

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

Decision No: [2017] NZIACDT 12

Reference No: IACDT 014/16

**IN THE MATTER** of a referral under s 48 of  
the Immigration Advisers  
Licensing Act 2007

**BY** **The Registrar of  
Immigration Advisers**

Registrar

**BETWEEN** **Darren Calder  
(Immigration New  
Zealand)**

Complainant

**AND** **Aseem Bharani**

Adviser

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**DECISION  
SANCTIONS**

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**REPRESENTATION:**

**Registrar:** Mr M Denyer, Lawyer, MBIE, Auckland

**Complainant:** Ms J Ellison, Lawyer, MBIE, Wellington.

**Adviser:** in person.

Date Issued: 4 August 2017

## DECISION

### Introduction

- [1] The Tribunal upheld this complaint in a decision dated 6 April 2017, *Calder v Bharani* [2017] NZIACDT 6. The Tribunal found Mr Bharani breached his professional obligations.
- [2] The grounds on which the complaint was upheld against Mr Bharani were:
- [2.1] He did not have a complying written agreement; however, it was not a considered and deliberate case of non-compliance. Mr Bharani's inexperience likely contributed to his failure to comply.
- [2.2] Mr Bharani completely failed to maintain proper records of his professional engagement with his client.
- [3] The grounds on which the complaint was upheld involved fundamental non-compliance with some elementary aspects of professional practice. However, it is important to recognise that Mr Bharani had not undergone the standard training required to obtain a licence, and he was inexperienced. Furthermore, his primary expertise was as a practitioner in Australia, rather than New Zealand. It appeared he lacked the mentoring and supervision that would have been beneficial to him at that point in his career. I refer to these matters, not only to give perspective, but also to emphasise that despite what amounts to an apparent complete failure to comply with aspects of his professional obligations, the Tribunal did not find this was a case of wilful misconduct.

### The Registrar's position

- [4] The Registrar noted the purpose of the disciplinary regime was to protect the interests of consumers and to enhance the reputation of New Zealand as a migration destination.
- [5] In this case, the Registrar's view was that the sanctions should be:
- [5.1] A caution or censure.
- [5.2] A requirement to complete the Graduate Diploma in New Zealand Immigration Advice.

**Mr Bharani's position**

- [6] Mr Bharani was concerned that the requirement to complete the full graduate diploma was “a bit drastic considering the matter of file management and record keeping”, which comprised the grounds on which the complaint was upheld. He suggested that a training course on file management might be more appropriate. He also suggested restriction to a limited licence might be an alternative.

**The Registrar's response**

- [7] The Registrar after considering Mr Bharani's position reaffirmed that, in her view, he ought to complete the graduate diploma; the grounds on which the complaint was upheld reflected significant failures relating to client engagement and file management. She said she had considered whether Mr Bharani ought to be required to be supervised when providing immigration advice, but ultimately decided that completing the diploma was the more appropriate course.
- [8] She said that while Mr Bharani had raised the possibility of him practicing under a limited licence, she was not in favour of that approach. It would require the cancellation of his existing licence, and not effectively address the deficiencies in his practice disclosed by the complaint.

**Discussion**

- [9] At the outset, the Tribunal acknowledges Mr Bharani has responded in a responsible manner to this complaint. He travelled from Australia to attend a hearing of the Tribunal. Given the costs that Mr Bharani incurred to do that and his positive attitude to his responsibilities, I am satisfied that this is not a case where there should be a monetary penalty. In reaching that determination, I take account of the fact that Mr Bharani successfully defended wider elements of the complaint, which the Tribunal did not uphold.
- [10] Censure is an inevitable part of the sanctions to be imposed; there was significant non-compliance and Mr Bharani did have a duty to ensure that he understood and met his professional obligations.
- [11] The remaining issue is whether Mr Bharani should be required to complete the graduate diploma; the basic qualification for licensed immigration advisers. When considering this issue, it is important to recognise that Mr Bharani obtained a licence as a licensed immigration adviser in New Zealand through the Trans-Tasman

Mutual Recognition Act 1997. Accordingly, he was not required to complete the diploma before holding a licence.

[12] Any professional making use of the privilege of cross-border professional registration without re-qualification, must carry the obvious professional obligation to take responsibility for ensuring they are competent to practise in the other jurisdiction. Licensed immigration advisers practising in New Zealand must understand:

[12.1] the New Zealand professional regulatory regime (principally embodied in the current Code of Practice); and

[12.2] New Zealand immigration law, practice and policy.

[13] In this case, Mr Bharani failed to comply with some of the most elementary aspects of professional practice, some of which would apply equally in Australia.

[14] In these circumstances, I am satisfied that a requirement to complete the graduate diploma is proportionate and reasonable. The regulatory regime is intended to protect the consumers of immigration services. Where practitioners have been given the privilege of licensing without completing the qualification, either because they entered the profession before the training was available or through Trans-Tasman recognition, a significant lapse is likely to be indicative of a need for further training. I am satisfied that this applies to Mr Bharani.

[15] I have considered alternatives such as practising under a limited licence, undertaking some other type of training and supervision. These alternatives are possibilities, however, I am satisfied that for Mr Bharani to have the privilege of practising in New Zealand, given the circumstances giving rise to this complaint, the training is the most appropriate response. Having the skills to practice safely is important for Mr Bharani's clients, himself, the reputation of New Zealand's immigration regime, and for the reputation of his profession.

[16] He has been practising in an environment where high level skills are required. Mr Bharani faced a very serious allegation of being party to unlicensed persons in an offshore office providing immigration advice. Had that element of the complaint been upheld, it would have been a very serious matter; under New Zealand law, such conduct amounts to a criminal offence and the professional consequences of being a party to offending under the Immigration Advisers Licensing

Act 2007 (the Act) is obvious. A number of senior and skilled practitioners have experienced professional disciplinary issues when practising in the challenging environment where service delivery involves an offshore office, and they do not have full control over that office.

- [17] If Mr Bharani practised in a supervised and mentored environment, he would not have been likely to have to face this complaint. As he practises independently, he must obtain the skills required to deliver his professional services in the environment where he practises. Completing the diploma course is the most appropriate way of achieving that objective.

### **Decision**

- [18] Pursuant to s 51 of the Act, Mr Bharani is:

[18.1] Censured.

[18.2] Required to enrol in the first available intake for the Graduate Diploma in New Zealand Immigration Advice, and successfully complete the requirements for the issue of the Diploma within two years of enrolment.

- [19] The Tribunal gives notice to Mr Bharani that the training requirement is imposed under section 51(1)(b) of the Act. Accordingly, section 51(4) applies. The effect is that if Mr Bharani fails to demonstrate, to the satisfaction of the Registrar, that he has complied with the requirement to enrol in and then complete the Graduate Diploma course, his licence is deemed to be cancelled.

- [20] The Tribunal reserves leave for any party to apply to vary the requirements for completing the Graduate Diploma.

**DATED** at Wellington, 4 August 2017

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**G D Pearson**  
Chair