Federal Court  Cour fédérale

Date: 20240712

Docket: IMM-4696-23

Citation: 2024 FC 1104

Toronto, Ontario, July 12, 2024

PRESENT: The Honourable Mr. Justice A. Grant

BETWEEN:

ROYA MOHAMMADHOSSEINI

Applicant

and

MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

ORDER AND REASONS

I. Overview

[1] On June 5, 2024, I dismissed the Applicant's application for judicial review: *Mohammadhosseini v Canada (Citizenship and Immigration)*, 2024 FC 848. Given some procedural irregularities that arose over the course of the proceedings, I also invited submissions on costs from the parties, pursuant to section 22 of the *Federal Courts Citizenship, Immigration and Refugee Protection Rules* and subsection 404(1) of the *Federal Courts Rules*.

[2] On June 20, 2024, the Court received submissions from counsel for the Applicant on the costs issue. On June 26, 2024, the Respondent provided their response.

[3] For the reasons that follow, I will issue costs against counsel for the Applicant personally in the amount of $350.

II. Background

[4] As noted above, at the conclusion of my reasons in the underlying matter, I addressed concerns that arose over the representation provided to the Applicant by her counsel, and counsel's corresponding interactions with the Court and the Respondent. In the reasons, I further set out the context for the consideration of a costs order, which I summarize as follows:

- The hearing into this matter was to be held on March 28, 2024. Less than a week before the hearing, the Court received correspondence from counsel for the Applicant. In the correspondence, counsel indicated that she had received instructions from her client not to attend the hearing. Counsel indicated that the Applicant wished the Court to assess the file based on the written submissions.
- Counsel for the Applicant in this matter had not indicated that she had been appointed to provide limited-scope representation, as is required in such situations, pursuant to subsection 124(2) of the *Federal Courts Rules* [the *Rules*].
- Out of concern to maintain a parity of representation between the parties, the Court issued a direction notifying the parties that the matter would be assessed on the basis of the written submissions.
- Counsel for the Applicant has provided similar last minute notices that she would not appear at judicial review hearings in numerous other matters that have recently come before the Court, including but not limited to: *Gholami v Canada (Citizenship and Immigration)*, 2024 FC 201; *Jamshidi v Canada (Citizenship and Immigration)*, 2024 FC 627 ; *Kashani v Canada (Citizenship and Immigration)*, 2024 FC 706; *Salamat v Canada (Citizenship and Immigration)*, 2024 FC 545; *Tabatabaei v Canada (Citizenship and Immigration)*, 2024 FC 521; *Roodafshani v Canada (Immigration, Refugees and Citizenship)*, 2024 FC 595; *Zaeri v Canada (Citizenship and Immigration)*, 2024 FC 638 [*Zaeri*]; and *Khorasgani v Canada (Immigration, Refugees and Citizenship)*, 2023 FC 1581.

- Counsel has not provided notice of limited-scope representation in any of these matters. In each of these cases, counsel informally notified the Court that she would not be appearing in the days immediately before the hearing was to be held, despite the fact that the underlying applications have been pending for over a year, and in some cases for almost three years.

III. Submissions of the Parties

[5] In response to the Court's decision, I summarize the submissions received from counsel for the Applicant as follows:

- The Applicant and her counsel respect the Court's processes and resources, and wish to provide context for the actions taken by counsel.
- The decision not to appear in person was made in the best interest of the clients, who often face significant financial constraints.
- Clients, typically international students, allocate their expenses toward tuition fees, accommodations, and travel preparations to Canada, making it difficult to continue spending on legal fees.
- Clients are hopeful for a last-minute settlement offer, which are not uncommon, and would resolve the matter without a hearing and its attendant expenses.
- The absence of oral arguments by the Applicant does not prejudice the Respondent.
- Counsel's actions do not meet the "special reasons" threshold for awarding costs in immigration matters. Counsel acted in a manner consistent with professional responsibility and client advocacy.
- There is no evidence to suggest that counsel acted in bad faith – counsel was guided by the objective of protecting the client's interests, particularly in light of their financial constraints.
- Counsel acknowledged the importance of properly indicating limited-scope representation and assured the Court that this will be correctly stated in future matters.
- Counsel apologizes for any inconvenience caused and reiterates that there was no intention to disrespect the Court or the Respondent.

[6] Counsel for the Respondent noted as follows in response:

- The Respondent will not be seeking costs in this application, but reserves the right to seek costs in accordance with the *Federal Courts Citizenship, Immigration and Refugee Protection Rules* and the jurisprudence in other analogous circumstances.
- The Respondent disagrees with the Applicant's assertion that last minute settlement offers at the judicial review stage are "not uncommon."
- It was clear by January 2024 that a settlement would not be offered in this matter.
- No further correspondence was received from counsel for the Applicant until March 19, 2024, when counsel advised that she was not retained with respect to appearance at a hearing.
- There is no evidence on the record to support the Applicant's submission that last minute settlement offers are "not uncommon;" nor does this submission support last minute requests to unilaterally change the hearing process, which impacts the Respondent's hearing preparation and the Court's resources and processes.

