Federal Court  Cour fédérale

Date: 20091105

Docket: T-1425-09

Citation: 2009 FC 1135

Ottawa, Ontario, November 5, 2009

PRESENT: The Honourable Mr. Justice Harrington

BETWEEN:

KATARINA ONUSCHAK

Applicant

and

CANADIAN SOCIETY OF IMMIGRATION CONSULTANTS AND THE BOARD OF DIRECTORS OF CANADIAN SOCIETY OF IMMIGRATION CONSULTANTS

Respondents

REASONS FOR ORDER AND ORDER

[1] Ms. Onuschak is a member of the respondent Society and a would-be director. She has applied to this Court for various declarations pertaining to her eligibility to run for office and as to the validity of the nomination and election procedures currently in place and other relief. Although the parties are of the view that this Court has jurisdiction, they are aware that this is a statutory court

which may only exercise the jurisdiction conferred upon it by Parliament. They have jointly asked for a ruling on jurisdiction now. The issue is whether the Society is a federal board, commission or other tribunal within the meaning of the *Federal Courts Act* and, if so, whether the activities in question had a public aspect or connotation to them or whether they were merely incidental to the Society's status as a corporation incorporated under the *Canada Corporations Act*.

[2] The Society is a corporation without share capital. Regulations pursuant to the *Immigration and Refugee Protection Act* (IRPA) provide that apart from lawyers and Quebec notaries, only members of the Society may charge a fee for immigration services and have standing to appear before the Immigration and Refugee Board. Ms. Onuschak is currently under investigation by the Society. Depending on the outcome she could be expelled and lose her means of livelihood.

HISTORY OF THE FEDERAL COURT

[3] The Federal Court has been plagued with jurisdictional issues ever since it was established by Parliament. Indeed, these issues arise from the very fact that the Court was established by Parliament rather than by a provincial legislature. The establishment and organization of courts falls within provincial jurisdiction under section 92(14) of the *Constitution Act, 1867*. However, by way of exception, section 101 authorizes Parliament to establish a general court of appeal for Canada, which it has done by creating the Supreme Court of Canada in 1875, as well as additional courts for the better administration of the laws of Canada. The first such court was the Exchequer Court which was replaced by what are now the Federal Court and the Federal Court of Appeal. The Federal Court of Canada, Trial Division, and the Federal Court of Appeal, as they were then known, were

established by Act of Parliament in 1970. There are two other section 101 courts, the Court Martial Appeal Court and the Tax Court of Canada.

[4] It had been widely assumed that courts established for the better administration of the laws of Canada had jurisdiction if Parliament confided jurisdiction upon them in an area within federal legislative competence even if there was no operative, applicable federal law to administer.

[5] However, following a series of Supreme Court decisions, including *Canadian Pacific Ltd. v. Quebec North Shore Paper Co.* , [1977] 2 S.C.R. 1054, *McNamara Construction (Western) Ltd. v. The Queen*, [1977] 2 S.C.R. 654 and *ITO - International Terminal Operators Ltd. v. Miida Electronics Inc.*, [1986] 1 S.C.R. 752, it is now clear that the Federal Court only has jurisdiction if:

a. The dispute pertains to a federal legislative class of subject;
b. There is actual operative applicable federal law, be it statute, regulation or common law, pertaining to the pith and substance of the litigation; and
c. The administration of that federal law has been confided to it.

[6] The situation was summarized by Chief Justice Jackett in *Associated Metals & Minerals Corp. v. The Evie W*, [1978] 2 F.C. 710 (F.C.A.), aff'd [1980] 2 S.C.R. 322. He said at paragraph 8:

> To illustrate what I mean, reference might be made to the 1976 and 1977 decisions, viz:
>
> i. In the Quebec North Shore Paper case, the claimant was invoking the general law of contract prima facie applicable to all persons ("provincial" law) in

