name. Thus, I find that claims or statements by the Defendants to the effect that ICCRC’s status has been revoked or that it no longer has a federal mandate, and that its members are practising illegally, among other similar statements, seemingly offend paragraph 7(a) which prohibits “false or misleading statement[s] tending to discredit the business, goods or services of a competitor.” To the extent that

CICC holds itself out as the new regulator, by its own claims makes it a competitor of ICCRC. For the reasons explained below. I am persuaded, therefore, that there is a serious issue to be tried.

[...]

[80] In my view, the names in which the Defendants assert rights, described in paragraphs 30 and 31, seemingly fall within the prohibition of paragraph 9(1)(d) and hence, potentially are prohibited by section 11, such that there is a serious issue to be tried. [...]

[81] The names in issue in this matter adopted by CICC are: CICC The College of Immigration and Citizenship Consultants Corp.; CICC – The College of Immigration and Citizenship Consultants; The College of Immigration and Citizenship Consultants; and The College Act. I find there is a serious issue to be tried about whether the names adopted by CICC are “likely to lead to the belief that the associated services have received or are performed under government approval or authority,” notwithstanding CICC’s above mentioned public disclaimer on LinkedIn or asserted intellectual property rights in the names. My finding in this regard is based on the *College Act* (meaning the legislation that received Royal Assent on June 21, 2019 as opposed to the legislative framework proposed by FSCIC/CSIP and Ms. Salloum in 2010 – I find they are not the same or even substantially the same), and the name of the College contained in the *College Act*, coupled with statements such as those reproduced in paragraph 77 above.

[11] On the interlocutory injunction motion, Mr. Dean did not file any evidence or responding record. He was accordingly not permitted to make any substantive submissions on the motion. Mr. Dean indicated only that it was his intention to bring a motion to be removed as a party Defendant.

[12] This motion was filed on July 12, 2021 and a schedule for the motion was set through case management.

[13] The action itself has not otherwise progressed beyond the pleadings stage. Mr. Dean indicates that if his motion is not successful he will bring a motion to amend his statement of defence.

II. Preliminary Evidentiary Issues

A. *The Stephan Affidavit*

[14] The Plaintiff filed a single affidavit [Stephan Affidavit] in response to this motion from a senior investigator at Xpera Risk Mitigation & Investigation. The Stephan Affidavit attaches as exhibits printouts of LinkedIn posts from CICC's LinkedIn page as retrieved from URL links provided by the Plaintiff's counsel. Mr. Stephan includes a table with the URL hyperlinks and lists the date that the posts were available. I note that the LinkedIn page of CICC is no longer available because of the interlocutory injunction order.

[15] As a preliminary matter, Mr. Dean seeks to strike the Stephan Affidavit. He asserts that the information retrieved is also found in the affidavit of another witness (Amandeep Singhera) whose affidavit was filed by the Plaintiff in the internal disciplinary proceeding brought by ICCRC against Mr. Dean. Ms. Salloum sought to file the Singhera Affidavit outside the schedule for filing materials on the interlocutory injunction motion. As the affidavit related to a proceeding other than the interlocutory injunction motion, it was not admitted.

[16] Mr. Dean asserts that the Stephan Affidavit is improper because it includes the same exhibits found in the Singhera Affidavit and is therefore seeking to shield Ms. Singhera from cross-examination. Mr. Dean also contests the authenticity of the exhibits attached to the Stephan

Affidavit on the basis that on the date of Mr. Stephan's cross-examination it was shown that there were some differences with the information retrieved at the URL links when compared to the printed exhibits.

[17] I note that there is no prohibition on two different witnesses attaching the same information to their affidavits. I see no basis to find the Stephan Affidavit inadmissible because the same URL links and printouts attached to the Stephan Affidavit are also found in the Singhera Affidavit.

[18] Further, while the cross-examination revealed some inconsistencies in the information printed from the URL links as found in the exhibits to Mr. Stephan's affidavit, for the most part these differences were minor and could be attributed to photos not printing correctly. The one inconsistency of note was the inclusion of the June 25, 2020 letter in an exhibit of the Stephan Affidavit where the letter did not appear related to the LinkedIn post at that exhibit. Mr. Stephan acknowledged this discrepancy during cross-examination and could not recall why the letter had been included with the post. The same June 25, 2020 letter, however, also appeared in another exhibit of the Stephan Affidavit and was shown to be retrieved from the post found at that exhibit. In my view, there is no basis on the record before me to strike the Stephen Affidavit as inadmissible based on this cross-examination. I conclude that Mr. Stephan was able to visit the URL hyperlinks as provided by Plaintiff's counsel, activate the IP addresses in those hyperlinks and obtain posts made from CICC's LinkedIn page.

[19] I note that the exhibits to Mr. Stephan's affidavit do not bear the date of the posts. Rather, they all bear the date September 3, 2021; the date of the printouts. The time of the posts is noted in the table included in Mr. Stephan's affidavit as being "1 year ago" – i.e., September, 2020. This date was not challenged during cross-examination.

B. *The Dean Affidavits*

[20] For his evidence, Mr. Dean filed over 12,000 pages of motion material, including four of his own affidavits. The affidavits submitted reattach the documentation that was before Justice Fuhrer on the interlocutory injunction motion as well as documentation relating to the internal disciplinary proceeding brought by ICCRC against Mr. Dean and materials from a separate proceeding in this Court (T-1033-20) involving the Attorney General, CICC and Ms. Salloum. Much of this documentation is not relevant to the specific issues on this motion. Mr. Dean seeks to rely on these materials primarily to assert that the Plaintiff has tampered with documents, and to challenge the credibility of ICCRC's affiant on the interlocutory injunction motion, Ms. Kennedy. Neither of these arguments have been made out on this motion.

[21] As a preliminary matter, it bears noting that allegations of document tampering are extremely serious in nature. Such allegations should not be raised lightly and can only succeed where there is significant evidence to support the allegation and where a proper right of response has been given to the accused party. These parameters have not been met here.

[22] In addition to the assertions relating to Mr. Stephan's evidence which have been dealt with above, Mr. Dean makes three further arguments. First, Mr. Dean asserts that there were two

versions of his June 25, 2020 letter submitted through the evidence of Ms. Kennedy on the Plaintiff's interlocutory injunction motion materials – one with CICC letterhead and one without. Second, Mr. Dean asserts that screen shots of CICC's website have been modified within materials filed in the T-1033-20 proceeding to remove an "under development banner". Third, Mr. Dean asserts that CICC's LinkedIn account has been "hacked".

[23] The first argument relates to evidence filed by the Plaintiff on the interlocutory injunction motion for which the Defendants already exercised a right of cross-examination and which has already been considered by this court. By filing Ms. Kennedy's evidence as his own, Mr. Dean does not obtain a right to cross-examine Ms. Kennedy. A right of cross-examination only arises on the opposing party's evidence. The Plaintiff has not filed any evidence from Ms. Kennedy on this motion; there is no renewed right to cross-examine Ms. Kennedy. Further, I note that the only copy of the June 25, 2020 letter filed by the Plaintiff on this motion has CICC letterhead on it. This is the same as the letter attached to the statement of claim. There is no inconsistency with the evidence filed by the Plaintiff on this motion. Nor is there any dispute that Mr. Dean signed a June 25, 2020 letter with the same content as that set out in the letter attached to the statement of claim.

[24] The second argument relates to evidence filed in T-1033-20, which is a separate Federal Court proceeding. There is no basis to challenge that evidence on this motion. While the Court will consider the assertions made by Mr. Dean that CICC's website was "under construction" at the time of his June 25, 2020 letter, there is no basis to opine on the form of the evidence filed in T-1033-20. It is irrelevant to this motion.

[25] The third argument was not significantly pursued in written or oral argument by Mr. Dean. The argument appears to be based on a phone call received by Ms. Salloum. However, there is no direct evidence from Ms. Salloum on the motion. Mr. Dean relies primarily on documents filed on the interlocutory injunction motion. The materials submitted cannot be deciphered and are wholly insufficient to establish the allegation made.

III. Summary Judgment

[26] Rules 213-219 of the *Federal Courts Rules*, SOR/98-106 [*Federal Courts Rules*] govern summary judgment. Rule 215 provides that the Court may grant summary judgment where it is satisfied that there is no genuine issue for trial with respect to a claim or defence.

[27] The test for determining whether there is a genuine issue for trial is not whether a party cannot possibly succeed at trial. Rather, it is whether the case is so doubtful that it does not deserve consideration by the trier of fact at a future trial: *Canmar Foods Ltd v TA Foods Ltd*, 2021 FCA 7 at para 24; *Milano Pizza Ltd v 6034799 Canada Inc*, 2018 FC 1112 [*Milano Pizza*] at para 33.

[28] There will be no genuine issue for trial if there is no legal basis to the claim, or if the judge has the evidence required to fairly and justly adjudicate the dispute: *Gupta v Canada*, 2021 FCA 31 at para 29, citing *Manitoba v Canada* 2015 FCA 57 at para 15; *Hryniak v Mauldin*, 2014 SCC 7 at para 66.

[29] The ultimate burden on a motion for summary judgment rests with the moving party; however, there is an evidentiary burden on a responding party to put forward evidence to show that there is a genuine issue for trial: *Cabral v Canada (Citizenship and Immigration)*, 2016 FC 1040 [*Cabral*] at para 69; aff'd 2018 FCA 4 at para 23; *TPG Technology Consulting Ltd v Canada*, 2013 FCA 183 [*TPG Technology*] at para 4. Responses to motions for summary judgment cannot be based upon what might be adduced as evidence at a later stage of the proceeding. The requirement has been described as necessitating a responding party to “lead trump or risk losing”: *Milano Pizza* at paras 34-35.

[30] Where there are important factual disputes that cannot be resolved without determining issues of witness credibility, a trial is the preferable means for resolution of the dispute, rather than summary judgment: *Milano Pizza* at para 37; *TPG Technology* at para 3; *Canada v Bezan*, 2021 FC 397 [*Bezan*] at para 47. A judge needs to take a “hard look” at the merits of the case to decide if credibility needs to be resolved: *Milano Pizza* at para 39. Issues of credibility arise when an issue must be decided by selecting the evidence of one witness over that of another or if the credibility of a witness must be assessed through cross-examination to determine if the witness’ evidence can be believed: *Bezan* at para 47.

IV. Issue

[31] The sole issue raised by this motion is whether there is a genuine issue for trial against Mr. Dean.

V. Is there a Genuine Issue for Trial Against Mr. Dean

[32] An analysis of whether there is a genuine issue for trial must be considered in the context of the pleadings as filed: *Cabral* at para 70. In the statement of claim, the Plaintiff makes the following specific allegations against Mr. Dean:

21. On or about May 14, 2020, Mr. Dean became Chief Executive Officer of the Defendant CICC. Ms. Salloum became or remained Chief Operating Officer.

...

34. On June 25, 2020, Mr. Dean sent a letter to members of the Plaintiff under the letterhead of “The College of Immigration and Citizenship Consultants Corp.”. A copy of that letter is attached at Schedule D.

35. In the letter Mr. Dean solicits members of ICCRC to join CICC as “members”, and promotes CICC as a competing regulatory body to ICCRC. As a business corporation incorporated under the CBCA, CICC does not have members.

...

37. On June 28, 2020, ICCRC wrote to Mr. Dean complaining of the false and misleading statements on the Defendants’ website and associated social media pages, and asking that the website be shut down and the false statements cease. ICCRC also published a warning to its members advising them that the statements made by the Defendants were false.

38. The Defendants did not shut down the website and associated social media pages or cease making the false statements [...]

[33] The Plaintiff alleges that Mr. Dean is individually liable as he acted “deliberately, wilfully, and knowingly in concert with CICC” in breach of the TMA.