IV. Law

[7] The *Federal Courts Rules* [the *Rules*] state as follows with respect to the Solicitor of Record in any proceeding before it:

> **123 (1)** If a party takes a step in a proceeding by filing or serving a document signed by a solicitor, that solicitor is the solicitor of record for the party.
>
> **(2)** If a solicitor is providing limited-scope representation to a party, the solicitor is the solicitor of record only in respect of those aspects of the proceeding that are within the solicitor's mandate.

[8] The *Rules* then set out a procedure for the appointment of counsel on a limited-scope retainer:

> **124 (1)** Subject to subsections (2) and (3), a party may appoint a solicitor, or change or remove its solicitor of record, by serving and filing a notice in Form 124A, 124B or 124C, as the case may be.

> **(2)** A party may appoint a solicitor to provide limited-scope representation by serving and filing a notice of limited-scope representation, in Form 124D, that is signed by the party and the solicitor and that sets out
>
> > **(a)** the scope of the solicitor's mandate;
> >
> > **(b)** whether it is the party or the solicitor who is to be served with documents relating to the mandate; and
> >
> > **(c)** if it is the solicitor who is to be served, the solicitor's address for service.
>
> **(3)** However, with leave of the Court, a party may appoint a solicitor to provide limited-scope representation before serving and filing the notice referred to in subsection (2).
>
> **(4)** The request for leave shall be made in open court by the solicitor and shall summarize the scope of their mandate. If the request is granted, the party shall file the notice referred to in subsection (2) within two days after the day on which leave is granted.
>
> **(5)** A solicitor who is providing limited-scope representation to a party may cease representation of the party by serving a notice to cease limited-scope representation, in Form 124E that is signed by the solicitor, on that party and all other parties to the proceeding and by filing the notice.

[9] On the issue of costs, subsection 400(1) of the *Rules* grants the Court broad discretion:

> **400 (1)** The Court shall have full discretionary power over the amount and allocation of costs and the determination of by whom they are to be paid.

[10] Rule 404 of the *Rules* relates to the ordering of costs against a solicitor personally:

> **404 (1)** Where costs in a proceeding are incurred improperly or without reasonable cause or are wasted by undue delay or other misconduct or default, the Court may make an order against any solicitor whom it considers to be responsible, whether personally or through a servant or agent,

> **(a)** directing the solicitor personally pay the costs of a party to the proceeding; or
>
> **(b)** disallowing the costs between the solicitor and the solicitor's client.
>
> **(2)** No order under subsection (1) shall be made against a solicitor unless the solicitor has been given an opportunity to be heard.
>
> **(3)** The Court may order that notice of an order against a solicitor made under subsection (1) be given to the solicitor's client in a manner specified by the Court.

[11] Finally, and also on the issue of costs, section 22 of the *Federal Courts Citizenship, Immigration and Refugee Protection Rules* [the *CIRP Rules*] provides that:

> No costs shall be awarded to or payable by any party in respect of an application for leave, an application for judicial review or an appeal under these Rules unless the Court, for special reasons, so orders.

V. Analysis

[12] It should go without saying – but it must be said here – that counsel are expected to know, and understand, the basic rules of practice associated with the courts before which they appear. The same is true for rules of professional conduct: counsel are expected to be aware of the rules that govern the profession.

[13] As noted above, the *Rules* set out very specific procedures to be followed where a solicitor has been appointed to provide limited-scope representation. There are important reasons for the existence of rules and procedures related to the scope of representation provided to parties. First, they inform the Court, and other parties, as to the extent to which parties will be represented over the course of proceedings. They ensure that the Court and other parties know with whom they

should communicate as the proceeding develops, and they help to inform the Court and other parties of their obligations, as these may vary depending on whether a person has counsel or is self-represented.

[14] There is also a strong public interest rationale that underpins these requirements. It is essential that parties know, with precision, the extent and limits of the representation that they will be receiving.

[15] These principles are further confirmed in the rules of professional conduct that govern the practice of law. For example, Rule 3.2-1A of the Law Society of Ontario's *Rules of Professional Conduct* requires counsel to advise clients honestly and candidly, and in writing, about the nature, extent and scope of the services that will be provided. The commentary to this provision further provides:

> [2] A lawyer who is providing legal services under a limited scope retainer should be careful to avoid acting such that it appears that the lawyer is providing services to the client under a full retainer.
>
> [5.3] Where the limited services being provided include an appearance before a tribunal, a lawyer must be careful not to mislead the tribunal as to the scope of the retainer, and should consider whether disclosure of the limited nature of the retainer is required by the rules of practice or the circumstances.

[16] I infer from the submissions of counsel for the Applicant that it is her general practice to represent clients before this Court on a limited basis, out of concern for their best interests and financial constraints. Laudable as this *may* be, it is not an excuse for disregarding either this Court's *Rules* or the *Rules of Professional Conduct* that govern her practice. Those rules are in place for reasons related to the public interest, and they are not optional.

