

Federal Court



Cour fédérale

**Date: 20120626**

**Docket: T-2082-10**

**Citation: 2012 FC 817**

**Ottawa, Ontario, June 26, 2012**

**PRESENT: The Honourable Mr. Justice Scott**

**BETWEEN:**

**CLAUDIO CALVIN LEWIS**

**Applicant**

**and**

**THE CANADIAN SOCIETY OF  
IMMIGRATION CONSULTANTS**

**Respondent**

**REASONS FOR JUDGMENT AND JUDGMENT**

**I. Introduction**

[1] Claudio Calvin Lewis (Mr. Lewis) brings this application for judicial review of the decision rendered by Jessika R. Morelli, Manager of Membership Registrations and Approvals of the Canadian Society of Immigration Consultants [CSIC], pursuant to section 18 of the *Federal Courts Act*, RSC 1985, c F-7. In that decision, dated November 18, 2010, the CSIC suspended Mr. Lewis' membership in the CSIC for non-compliance of the full membership requirements. As a result, Mr.

Lewis was removed from the Membership List and placed on the Suspended Members List. His membership was revoked effective June 14, 2011.

[2] For the following reasons, this application is dismissed.

## **II. Factual background**

### **A. Parties**

[3] Mr. Lewis is a paralegal. He joined the CSIC on January 23, 2004 and became a full member on July 19, 2006.

[4] The CSIC is a non governmental organization, incorporated without share capital under the *Canada Corporations Act*, RSC 1970, c C-32. By regulation under the *Immigration and Refugee Protection Act*, SC 2001, c 27, [*IRPA*], members of the society used to be recognized as “authorized representatives” who may appear in immigration proceedings and charge for their services (see Section 2 and subsection 13.1(1) of the regulations of the *IRPA* in effect since 2004). In 2011, bill C-35 amended section 91 of the *IRPA*.

[5] The CSIC is governed by the applicable legislation, its by-laws and its letters patent. The CSIC’s mandate is to regulate in the public interest, members of the CSIC, as determined by its policies and procedures.

[6] Pursuant to its mandate, the Society enacted by-laws, created policies and established a Continuing Professional Development [CPD] program.

**B. Facts**

[7] On March 31, 2004, Mr. Lewis signed an application package which included an Intent to Register form wherein he agreed to “abide by the Letters Patent, By-laws, and Rules, Regulations and Policies (including, without limitation, the Rules of Professional Conduct) established by CSIC, from time to time and as amended from time to time and the authority of CSIC with respect to its members” (see Exhibit D of the Affidavit of Jessika Morelli at page 92 of the Respondent’s Record).

[8] Mr. Lewis’ first installment for his 2010-2011 membership fees was due on November 1, 2010.

[9] On November 5, 2010, Mr. Lewis was informed by email that his credit card was declined for payment of his membership fees (see Exhibit E of the Affidavit of Jessika Morelli at page 94 of the Respondent’s Record).

[10] His cheque for his mandatory CPD video payment was returned with the mention “without provisions” as well. He was informed of the situation on November 8, 2010 (see Exhibit E of the Affidavit of Jessika Morelli at page 95 of the Respondent’s Record).

[11] On November 9, 2010, Mr. Lewis called Ms. Jie Li, the Society's Finance Manager, and promised to effect his payment on November 11, 2010 at the Society's offices. Mr. Lewis never made the payment.

[12] On November 18, 2010, Ms. Li referred Mr. Lewis' file for suspension, to Ms. Jessika Morelli, the Society's Manager of Membership Registrations and Approvals. According to Ms. Morelli, Mr. Lewis failed to take any remedial measures for his non payment of membership fees and also failed to complete his mandatory CPD.

[13] Mr. Lewis' membership was suspended on November 18, 2010.

[14] The CSIC's decision reads as follows:

Dear Mr. Lewis,

Your membership has been referred by the Accounting Department to be suspended for non compliance of membership fees and not meeting the 2010 CPD deadline, therefore not meeting the Full Membership requirements. As a result, your name has been removed from the Membership List and placed on the Suspended Members List effective November 18, 2010.

Please be advised that if you do not remedy your breach and submit the \$750.00 plus HST reinstatement fee by December 18, 2010, at 5pm EST, the Society may revoke your membership pursuant to By-law 10.20(a).