[34] An individual of a company may be personally liable for the acts he takes where it can be shown that such acts were either independent of the direction of the company or of a deliberate, wilful and knowing pursuit of a course of conduct that was likely to constitute infringement or reflected an indifference to the risk of it: *Mentmore Manufacturing Co Ltd v National Merchandising Manufacturing Co Ltd*, 1978 CanLII 2037 at pp. 204-205 (FCA). A plaintiff alleging that a principal employee is personally liable must show that the principal employee carried out the activities that led to the alleged violation: *Fibremann Inc v Rocky Mountain Spring (Icewater 02) Inc*, 2005 FC 977 at para 32; *Krav Maga Enterprises, LLC v Edge Combat Fitness Inc*, 2006 FC 112 at para 26.

[35] In its submissions on the motion, the Plaintiff narrowed its allegations against Mr. Dean to sections 7(a) and 9(1)(d) of the TMA.

[36] Section 7(a) of the TMA states that no person shall “make a false or misleading statement tending to discredit the business, goods or services of a competitor”. The essential elements required to establish a claim under section 7(a) of the TMA were set out in *S. & S. Industries Inc. v Rowell*, [1966] SCR 419 at page 424, namely that there must be established in evidence: 1) a false and misleading statement (relating to an intellectual property right); 2) tending to discredit the business wares or services of a competitor; and 3) resulting damages. For a successful cause of action under section 7(a) of the TMA there must be damage to the business of the competitor and a causal connection between the false and misleading statement and the asserted damage: *E. Mishan & Sons, Inc v Supertek Canada Inc*, 2016 FC 986 at paras 28 and 29.

[37] Section 9(1)(d) provides that “no person shall adopt in connection with a business, as a trademark or otherwise, any mark consisting of, or so nearly resembling as to be likely mistaken for ... any word or symbol likely to lead to the belief that the ... services in association with which it is used have received... or are ... performed under... governmental patronage, approval or authority.” The applicable test under section 9(1)(d) is whether the impugned mark is likely to lead to the belief that the associated services have received or are performed under government approval or authority: *College of Dietitians of Alberta v 3393291 Canada Inc (Canadian School of Natural Nutrition)*, 2015 FC 449 at para 66; *College of Traditional Chinese Medicine Practitioners and Acupuncturists of British Columbia v Council of Natural Medicine College of Canada*, 2009 FC 1110 at para 224.

[38] The Plaintiff asserts that Mr. Dean’s use of the name “College of Immigration and Citizenship Consultants” in his letter from June 25, 2020, either in his individual capacity, or as a wilful and deliberate act as the CEO and Managing Director of CICC, is contrary to section 9(1)(d) of the TMA and is a false and misleading statement that the corporate Defendant is the national regulator, contrary to section 7(a) of the TMA.

[39] In the June 25, 2020 letter, Mr. Dean as CEO and Managing Director of CICC, provides “notice” to “all licensed Canadian Immigration Consultants with the existing regulator” to come to CICC to register and to transition their membership to the “College”. The letter suggests that CICC will likely become the new regulator.

[40] The Plaintiff contends that further violations of sections 7(a) and 9(1)(d) were made through a June 22, 2020 letter to MP Peter Kent signed by Mr. Dean as CEO of CICC, in which Mr. Dean refers to CICC as the “National College for Immigration Consultants of Canada, with more than 6,700 members”. In this letter, Mr. Dean states that “It is clear by now that ICCRC will be not converted into the new College of Immigration and Citizenship Consultants but has been in a state of being out of compliance with the new law and as a regulator as of October 2019” and solicits approval for a transfer of the membership from ICCRC to CICC. There is also a July 17, 2020 email from Mr. Dean to the Minister of Immigration, Refugees and Citizenship, Marco Mendicino, in which Mr. Dear refers to himself as the CEO and Managing Director of the “Constituted College of Immigration and Citizenship Consultants Corp.” In this email, Mr. Dean makes certain assertions about ICCRC’s conduct and states that ICCRC is referring to itself as the “legitimate” regulator of Canadian Immigration Consultants when “it has lawfully been extinguished by its own inaction”.