[17] I would also note that the *Rules* specifically allow for limited-scope parameters; they simply impose certain requirements when proceeding on this basis. This being the case, whether counsel was acting in her clients' best interests or out of concern for their finances is really neither here nor there. The fact is, counsel could have represented her clients in much the same manner, and brought clarity to her role in the proceedings, and avoided the burden she has placed on the Court and the Respondent, by simply complying with Rule 124 of the *Rules*.

[18] Certainly, if this were a simple oversight by counsel for the Applicant on a single matter, I would not be inclined to consider an order of costs in this matter. But, as I previously noted, Ms. Taghavikhansari appears to have acted similarly in dozens of other matters, and she currently appears to be counsel of record in over 180 pending cases before this Court.

[19] As was also noted in my decision on the underlying matter, applications for judicial review in the Federal Courts are intended to be conducted by way of a written record and an oral hearing: see sections 72-74 of the IRPA and sections 5(1)(g), 15(1)(a) of the *Federal Courts Citizenship, Immigration and Refugee Protection Rules* [the *CIRP Rules*]. Oral hearings assist the parties to articulate their key arguments, and they assist the Court in refining the issues and providing the presiding judge with the opportunity to ask clarifying questions on areas of uncertainty or ambiguity. Absent exceptional circumstances, the default approach in all immigration matters for which leave has been granted is to conduct a hearing. It is not for parties to unilaterally dispense with this essential feature of the judicial review process. For a party to do so is a concern in any application for judicial review. For Ms. Taghavikhansari to do so, in what appears to be dozens of matters, is not acceptable.

[20] Costs are not generally awarded in immigration matters, and may only be awarded where there are "special reasons" for doing so: see section 22 of the *CIRP Rules*. Counsel for the Applicant contends that special reasons are not present in this case. I disagree.

[21] First, I note that my colleague Mr. Justice Ahmed has already found that counsel's last-minute failure to appear for judicial review hearings constitutes special reasons: *Zaeri*, at paragraphs 20-25. As Justice Ahmed noted in *Zaeri* (at para 21), conduct that may constitute "special reasons" includes unnecessarily or unreasonably prolonging proceedings, acting unfairly, oppressively, or improperly, as well as engaging in conduct that undermines our judicial system's integrity.

[22] Second, while there is "no exhaustive list of grounds which may justify an award of costs in immigration proceedings" it is clear that behaviour on the part of counsel that is improper may provide such justification: *King v Canada (Citizenship and Immigration)*, 2011 FC 1193 at paragraph 2. I am convinced that counsel for the Applicant's systematic failure to comply with both this Court's rules and her own obligations under the *Rules of Professional Conduct* undermines the integrity of our judicial system, and as such, amount to special reasons for awarding costs.

[23] I have considered the submissions of the parties on the costs issue, including the submissions provided pursuant to subsection 404(2) of the *Rules* on the question of whether those costs should be incurred personally by counsel for the Applicant. Having done so, I conclude that the responsibility for the failure to comply with the *Rules* in this case lies not with the Applicant, but solely with her counsel. To the extent that the Applicant in this matter was aware of the scope

of her retainer with her counsel, she could not be expected to be aware of this Court's rules related to such arrangements: *Tai v Canada (Citizenship and Immigration)*, 2010 FC 788 at paragraph 9. This being the case, I am of the view that the special reasons that call for costs in this matter also call for those costs to be borne by counsel personally. Pursuant to subsection 404(3) of the *Rules*, I will also order that Ms. Taghavikhansari provide a copy of this Order to the Applicant, Ms. Roya Mohammadhosseini.

[24] In arriving at this conclusion, I have also reviewed Ms. Taghavikhansari's apology, and her assurance that she will follow Court procedures in future matters. Taking these statements, together with her other submissions into account, I have concluded that a small award of costs is appropriate in these circumstances. I have set that award at $350. As noted above, Ms. Taghavikhansari has many more matters pending before this Court. I would expect that she will comply with the assurances she has provided and thereby avoid future, and likely greater, costs awards.

VI. Conclusion

[25] For all of these reasons, pursuant to section 22 of the *CIRP Rules*, special reasons arise in this case that justify an award of costs. Pursuant to subsection 404(1) of the *Rules*, I further direct counsel for the Applicant – Ms. Shirin Taghavikhansari – to pay those costs, which I set in the amount of $350.

ORDER in IMM-4696-23

THIS COURT ORDERS that:

1. Lump sum costs in the amount of $350 are awarded to the Respondent.
2. Counsel Shirin Taghavikhansari shall personally pay the above costs to the Respondent.
3. A copy of this Order is to be provided to the Applicant by Ms. Taghavikhansari.

"Angus G. Grant"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-4696-23
STYLE OF CAUSE:	ROYA MOHAMMADHOSSEINI v MINISTER OF CITIZENSHIP AND IMMIGRATION

SUBMISSIONS ON COSTS CONSIDERED AT TORONTO, ONTARIO PURSUANT TO THIS COURT'S JUDGMENT IN 2024 FC 848

ORDER AND REASONS:	GRANT J.
DATED:	JULY 12, 2024

WRITTEN SUBMISSIONS BY:

Shirin Taghavikhansari	FOR THE APPLICANT
Kareena Wilding	FOR THE RESPONDENT

SOLICITORS OF RECORD:

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Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT