

**BEFORE THE IMMIGRATION ADVISERS
COMPLAINTS AND DISCIPLINARY TRIBUNAL**

Decision No: [2015] NZIACDT 26

Reference No: IACDT 031/14

IN THE MATTER

of a referral under s 48 of the Immigration
Advisers Licensing Act 2007

BY

The Registrar of Immigration Advisers

Registrar

BETWEEN

Sajeev Unnikrishnan

Complainant

AND

Amanda Goldsmith

Adviser

DECISION ON APPLICATION TO DISMISS COMPLAINT

REPRESENTATION:

Registrar: K England, Ministry of Business Innovation and Employment, Auckland.

Complainant: In person.

Adviser: S Laurent, Laurent Law, Auckland.

Date Issued: 13 March 2015

DECISION

The issue

- [1] The Registrar filed a statement of complaint dated 25 November 2014. Through her counsel Ms Goldsmith responded with an application to dismiss the complaint on the grounds:
 - [1.1] The Statement of Complaint does not comply with the Tribunal's practice note.
 - [1.2] The Registrar in the conduct of her statutory functions exhibited "bias" against Ms Goldsmith "at a level [that she] ... is no longer competent to carry out" her statutory functions.
 - [1.3] The Registrar is "now acting dishonestly".
- [2] Ms Goldsmith said she refused to file a statement of reply, for those reasons.
- [3] This decision determines the application to dismiss the complaint.

Background

- [4] The Registrar has changed her approach to evaluating and processing complaints. The result has been the Registrar now investigates and evaluates complaints, and then lodges a statement of complaint. The statement of complaint identifies potential grounds where the Registrar is in a position to lodge information supporting those grounds, and identifies any wider grounds the complainant advanced for which the Registrar did not find support. Formerly, the Registrar gave the Tribunal notice of the complaint as presented by the complainant.
- [5] The result is that the statement of complaint now puts:
 - [5.1] The adviser on notice of potential grounds of complaint and of the evidence the Registrar considers potentially supports those grounds.
 - [5.2] The complainant on notice the Registrar does not consider there is evidence to support any wider grounds, if they advanced such grounds.
- [6] The next step in the process allows both the complainant and the adviser to respond. Typically, complainants accept the narrower or different grounds the Registrar identifies and the adviser is of course in a position to admit or dispute all or some of the complaint.
- [7] The Registrar has modified the form of the statement of complaint to reflect her current processes. It is not necessary for her to set out details of information that has become apparently irrelevant after the investigative and evaluation process.

This case

- [8] The present case is a typical example of the new process adopted by the Registrar. The complainant lodged a complaint with the Registrar that Ms Goldsmith was negligent, incompetent, lacked capacity, engaged in dishonest or misleading behaviour, and breached the Code of Conduct.
- [9] The Registrar, having investigated the complaint, identified the complaint may disclose specific breaches of the Code of Conduct, though they do extend to potentially knowingly providing false or misleading documentation to Immigration New Zealand. The complainant lodged a statement of reply and accepted the Registrar's formulation of the potential grounds.

Discussion

Form of the statement of complaint

- [10] For Ms Goldsmith, her counsel sets out in some detail the respects in which the Statement of Complaint departs from the practice note. However, he fails to identify any respect in which it is unfair or inadequate in achieving the purpose of giving Ms Goldsmith notice of the complaint, and the respects in which it appears to have potential support. The criticism is one of form, which does not go to the substance of the document.
- [11] The submission includes a claim that the Registrar, in preparing the Statement of Complaint, failed to take adequate account of Ms Goldsmith's response to the complaint. I discuss that issue in the following section.