> the Federal Court on the view that pro tanto such law could be "altered" by a federal law in relation to interprovincial or international transportation although there was no existing federal law on which it could found its claim; and
>
> ii. In the McNamara case, Her Majesty in right of Canada was invoking the general law of contract prima facie applicable to all persons ("provincial" law)[10] in the Federal Court on the view that "pro tanto" such law could be "altered" by a federal law in relation to federal government operations[11] although there was no existing federal law on which She could found her claim.
>
> In both cases,
>
> (a) the claimant was basing its claim on the general law of property and civil rights prima facie applicable to all persons, which was "provincial" law that could not, as such, be altered by Parliament, and
>
> (b) the claimant was unable to base its claim on any existing federal law although, at least arguably, Parliament could have enacted a special law in relation to a federal subject matter that would have prevailed over the provincial law and have made it, to that extent, inoperative

[7] In Ms. Onuschak's case, the Federal Court, under section 18 of the *Federal Courts Act*, has exclusive original jurisdiction to judicially review the decisions of a federal board, commission or other tribunal, with the exception of those boards whose decisions are judicially reviewed in first instance by the Federal Court of Appeal in accordance to section 28 of the Act. "Federal board, commission or other tribunal" is defined in section 2 of the Act:

"federal board, commission or other tribunal" means any body, person or persons having, exercising or purporting to exercise jurisdiction or powers conferred by or under an Act of Parliament or by or under an	« office fédéral » Conseil, bureau, commission ou autre organisme, ou personne ou groupe de personnes, ayant, exerçant ou censé exercer une compétence ou des pouvoirs prévus par une loi fédérale ou

order made pursuant to a prerogative of the Crown, other than the Tax Court of Canada or any of its judges, any such body constituted or established by or under a law of a province or any such person or persons appointed under or in accordance with a law of a province or under section 96 of the *Constitution Act, 1867*	par une ordonnance prise en vertu d'une prérogative royale, à l'exclusion de la Cour canadienne de l'impôt et ses juges, d'un organisme constitué sous le régime d'une loi provinciale ou d'une personne ou d'un groupe de personnes nommées aux termes d'une loi provinciale ou de l'article 96 de la *Loi constitutionnelle de 1867*.

THE DISPUTE

[8] The Society is a non-government organization, incorporated without share capital under the *Canada Corporations Act*. By regulation under the *Immigration and Refugee Protection Act*, members of the Society were recognized as "authorized representatives" who may appear in immigration proceedings and charge for their services. Sections 2 and 13.1(1) of the Regulations (IRPR) in effect since 2004 provide:

2. "authorized representative" means a member in good standing of a bar of a province, the Chambre des notaires du Québec or the Canadian Society of Immigration Consultants incorporated under Part II of the *Canada Corporations Act* on October 8, 2003.	2. « représentant autorisé » Membre en règle du barreau d'une province, de la Chambre des notaires du Québec ou de la Société canadienne de consultants en immigration constituée aux termes de la partie II de la *Loi sur les corporations canadiennes* le 8 octobre 2003.
13.1 (1) Subject to subsection (2), no person who is not an authorized representative may, for a fee, represent, advise or consult with a person who is the subject of a proceeding or	13.1 (1) Sous réserve du paragraphe (2), il est interdit à quiconque n'est pas un représentant autorisé de représenter une personne dans toute affaire devant le ministre,

application before the Minister, an officer or the Board.	l'agent ou la Commission, ou de faire office de conseil, contre rémunération.

[9] Ms. Onuschak is currently under investigation by the Society for possible breaches of its Code of Discipline. Depending on the results of those investigations, her membership could be rescinded, which would have the result of depriving her from earning a living as an immigration consultant. If, as and when this dispute comes to that stage undoubtedly the Society would be acting as a federal board, commission or other tribunal. In *Jackson v. Canada (Attorney General)* (1997), 141 F.T.R. 1, Mr. Justice Rothstein, as he then was, had to determine whether the Canadian Wheat Board was acting as such in the granting of licenses. He held that it was. He stated at paragraphs 10 and 11:

> [10] Under these provisions, the Canadian Wheat Board is granted a significant regulatory power. The Board is to engage in the granting of export licences for the purposes of carrying out government policy allowing for the export of wheat from Canada by persons other than the Board if the conditions specified in section 14 of the regulations are satisfied.
>
> [11] A regulatory power such as the granting of licences is by nature public. There can be no doubt that when the Board is carrying out the licensing power, it is not exercising the general management powers of an ordinary corporation. No ordinary corporation has the power to regulate. Regulatory power is one of the hallmarks of public, as opposed to private commercial activity.