[41] Mr. Dean acknowledges that he wrote and sent the letter to Mr. Kent and email to Mr. Mendicino, and that he wrote the June 25, 2020 letter. However, he asserts that the June 25, 2020 letter was never sent to any members of ICCRC and even if it was posted on CICC’s LinkedIn page or website, it was posted without his knowledge and did not have any impact on ICCRC’s membership. Mr. Dean asserts that he did not intend to transmit the June 25, 2020 letter until CICC was designated as the new regulator. He further contends that the correspondence to Mr. Kent and Mr. Mendicino is covered by “lobbying privilege”, although no legal support is provided for this assertion.

[42] Having considered the content of the June 25, 2020 letter and the correspondence to Mr. Kent and Mr. Mendicino in light of the designation of ICCRC as the regulator and now the College, and upon considering the state of the evidence relating to the communication of this correspondence, I am unable to conclude that the allegations against Mr. Dean are so doubtful that they should not proceed forward to trial. I note that the allegations under section 7(a) and 9(1)(d) will depend on the role of Mr. Dean within CICC, the transmission of the June 25, 2020 letter to members of ICCRC and for section 7(a) of the TMA, the impact of such communication. The evidence I have in respect of these matters is not complete and it is clear that an assessment of the credibility of witnesses will play an important role in the proper determination of these factors.

[43] I agree with the Plaintiff that the evidence relating to the role of Mr. Dean at CICC is inadequate.

[44] There is evidence of a written announcement of Mr. Dean's appointment as CEO and Managing Director of CICC from May 14, 2020 that was posted on CICC's LinkedIn page and a job announcement for a "Manager, Data and Information Management" for CICC, signed by Mr. Dean as CEO-Managing Director of CICC. The Stephan Affidavit attaches additional LinkedIn posts referring to Mr. Dean as the "CEO and Managing director of the new College CICC", including a post indicating that ICCRC is not entitled to any transition without the approval of Mr. Dean.

[45] However, Mr. Dean asserts that he never assumed the role of CEO or Managing Director of CICC. He refers to his position with CICC as “CEO/Managing Director in waiting” on the basis that that his role depended on what the Minister would decide with respect to the entity that would become the new regulator. He refers to a letter from Ms. Salloum dated December 8, 2020 in which she states that Mr. Dean’s position was voluntary and that he did not receive any remuneration. He therefore asserts that he had no authority to direct any actions on behalf of CICC.

[46] There is also the correspondence to Mr. Kent and the email to Mr. Mendicino, which Mr. Dean admits to sending and in which he refers to himself as the CEO and Managing Director of CICC. Mr. Dean asserts that these were submitted for lobbying purposes and do not establish that he occupied a formal, paid position.

[47] As part of the Plaintiff’s Direction to Attend for the cross-examination of Mr. Dean, Mr. Dean was requested to provide documentation relating to his position with CICC, including his correspondence with Ms. Salloum regarding the offer and acceptance of his position and correspondence relating to the May 14, 2020 announcement. Mr. Dean was also requested to provide all correspondence with individuals enquiring about the relationship between CICC and the College or the relationship between CICC and ICCRC, and correspondence with individuals wishing to be members of CICC. Mr. Dean refused the requests, stating that such productions should be left for discovery. It is likely that such productions could provide greater illumination on Mr. Dean’s status.

[48] Mr. Dean asserts that his negotiations regarding his role within CICC were done orally, through discussions with Ms. Salloum. The details of these discussions are not clear. Testimony from Ms. Salloum and discovery of documents will be necessary to obtain all of the facts needed to evaluate Mr. Dean's role within CICC properly.

[49] As a former member of ICCRC, I agree with the Plaintiff that Mr. Dean would have insight as to the role of the Plaintiff in the regulation of immigration and citizenship consultants and would have been drafting correspondence to members of ICCRC and to Mr. Kent and Mr. Mendicino in an informed way. I also agree that this communication was intended to promote CICC as a competing regulatory body to ICCRC and to suggest that CICC should become the College.

[50] Mr. Dean states that the June 25, 2020 letter was never properly posted on the CICC website as it was under construction at the time, or if it was posted, it was posted without his knowledge or intention. Mr. Dean states that he does not own and was not involved in the creation of CICC's website and did not have control over what was posted on CICC's website or LinkedIn page. He refers to documentation relating to the formation of the website and Ms. Salloum's response to the June 25, 2020 letter as support for this position. No direct evidence from Ms. Salloum was filed on the motion.