Allegation of actual bias and dishonesty against the Registrar

- [12] Through her counsel, Ms Goldsmith expresses concern over the Registrar including Ms Goldsmith's acknowledgement that she did not have a signed agreement, in the Statement of Complaint. This, in the absence of including other material and submissions put forward on Ms Goldsmith's behalf, Mr Laurent contends is evidence the Registrar was "seeking to bolster the complaint to the Complainant's advantage".
- [13] The Registrar lodged the Statement of Complaint with an extensive body of documents, including documents provided by Ms Goldsmith; in fact, it is the largest section of the material. Mr Laurent's submission appeared to be that the text of the Statement of Complaint did not set out Ms Goldsmith's response in any significant respect, other than those parts that tended to support the complaint. This appears to be correct, however, the implication is that the Registrar did not consider that the adviser's initial response answered the grounds which were continued in the Statement of Complaint. The next step in the process is for Ms Goldsmith to have the option of lodging a statement of reply that sets out her position and/or provides further evidence supporting her version of events. To date, she has refused to take that step.
- [14] Mr Laurent went on to contend "one of the purported grounds of complaint was not in fact authored by the complainant at all". He said:
- "By purporting to make this issue look like a matter which the Complainant complained about, we asserted that the [Registrar] acted improperly; and to refuse to acknowledge that this was brought to [her attention, she] is now acting dishonestly."
- [15] Mr Laurent referred to the "Authority" in the submissions, however, the Registrar has the relevant statutory duties and she personally signed and presented the Statement of Complaint.
- [16] Mr Laurent accordingly alleged the Registrar dishonestly refused to acknowledge his claim that the Registrar raised a ground of complaint, and pretended that it was the complainant who raised the ground. For support he refers to a letter he wrote dated 12 November 2014, which the Registrar attached to the Statement of Complaint. The Statement of Complaint also identifies the grounds the complainant raised and unambiguously sets out that, in contrast, the Registrar has "determined that the complaint may disclose" a narrower and different set of grounds.
- [17] Mr Laurent has provided nothing that gives substance to, or support for, his submission the Registrar acted dishonestly or in any way that was inappropriate.
- [18] The other ground Mr Laurent relied on was that among the materials the Registrar filed was a letter in which Mr Laurent raised a question of text messages. An officer of the Authority inquired of the complainant regarding the text messages, and there was no response. The issue is a simple evidential matter, which Mr Laurent can highlight as he sees fit in a statement of response, or in submissions. That the Registrar did not narrate the issue in the statement of complaint, Mr Laurent says:

"... goes to the heart of [the Registrar] not fulfilling [her] investigative function, that [she] has not drawn this to the Tribunal's attention. On its own this might be seen as an innocent mistake, but in context of its presentation of the complaint as a whole it may or may not be so innocuous.

- [19] A more realistic evaluation is that the Registrar has set out a potential view of the facts and the potential breaches of the Code of Conduct and the Act, but has not gone into a minute discussion of evidential material. The text of the Statement of Complaint is seven pages long, including a good deal of simple description and a cover page. The documentary material lodged with the Statement of Complaint contains 307 pages. The text of the Statement of Complaint is entirely adequate to identify issues, and the parties are free to focus on evidential matters and present them in their statements of reply. The personal allegations of impropriety wholly lack support.
- [20] It is difficult to conceive of more serious allegation against the Registrar of a licensing authority than those in Mr Laurent's submissions. Dishonesty of any kind is inconsistent with holding a statutory decision-making power.
- [21] There is no justification for, or merit in, Mr Laurent's submission regarding the Registrar's conduct; his position that his client should refuse to file a statement of reply is equally lacking in substance and merit. Assuming that the Tribunal has the authority to dismiss a complaint before it is heard, I decline this application.

Timetable

- [22] This application having failed, there will be a further opportunity for the complainant and Ms Goldsmith to respond to the substance of the complaint as set out in the statement of complaint. Ms Goldsmith may file a statement of reply within 10 working days of the date of this decision. The complainant may file a reply to any statement of reply within 5 working days of receiving the reply, if he wishes to do so.
- [23] Ms Goldsmith is not required to file a statement of reply if she accepts the Statement of Complaint adequately sets out issues, reasoning and factual material she wishes the Tribunal to consider.

DATED at WELLINGTON this 13th day of March 2015

G D Pearson
Chair