[10] However the issues in this application may be one step removed from that regulatory power. The Court queried its own jurisdiction at the outset when, within the context of this application for judicial review, Ms. Onuschak sought an injunction to prevent an election of the Board of Directors. The injunction was not granted and the election has taken place. The application for judicial review

was put under special management by Chief Justice Lutfy, who is acting as case manager. The parties have now asked, as a preliminary determination of a point of law, whether the Society is a federal board, commission or other tribunal, such that the Federal Court has jurisdiction to review the following:

a. Are the restrictions on nomination promulgated by the Nominating Committee invalid *ultra vires* the Nominating Committee or the Board of Directors, because they are inconsistent with the by-laws?
b. Does the Board of Directors have the authority to impose preconditions on a member of the Society's right to participate in meetings of the corporation?

THE REGULATION OF IMMIGRATION CONSULTANTS

[11] Until recently immigration consultants were not regulated. While many immigration consultants were both competent and honourable, unfortunately there were others who were unqualified, unscrupulous and who preyed on vulnerable members of society. This lack of regulation was widely recognized as a serious problem by the Federal Government, the Royal Canadian Mounted Police, the Law Reform Commission of Canada, the Canadian Bar Association, provincial law societies and immigration consultants' organizations and public interest groups.

[12] The question arose whether the Federal Government was constitutionally capable of regulating these consultants. As a general proposition the regulation of professions is a matter of property and civil rights, an area of provincial jurisdiction. Nevertheless, in *Law Society of British Columbia v. Mangat*, 2001 SCC 67, [2001] 3 S.C.R. 113, the Supreme Court held that Parliament's

jurisdiction over naturalization and aliens under section 91(25) of the *Constitution Act, 1867* included the power to establish tribunals such as the Immigration and Refugee Board, from which flows the further power to grant rights of appearance before such tribunals. More recently in *Law Society of Upper Canada v. Canada (Minister of Citizenship and Immigration)*, 2008 FCA 243, [2009] 2 F.C.R. 466, the Federal Court of Appeal upheld the regulatory scheme currently in place.

[13] There were a number of ways in which immigration consultants could be subjected to regulation. One would be by the creation of a specially constituted federal board, such as was the case in the United Kingdom. Another would be by incorporating a self-regulating organization under a special statute, and a third would be the establishment of an arm's length organization incorporated under the *Canada Corporations Act* to which regulatory power would be sub-delegated. It was this third option which was recommended to the Minister of Citizenship and Immigration by an Advisory Committee on Regulating Immigration Consultants. This non-share capital corporation would have as its object and sole purpose the regulation of immigration consultants. Such a corporation would regulate its membership by way of, among other things, a code of conduct, a complaint and discipline mechanism, liability insurance, a compensation fund, the development and provision of a bilingual service to the public and a continuing national education program. The Advisory Committee does not appear to have directed its mind to the superintending power of courts by way of judicial review.

[14] Like all corporations, it would also need to lease office space, hire personal, operate bank accounts and the like.

[15] In accordance with the Advisory Committee recommendations, the Canadian Society of Immigration Consultants / Société canadienne de consultants en immigration was incorporated by letters patent under the *Canada Corporations Act* on 8 October 2003. It had nine stated purposes, most of which were stated above. They really boil down to one:

> To regulate in the public interest eligible persons who are members of the Corporation and advise or represent individuals, groups and entities in the Canadian immigration process ("Immigration Consultants"), as determined in accordance with the policies and procedures published by the corporation from time to time.

[16] It was provided with seed money from the Federal Government by way of an Immigration Consultants Program Contribution Agreement. The agreement referred to section 91 of the *Immigration and Refugee Protection Act* (*IRPA*) which states that:

91. The regulations may govern who may or may not represent, advise or consult with a person who is the subject of a proceeding or application before the Minister, an officer or the Board.	91. Les règlements peuvent prévoir qui peut ou ne peut représenter une personne, dans toute affaire devant le ministre, l'agent ou la Commission, ou faire office de conseil.

[17] The object of the funding was to create a self-governing body for the regulation of immigration consultants, which, it was hoped, would enhance public confidence, preserve the integrity of the immigration program and protect vulnerable clients by providing them a recourse mechanism in instances where they had been given inappropriate advice. It was stated that the establishment of this organization, coupled with the passing of a regulation calling upon the

Government of Canada to only deal with consultants who were members in good standing of the Society, would help put unscrupulous consultants out of business. The Society promised to "establish its infrastructure and develop membership standards, a code of conduct, a complaint and discipline mechanism, education and training programs, will set up a Professional Errors and Omission Insurance for their members." There was also reference to continuing education.

[18] In addition the Society was subjected to a "Results-based Management and Accountability Framework" (RMAF) which was being developed within government for policies, programs or initiatives "whether managed within the boundaries of a single department or agency or involving external partnerships. They are consistent with the principles of modern public sector management…"

[19] In exchange, the Governor in Council amended the IRPR to add sections 2 and 13.1, which provide the mechanism by which members of the Society, along with members of a provincial bar or the Chambre des notaires du Québec, are given exclusive privileges to represent paying clients in immigration proceedings.

THE CURRENT DISPUTE

[20] True to its word, the Society has, through by-laws and otherwise, developed policies, programs and initiatives which have as their sole goal the regulation of its membership in the public interest.

[21] Ms. Onuschak is currently in a spat with the Society and its Board of directors with respect to nomination and election procedures which purport to make her ineligible to run for office because she is the subject of a current investigation. Certain electronic-only meetings that were held are alleged to be contrary to the Society's by-laws. Among other things she seeks a declaration that the current complaints and investigation procedures of the Society are illegal in that they can and have been used to prevent the free and fair election of board members.

THE POSITION OF THE PARTIES

[22] Although the Society disagrees with the merits of Ms. Onuschak's application for judicial review and asserts that at least part, if not all, of the application is not yet justiciable in that the investigation has not been completed, it agrees that this Court has jurisdiction over all aspects of the dispute, including those that at first glance are matters pertaining to the internal organization of a federally incorporated corporation. Only Parliament may give the Federal Court jurisdiction, and it certainly has not given the Court jurisdiction over federally incorporated bodies as such. The Courts referred to in the *Canada Corporations Act* are the superior courts of the various provinces and territories. Section 17(6) of the *Federal Courts Act* provides:

If an Act of Parliament confers jurisdiction in respect of a matter on a court constituted or established by or under a law of a province, the Federal Court has no jurisdiction to entertain any proceeding in respect of the same matter unless the Act expressly confers that jurisdiction on that court.	[La Cour fédérale] n'a pas compétence dans les cas où une loi fédérale donne compétence à un tribunal constitué ou maintenu sous le régime d'une loi provinciale sans prévoir expressément la compétence de la Cour fédérale.

On the other hand, subject to the exceptions in section 28 of the Act, Parliament has given this Court exclusive original jurisdiction to review decisions of federal boards, commissions or other tribunals.

[23] It has been well established that a non-government organization may nevertheless be a federal board or tribunal for some purposes, but not for others. The authorities were thoroughly reviewed by Madam Justice Mactavish in *DRL Vacations Ltd. v. Halifax Port Authority*, 2005 FC 860, [2006] 3 F.C.R. 516, which led her to this conclusion at paragraph 48:

> From this review of the jurisprudence, the following principles can be distilled:
>
> 1. The phrase "powers conferred by or under an Act of Parliament" found in the definition of a "federal board, commission or other tribunal" in subsection 2(1) of the *Federal Courts Act* is "particularly broad" and should be given a liberal interpretation: *Gestion Complexe Cousineau (1989) Inc.* [*Gestion Complexe Cousineau (1989) Inc. v. Canada (Minister of Public Works and Government Services)*, [1995] 2 F.C. 694 (C.A.)];
> 2. The "powers" referred to in subsection 2(1) of the *Federal Courts Act* are not confined to those powers that have to be exercised on a judicial or quasi-judicial basis. However, the phrase "jurisdiction or powers" refers to jurisdiction or powers of a public character: *Thomas W. Wilcox* [*Thomas W. Wilcox v. Canadian Broadcasting Corporation*, [1980] 1 F.C. 326 (T.D)];
> 3. The powers referred to in subsection 2(1) do not include the private powers exercisable by an ordinary corporation created under a federal statute which are merely incidents of its legal personality or authorized business: *Thomas W. Wilcox*;
> 4. Although the character of the institution is significant to the analysis, it is the character of the powers being exercised that determines whether the decision maker is a federal board, commission or other tribunal for the purposes of section 18.1 of the *Federal Courts Act*: *Aeric* [*Aeric Inc. v. Canada Post Corporation*, [1985] 1 F.C. 127 (C.A.)];
> 5. The fact that an institution was created to be at arm's length from the government, the discretion conferred on the institution

to manage its business, and the government's lack of control over the finances of the institution are all indicators that the institution is not a "federal board, commission or other tribunal": *Toronto Independent Dance Enterprise* [*Toronto Independent Dance Enterprise v. Canada Council*, [1989] 3 F.C. 516 (T.D.)];

6. The fact that the institution was created by government is not, by itself, determinative of the question: *Toronto Independent Dance Enterprise*;
7. The mere exercise of statutory powers alone is not sufficient to bring an institution under subsection 2(1) of the *Federal Courts Act*. All of the circumstances of the case have to be considered in order to determine whether, in exercising the powers in issue, the institution was acting as a "federal board, commission or other tribunal": *Cairns* [*Cairns v. Farm Credit Corp.*, [1992] 2 F.C. 115 (T.D.)];
8. While an organization may be a "federal board, commission or other tribunal" for some purposes, it is not necessarily so for all purposes. In determining whether an organization is a "federal board, commission or other tribunal" in a given situation, it is necessary to have regard to the nature of the powers being exercised: *Jackson* [*Jackson v. Canada (Attorney General)* (1997), 141 F.T.R. 1].

DISCUSSION

[24] There can be little doubt that this Court would have jurisdiction to judicially review a decision of the Society depriving Ms. Onuschak of membership therein, or terminating her membership. The effect of such a decision would be to prevent Ms. Onuschak from representing paid clients in federal immigration proceedings. The Society derives its authority in this regard from section 91 of IRPA and section 13.1 of IRPR. When exercising that authority, the Society is clearly “exercising jurisdiction or powers conferred by or under an Act of Parliament” – and therefore is federal board, commission, or tribunal for those purposes.

[25] The decision of Mr. Justice Rouleau in the *Toronto Independent Dance Enterprise* case is, in my view, distinguishable. The issue there was whether the Canada Council, which was empowered to distribute public funds to various organizations owed a duty of fairness to potential recipients. Mr. Justice Rouleau leaned to the proposition that the Council was not a federal board as it was intended to be at arm's length from the government which had a lack of control over distribution of the funding which was in the absolute discretion of the Council. In this case, the funding received by the Society was in the form of seed money. It does not distribute public funds. It regulates a federal profession in accordance with Regulations promulgated under IRPA.

[26] Although the Regulation of a profession in a general sense falls upon the provinces, if the very pith and substance of the profession falls within a federal field such as aliens, naturalization and immigration, Parliament has regulatory jurisdiction to determine who may act as agent, represent people and have standing before federal bodies (*Mangat*, above). This is consistent with holdings that although a contract of sale or a contract of insurance, without more, are matters of property and civil rights, the sale of a ship is federal (*Antares Shipping Corp. v. The Capricorn et al*, [1980] 1 S.C.R. 553, as is marine insurance (*Zavarovalna Skupnost Triglav v. Terrasses Jewellers Inc.*, [1983] 1 S.C.R. 283.)

[27] While some decisions of the Society would not be subject to judicial review such as a decision with respect to the leasing of its office premises, in this case internal management cannot be separated from the only purpose for which the Society exists, the regulation of immigration consultants. The elections and operating by-laws bear directly upon the Society's activities. One of

the issues in dispute is the tying in of continuing education programs with eligibility to run for office.

[28] The follow-up to *Quebec North Shore*, above, was *Quebec and Ontario Transportation Limited v. The Ship Incan St. Laurent et al*, [1979] 2 F.C. 834, affirmed [1980] 2 S.C.R. 242. In speaking for the Federal Court of Appeal Mr. Justice Le Dain held that since the pith and substance of the joint venture in *Quebec North Shore* was beyond the jurisdiction of the Court in that there was no operative federal law to feed a dispute pertaining to inter-provincial trade and commerce, the fact that a ship was incidentally involved did not give the Court jurisdiction to arrest her in support of a claim arising out of the ownership and possession of a ship governed by Canadian maritime law. So too in this case, the management of the Society cannot be segregated from its sole object, the regulation of immigration consultants.

[29] I am satisfied that the Federal Court has jurisdiction. The decision of the Supreme Court in *Des Champs v. Conseil des écoles séparées catholique de langue française de Prescott-Russell*, [1999] 3 S.C.R. 281, is instructive. It dealt with the six-month time bar given public authorities in the now-repealed s. 7 of the *Public Authorities Protection Act*, R.S.O. 1990, c. P.38. The Court held that the Act did not protect public authorities as a matter of status. The right asserted by a plaintiff must be correlative to a public duty or power imposed on the public authority. It was recognized that such authorities also have duties that are of a private or subordinate nature. In those activities, they do not benefit from a six-month limitation. The Court has to consider the action at issue and its relationship with the nature of the public power or duty imposed upon the public authority.

[30] To paraphrase Chief Justice Laskin's speech in *R. v. Rhine, R. v. Prytula*, [1980] 2 S.C.R. 442, when we consider the entirety of the scheme (including the Society's by-laws enacted by sub-delegation under the Regulations), what we have here is a detailed regulatory framework under which all aspects of the profession of immigration consultant are dealt with. At every turn the *Immigration and Refugee Protection Act* and Regulations have their impact on the Society so as to make it proper to say there is existing and valid federal law to govern the transactions which became the subject of litigation in this Court. Chief Justice Laskin continued: "It should hardly be necessary to add that "contract" or other legal institutions, such as 'Tort' cannot be invariably attributed to sole provincial legislative regulation or be deemed to be, as common law, solely matters of provincial law."

[31] Although the relief sought by Ms. Onuschak is akin to oppression remedies sought by shareholders under business corporations statutes, this Court is no stranger to such remedies. It is well established that this Court has jurisdiction over Indian band councils, regardless whether the election of the council was pursuant to Band Custom or the *Indian Act (Roseau River Anishinabe First Nation v. Roseau River Anishinabe First Nation (Council)*, 2003 FCT 168, 228 F.T.R. 167). In *Roseau*, Mr. Justice Kelen made reference to *Canatonquin v. Gabriel*, [1980] 2 F.C. 792 (C.A.) and *Sparvier v. Cowessess Indian Band #73*, [1994] 1 C.N.L.R. 182 (F.C.T.D.), where Mr. Justice Rothstein, as he then was, stated at page 4:

> It is well settled that for purposes of judicial review, an Indian band council and persons purporting to exercise authority over members of Indian bands who act pursuant to the provisions of the *Indian Act* constitute a "federal board, commission or other

> tribunal" as defined in section 2 of the *Federal Court Act* [...] an Indian band council came within the jurisdiction of the Federal Court where the election of the band council was pursuant to band custom and not the *Indian Act*.

[32] Likewise in this case, the Society purports to exercise authority over Ms. Onuschak as a member of the Society, a member who is entitled to seek judicial review as she is "directly affected" within the meaning of section 18 of the *Federal Courts Act* .To revert to the *Indian Act*, a recent example of the Court dealing with an election code, and the rejection of nomination papers, is *Fort McKay First Nation v. Laurent,* 2009 FCA 235. An example where a band council, and in this context the board of directors of a corporation, would not be acting as a federal board, commission or tribunal, was a decision not to extend a lease, as that power did not flow from any grant of statutory authority or from a power that was public in nature. Such a situation is completely different from Ms. Onuschak's (*Devil's Gap Cottagers (1982) Ltd. v. Rat Portage Band No. 38B,* 2008 FC 812, [2009] 2 F.C.R. 267).