If you wish to reapply with the Society, note that you will be applying for membership under the new criteria. As of April, 13, 2006, only graduates from the accredited program will be eligible to apply for membership.

Full Membership examination results are valid for a period of one year from the date that the examination was successfully passed and your language examination results are only valid for two years from

the date that the examination was successfully passed. If the one year time period has lapsed, you will be required to re-write and successfully pass the examination in order to bring your membership into good standing as well as pay all the necessary fees as stated above.

Should you have any questions or concerns regarding the Suspension Policy, please contact me immediately.

Please govern yourself accordingly,

Respectfully,

Jessika R. Morelli

[15] On December 16, 2010, Mr. Lewis filed an application for judicial review of his suspension before the Federal Court of Canada.

[16] On April 29, 2011, the CSIC informed Mr. Lewis he had to pay an outstanding amount of \$4,843.28 for reinstatement (see Exhibit C of the Affidavit of Claudio C. Lewis at page 17 of the Applicant's Record).

[17] Mr. Lewis' membership was revoked on June 13, 2011 (see Exhibit D of the Affidavit of Claudio C. Lewis at page 19 of the Applicant's Record).

### **III. Legislation**

[18] By-laws 10.19 and 10.20 of the Canadian Society of Immigration Consultants [CSIC] provide as follows :

10.19 Suspension of Membership

10.19 Suspension de l'adhésion

The membership of a Transitional Member, Full Member or Student Member shall be suspended :

L'adhésion d'un membre transitoire, d'un membre à part entière ou d'un membre étudiant est suspendue dans les cas suivants :

(a) if the Member fails to submit required membership dues, fees, assessments or other sum levied or payable by the Member to the Society or fails to submit any form, return or other information required by the Society within thirty (30) days of the due date of same or at another date mutually agreed upon by the Society and the Member; or

a) si le membre n'acquitte pas les frais d'adhésion, les droits, les cotisations ou les autres sommes applicables qu'il doit à la Société ou ne remet pas à la Société un formulaire, une déclaration ou d'autres renseignements que celle-ci exige dans les trente (30) jours suivant la date d'exigibilité de ces éléments ou à toute autre date dont la Société et le membre auront convenu mutuellement;

(b) if the Member publishes a notice of intention to resign on the Society's website in accordance with By-law 10.17(d) and fails to submit an Application to Resign to the Society within sixty (60) days of the publication of such notice or if the Member submits an Application to Resign to the Society and fails to meet the requirements of By-law 10.17 within sixty (60) days of notice from the Society to the Member that he or she has failed to do so; or

b) le membre publie un avis de son intention de démissionner sur le site Web de la Société conformément à l'alinéa d) du règlement 10.7 et ne remet pas une demande de démission à la Société dans les soixante (60) jours suivant la publication de cet avis ou le membre présente une demande de démission à la Société et ne respecte pas les exigences du règlement 10.17 dans les soixante (60) jours suivant l'avis que la Société lui fait parvenir à cet effet;

(c) upon such time as a disciplinary or

c) au moment où des mesures disciplinaires ou

administrative action against a Member by the Society results in the suspension of the Member's membership.

administratives que la Société prend à l'encontre d'un membre entraînent la suspension de l'adhésion de celui-ci.

#### 10.20 Revocation of Membership

#### 10.20 Révocation de l'adhésion

The membership of a Transitional Member, full Member or Student Member shall be revoked :

L'adhésion d'un membre transitoire, d'un membre à part entière ou d'un membre étudiant est révoquée dans les cas suivants:

(a) when the Member fails to submit required membership dues, fees, assessments or other sum levied or payable by the Member to the Society or fails to submit any form, return or other information required by the Society within sixty (60) days of the due date of same or at another date mutually agreed upon by the Society and the Member, provided that a Member may be reinstated as a Member if he or she makes payment in full of all amounts owing to the Society and submits all forms, returns and other information required by the Society within one (1) year of the due date of same; or

a) lorsque le membre n'acquies pas les frais d'adhésion, les droits, les cotisations et les autres sommes applicables qu'il doit à la Société ou ne remet pas à la Société un formulaire, une déclaration ou d'autres renseignements que celle-ci exige dans les soixante (60) jours suivant la date d'exigibilité de ces éléments ou à toute autre date dont la Société et le membre auront convenu mutuellement; toutefois, un membre peut être réintégré à ce titre s'il acquies intégralement toutes les sommes dues à la Société et remet à la Société tous les formulaires, déclarations et autres renseignements que celle-ci exige dans un délai de un (1) an suivant la date d'exigibilité de ces éléments;

(b) upon such time a disciplinary or administrative action against

b) au moment où des mesures disciplinaires ou administratives que la

a Member by the Society results in the revocation of the Member's membership.