[51] Mr. Dean states that it was his understanding that any letters he prepared were draft letters that were "on lock down in the CICC website" until CICC was approved as the new regulator. He asserts that they were inadvertently released because of a godaddy.com glitch.

However, there is no evidence from GoDaddy on this motion nor was there any such evidence submitted on the interlocutory injunction motion when this glitch was first raised. The general newspaper articles provided by Mr. Dean on GoDaddy, which appear to relate to a data breach notice that was filed with the California Attorney General's Office relating to a security incident from 2019, do not address the assertions made on this motion.

[52] The Plaintiff has submitted evidence indicating that the letter was accessible on CICC's LinkedIn page. Mr. Dean asserts that he was not responsible for the content on the LinkedIn page. He further states that it is his belief that none of the followers on the CICC LinkedIn account were ICCRC members or any of his contacts.

[53] The Plaintiff has not submitted evidence on this motion as to who may have seen the June 25, 2020 letter as posted on CICC's LinkedIn page, and possibly its website. However, a June 28, 2020 post from the CICC "Membership Registrar" was included with the Stephan Affidavit. The post indicated that CICC obtained 1878 members over the June 26/27, 2020 weekend. This timing, in my view, suggests that there may have been some impact on membership as a result of the June 25, 2020 letter.

[54] Mr. Dean refers to the cross-examination of Ms. Kennedy from the interlocutory injunction motion where she states that ICCRC received emails and phone calls about members receiving a letter in which CICC asserted that they were the College. Mr. Dean asserts that Ms. Kennedy was unable to confirm that the June 25, 2020 letter was the letter received by ICCRC members or that he sent the letter. The evidence from Ms. Kennedy on the receipt of the

June 25, 2020 letter and the evidence on the website was considered by the Court on the interlocutory injunction motion as follows:

[56] I note an issue regarding CICC's website that was raised during the cross-examination of both Ms. Kennedy and Ms. Salloum. Ms. Kennedy was asked a series of questions regarding the late June 2020 letters from CICC described in her affidavit and summarized in paragraphs 36-37 above. Regarding the June 25, 2020 letter commencing "NOTICE IS HEREBY GIVEN," Ms. Kennedy indicated that she definitely remembers reading it on the [CICC] website and she believes it might have been in the that Dropbox as well (the links to which were provided in the June 25 email inquiry from the ICCRC member, described in paragraph 35 above). She further testified clicking on the Dropbox link the business day following June 25th. Ms. Kennedy was not asked specifically if she also clicked on the CICC website link then. She testified, however, that she became aware that somebody was holding out as the college when she received a complaint about it and that she checked the website more than once, between July and August, when ICCRC received most of the complaints.

[57] Ms. Salloum described a GoDaddy glitch that made the website available, from June 29 to July 10, at a time when it was not intended to be publically accessible. Letters were posted when the private website was under construction. No evidence was adduced on the motion, however, from a GoDaddy.com representative confirming the glitch and that the Defendants' website was impacted. Further, there was no mention in the June 29, 2020 response to the demand letter that the website was private and under construction nor in the Defendants' Statement of Defence and Counterclaim.

[58] Nonetheless, even had the alleged glitch occurred and even if the website was private at that time but for the glitch, very similar information appears in the LinkedIn excerpts, summarized in paragraphs 33-34 above...

[55] It is clear that further evidence and live testimony on the transmission and impact of the June 25, 2020 letter on ICCRC members will be necessary and that the credibility of witnesses will play a role in the proper determination of the issues.

[56] Given the state of the evidence before me, I cannot conclude that there is no genuine issue for trial with respect to sections 7(a) and 9(1)(d) of the TMA.