[33] Indian band councils are established, or at least recognized, by means of a special statute, the *Indian Act.* The Society, on the other hand, was incorporated under a statute of general application. As regards section 17(6) of the *Federal Courts Act*, although the superior courts of the provinces, more particularly the Ontario Superior Court of Justice, as the Society's head office is in Toronto, have jurisdiction for certain purposes, that jurisdiction does not oust the Federal Court's jurisdiction by way of judicial review as the relief Ms. Onuschak seeks is inextricably tied in with the Society's public licensing power. This line of reasoning is supported by the decision of the Federal Court of Appeal in *Mil Davie Inc. v. Hibernia Management and Development Co* (1998),

226 N.R. 369 (F.C.A.). It was held that although the *Canada-Newfoundland Atlantic Accord Implementation Act* gave the Newfoundland courts jurisdiction regarding matters arising in the offshore area, the Federal Court maintained its jurisdiction with respect to the *Competition Act*. Likewise in *Holt Cargo Systems Inc. v. ABC Container Line*, 2001 SCC 90, [2001] 3 S.C.R. 907, the Supreme Court held that in dealing with a ship which was under arrest, but whose owners were in bankruptcy, the Federal Court was exercising jurisdiction under Canadian maritime law, and not statutory jurisdiction under the *Bankruptcy and Insolvency Act*, a federal statute the administration of which was not specifically given to this Court.

[34] To summarize, had the Minister only delegated to the Society the power to license third parties on standards set by the Minister, the situation might well have been different. In this case, however, he has also delegated to the Society the power to set the rules and has prohibited immigration consultants from charging fees or having a right of standing in administrative proceedings unless they are members of the Society. Thus, licensing, standards and membership all form part of a single whole. In contrast, consider section 10 and following of the *Canada Marine Act, 2001*. Steamship inspections are carried out by government marine safety inspectors. However, the Minister of Transport may also authorize others to issue any required Canadian maritime document or to carry out inspections. The licensing power given to these NGOs is similar to that in *Jackson*, above. However, they are applying standards set, or approved, by the Minister and the shipowner need not be a member of the organization. It may be that an internal decision relating to by-laws or elections of such an organization might not be subject to judicial review by this Court.

[35] In an overabundance of caution, Ms. Onuschak also took an action, docket number T-1450-09, arising out of the same facts. However, as I am satisfied that the Society is a federal board, commission or other tribunal, and was acting as such with respect to all aspects of the application for judicial review, it would be inappropriate to make any ruling in that action. As the law currently stands, Ms. Onuschak's foray into the Federal Court must first be by way of judicial review (*Grenier v. Canada*, 2005 FCA 348, [2006] 2 F.C.R. 289). Whether the Federal Court has any jurisdiction over the Society other than by way of judicial review is a question to be left to another day.

[36] Although I am of the view that this Court has jurisdiction, before the application may be heard on the merits, a number of other issues require consideration. Is the application premature? Since the Society is a federal board, commission or tribunal only by virtue of regulatory power delegated to it under IRPA, must leave of this Court be obtained in accordance with section 72(1) thereof? If so, was the notice of application served and filed within 15 days in accordance with section 72(2)(b) thereof and, if not, should time be extended in accordance with section 72(2)(c)? If more than one decision is involved, should the Court nevertheless in its discretion deal with everything in one application, as permitted under rule 302 of the *Federal Courts Rules?* These issues revert to the Chief Justice as case manager.

[37] A copy of these reasons shall be placed in court docket number T-1450-09.

ORDER

FOR REASONS GIVEN;

IT IS HEREBY DECLARED that the Federal Court has jurisdiction to judicially review the following questions:

a. Are the restrictions on nomination promulgated by the Nominating Committee of the Canadian Society of Immigration Consultants invalid *ultra vires* the Nominating Committee or the Board of Directors, because they are inconsistent with the by-laws?

b. Does the Board of Directors have the authority to impose preconditions on a member of the Society's right to participate in meetings of the corporation?

There shall be no order as to costs.

"Sean Harrington"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1450-09
STYLE OF CAUSE:	*Katarina Onuschak v. Canadian Society of Immigration Consultants et al*
PLACE OF HEARING:	Toronto, Ontario
DATE OF HEARING:	October 21, 2009
REASONS FOR ORDER:	HARRINGTON J.
DATED:	November 5, 2009

APPEARANCES:

Lorne Waldman	FOR THE APPLICANT
John Callaghan Benjamin Na	FOR THE RESPONDENTS

SOLICITORS OF RECORD:

Lorne Waldman & Associates Barristers & Solicitors Toronto, Ontario	FOR THE APPLICANT
Gowling Lafleur Henderson LLP Barristers & Solicitors Toronto, Ontario	FOR THE RESPONDENT