Société prend à l'encontre d'un membre entraînant la révocation de l'adhésion de celui-ci.

A Member whose Membership in the Society has been revoked may re-apply for Membership in accordance with the By-laws and the policies and procedures established and amended by the Society from time to time.

Le membre dont l'adhésion à la Société a été révoquée peut faire une nouvelle demande d'adhésion conformément aux règlements administratifs et aux politiques et méthodes établies par la Société et modifiées par celle-ci au besoin.

#### **IV. Issues and Standard of review**

##### **A. Issues**

1. *Did the CSIC breach its duty of procedural fairness?*
2. *Was the CSIC's decision to revoke Mr. Lewis' membership reasonable?*

##### **B. Standard of review**

[19] The first issue is a question of procedural fairness that must be reviewed on a standard of correctness (*Mooney v Canadian Society of Immigration Consultants*, 2011 FC 496 at para 127).

[20] As for the second issue, the Supreme Court of Canada held in *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 53, that “where [a] question is one of fact, discretion or policy, deference will usually apply automatically”. The decision under review is an administrative action taken pursuant



CSIC's policies and by-law. Consequently, the CSIC's decision must be reviewed under a reasonableness standard.

## **V. Parties' submissions**

### **A. Mr. Lewis' submissions**

[21] In his affidavit, Mr. Lewis alleges that "40 percent or approximately 890 of CSIC members' licences were revoked. Of that amount almost 95 percent of the revocations are due [to] failure to pay fees and finance educational upgrading" (see the Affidavit of Claudio C. Lewis at page 7 of the Applicant's Record). Mr. Lewis submits that the CSIC's decision to suspend and revoke his membership and to demand a reinstatement fee of \$750.00 is unreasonable.

[22] At the hearing, Mr. Lewis acknowledged being in default of his obligations with respect to payment of his membership fees and CPD but alleged that the Court should intervene because the reinstatement fees were exorbitant and that he was not afforded due process before being suspended and then revoked.

[23] Mr. Lewis further affirms that the revocation of his licence for a non-disciplinary breach is a harsh penalty. He relies upon *Wilson, and College of Physicians and Surgeons of Ontario*, 2003 OJ No 4236 at para 12, where the Ontario Divisional Court of Ontario expressed the following in one of its previous decisions:

The discipline committee of a professional body is charged with a public responsibility to ensure and maintain high standards of

professional ethics and practice. The penalty imposed by it against a member for professional misconduct, as has often been said, is not to be lightly interfered with. The committee in the proper discharge of its function is best able to assess the gravity of the misconduct, and its consequences to the public and the profession. Unless there is error in principle, unless the punishment clearly does not fit the crime, so to speak, a Court sitting in appeal ought not to disturb the penalty and substitute its judgment for that of the committee [see *Takahashi v College of Physicians and Surgeons of Ontario* (1980), 102 DLR (3d) 695].

[24] Furthermore, Mr. Lewis argues that the CSIC denied him procedural fairness as it revoked his licence without affording him the opportunity to dispute the revocation through an appeal process or at least a hearing. The CSIC therefore breached its duty of procedural fairness.

#### **B. The CSIC's submissions**

[25] The CSIC's by-laws and policies were enacted pursuant to its sub-delegated legislative authority. There is no evidence in the present case to demonstrate that the CSIC's By-laws were adopted in bad faith.

[26] Moreover, Mr. Lewis alleges a breach of procedural fairness but does not set out the content of these rights. The CSIC submits that Mr. Lewis was provided with numerous opportunities to comply with the membership requirements and was afforded the opportunity to remedy his default.

[27] The circumstances of the revocation did not give rise to a hearing according to the CSIC who argues that by failing to adhere to its policy or rules, the by-law, on its own, attracts

consequences. It further alleges that Mr. Lewis failed to file a demand for assistance as provided for by the By-law.

[28] The CSIC submits that its decision was merely based on the requirements of the by-law. It clearly did not fail to consider evidence nor did it make perverse or capricious findings of facts.

[29] At the hearing, counsel for the Respondent also submitted there is a certain mootness to Mr. Lewis' application further to the enactment of amendments to section 91 of *IRPA*, in that Mr. Lewis being a paralegal in good standing with the Law Society of Upper Canada can now practice on immigration issues irrespective of his membership in CSIC.

## **VI. Analysis**

### ***1. Did the CSIC breach its duty of procedural fairness?***

[30] Mr. Lewis argues that the CSIC breached its duty of procedural fairness because it failed to provide him with an opportunity to challenge the revocation of his membership. He adds that most of the revocations are attributable to economic reasons.

[31] The decision to suspend a member for failure to pay membership fees is administrative in nature. It therefore commands a low duty in terms of procedural fairness. In the present case, there was no necessity for a hearing contrary to Mr. Lewis' submission. The CSIC's regulations are clear: Mr. Lewis received prior notice in writing and was forewarned of the consequences of his failure.

[32] The Court finds there was no obligation to hold a hearing in the present circumstances.

[33] Furthermore, the Member Assistance Policy of the CSIC provides that “the Membership Committee in conjunction with the Treasurer of the Board may waive, delay and/or reduce the payment of a member’s annual membership fee upon a sufficient showing of hardship, as defined below. For the purposes of this policy, "hardship" means an economic inability to pay dues as the result of a medical condition, mental condition, pregnancy/parental leave or an involuntary change in economic status” (see Exhibit C of the Affidavit of Jessika Morelli at page 78 of the Respondent’s Record).

[34] The Policy affords members the opportunity to ask for a waiver, delay or reduction of payable fees. In the present case, Mr. Lewis failed to avail himself of this opportunity. Before the Court, Mr. Lewis stated he was not aware of the existence of that policy and that it was incumbent on the CSIC to inform him of the policy.

[35] The Court cannot accept such a proposition. There is no legal obligation on the part of the CSIC to that effect.

[36] For these reasons, the Court finds that the CSIC did not breach its duty of procedural fairness towards Mr. Lewis.

**2. *Was the CSIC’s decision to revoke Mr. Lewis’ membership reasonable?***

[37] The CSIC's decision to revoke Mr. Lewis's membership was reasonable. As the CSIC noted in its submissions, "the factual basis for the [Mr. Lewis]' suspension was grounded on very simple failings to comply with the Society's requirements for membership, i.e. failing to pay his annual fee and failing to complete his CPD requirement. The basis for [that] decision is clearly evidenced in the Manager's decision letter of November 18, 2010" (see Tab 2, page 165, para 61 of the Respondent's Record).

[38] The Court also notes that Mr. Lewis failed to establish that the CSIC had ignored probative evidence or demonstrate that he had complied with the CSIC's by-law. On the contrary he acknowledged being in default of payment.

[39] In the enforcement of CSIC's by-laws and policies, Ms. Morelli had limited discretion. She reasonably applied by-laws 10.19 and 10.20 to the case.

[40] Finally, the Court must underline that a judicial application is not the proper proceeding to dispute the imposition of reinstatement fees.

[41] This application for judicial review is therefore dismissed, each party paying its costs.

## **VII. Conclusion**

[42] The CSIC did not breach its duty of procedural fairness nor did it misapply its by-laws. It was reasonable for the CSIC to revoke Mr. Lewis' membership since he failed to comply with the CSIC's membership requirements under By-law 10.19 and 10.20. Therefore, the Court concludes that this application for judicial review be dismissed, each party paying its costs.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that**

1. This application for judicial review is dismissed; and
2. Each party paying its own costs.

"André F.J. Scott"

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** T-2082-10

**STYLE OF CAUSE:** CLAUDIO CALVIN LEWIS  
v  
THE CANADIAN SOCIETY OF  
IMMIGRATION CONSULTANTS

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** April 17, 2012

**REASONS FOR JUDGMENT  
AND JUDGMENT:** SCOTT J.

**DATED:** June 26, 2012

**APPEARANCES:**

Claudio Calvin Lewis	FOR THE APPLICANT (ON HIS OWN BEHALF)
Visha Sukdeo	FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

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