VI. Other Arguments

[57] For completeness, I note that Mr. Dean included two additional arguments in his written submissions that were not part of his notice of motion. While Mr. Dean did not seek leave to raise these new arguments, I will nonetheless note that neither of these arguments can succeed. Mr. Dean's argument that he should be removed from the proceeding because of jurisdiction has no merit. Mr. Dean has already attorned to the jurisdiction of the Court by filing a statement of defence and his activities in Canada relating to CICC create a nexus sufficient to establish jurisdiction in Canada. Further, Mr. Dean has not established how the *Charter of Rights and Freedoms*, the US Constitution or his asserted right to free speech negate the alleged unauthorized activities under sections 7(a) and 9(1)(d) of the TMA. These alternative arguments cannot succeed on this motion.

VII. Costs

[58] The Plaintiff argues that elevated costs should be awarded in its favour for this motion as serious, unsubstantiated allegations of evidence tampering were made against its client and counsel. The Plaintiff refers the Court to the decision in *Gordon v Canada*, 2019 FC 1348 [*Gordon*] as support for its submission.

[59] In *Gordon*, the Court found that enhanced costs against a self-represented litigant were justified because of repeated unproven accusations of dishonesty, malice and bad faith and consistent uncooperative conduct by the plaintiff throughout the action and the trial.

[60] The Plaintiff requests that it be awarded costs for two counsel, on a solicitor client basis, in any event of the cause, or for two counsel on the highest scale under column V of the Tariff. The Plaintiff asserts that this likens the award to that made in *Gordon*.

[61] On this motion, Mr. Dean raises several issues regarding inconsistencies with evidence filed by the Plaintiff. While I do not disagree that inconsistencies in the evidence are matters that a party may wish to address through cross-examination, as noted above, the issues raised were, for the most part, misplaced on this motion as they related to documents filed by the Plaintiff on other motions or in other proceedings. Caution must be taken before accusing parties of serious misconduct and obstruction of evidence, particularly where the party accused has not been given the proper right to address any questions relating to the evidence in the context in which it was filed. While I do not consider the conduct on this motion to rise to the level discussed in *Gordon*, which involved repeated accusations over the course of the action and trial amidst several warnings from the Court, the accusations made in this case are serious in nature and there must be some cost consequences flowing from this.

[62] The level of costs however, must also be balanced against other observations regarding the conduct of both parties on the motion. I note that a preliminary case management conference was held to try to streamline the materials filed on the motion and to assist the parties in

resolving preliminary issues relating to attacks on the evidence. Despite these efforts and assurances made to the Court that the parties would make efforts to try to streamline and resolve issues, the parties did not appear to engage in any further discussions to advance matters. This lack of co-operation falls equally on both parties and in my view, contributed to the escalation of issues between the parties and the incongruous evidence filed. This not only served to exacerbate matters, but also detracted from the efficient adjudication of the merits of the motion.

[63] While I do not disagree that costs should be awarded to the Plaintiff in any event of the cause, the award will be for one counsel and will be set at the top end of column III of the Tariff.

ORDER IN T-834-20

THIS COURT ORDERS that:

1. Mr. Dean's motion is dismissed.
2. Costs of the motion are awarded to the Plaintiff at the top end of column III of the Tariff, in any event of the cause.

"Angela Furlanetto"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-834-20

STYLE OF CAUSE: IMMIGRATION CONSULTANTS OF CANADA
REGULATORY COUNCIL v CICC THE COLLEGE
OF IMMIGRATION AND CITIZENSHIP
CONSULTANTS CORP., NUHA NANCY SALLOUM,
AND, RYAN DEAN

AND BETWEEN: CICC THE COLLEGE OF IMMIGRATION AND
CITIZENSHIP CONSULTANTS CORP. AND NANCY
SALLOUM v HER MAJESTY THE QUEEN,, IN
RIGHT OF CANADA

PLACE OF HEARING: HEARD BY VIDEOCONFERENCE

DATE OF HEARING: OCTOBER 7, 2021

ORDER AND REASONS: FURLANETTO J.

DATED: DECEMBER 16, 2021

APPEARANCES:

Gervas Wall
Gary Daniel
Michelle Noonan

FOR THE PLAINTIFF

Ryan Dean

FOR THE DEFENDANT RYAN DEAN
(ON HIS OWN BEHALF)

SOLICITORS OF RECORD:

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FOR THE PLAINTIFF