IMMIGRATION ADVISERS COMPLAINTS AND DISCIPLINARY TRIBUNAL

Decision No: [2020] NZIACDT 44

Reference No: IACDT 022/19

IN THE MATTER	of a referral under s 48 of the Immigration Advisers Licensing Act 2007
BY	**THE REGISTRAR OF IMMIGRATION ADVISERS** Registrar
BETWEEN	**THE REGISTRAR OF IMMIGRATION ADVISERS** Complainant
AND	**SEOK HEE YOON** Adviser

DECISION
Dated 8 October 2020

REPRESENTATION:

Registrar/ Complainant:	Self-represented
Adviser:	D F Parris, counsel

PRELIMINARY

[1] Mr Seok Hee (Sam) Yoon (the adviser) was an independent contractor to Mr John Horan, formerly a licensed adviser (the advocate). In this capacity, he came to represent Mrs Leonora McKelvey, one of the advocate's clients from the time he was licensed (the client). However, the advocate continued to conduct correspondence with the Minister of Immigration and other Ministers on her behalf.

[2] The Immigration Advisers Authority (the Authority) commenced an investigation of the adviser leading to the Registrar of Immigration Advisers (the Registrar) referring a complaint against him to the Tribunal. It is alleged that the adviser was negligent, a ground of complaint under the Immigration Advisers Licensing Act 2007 (the Act), in permitting the unlicensed advocate to perform services exclusively reserved under the Act to a licensed adviser. Alternatively, it was alleged that the adviser breached the Licensed Immigration Advisers Code of Conduct 2014 (the Code) by relying on an unlicensed person.

[3] The essential issue to consider is whether the advocate's correspondence with the Ministers is caught by the statutory prohibition against unlicensed persons performing work reserved to advisers.

BACKGROUND

[4] The adviser is a licensed immigration adviser and director of H.His Limited, trading as Onestop NZ, of Christchurch.

[5] The advocate, a director of New Zealand 4 Ever Limited (the advocate's company), of Christchurch, was a licensed immigration adviser until the renewal of his licence was refused by the Registrar in 2016.

Adviser becomes independent contractor to advocate

[6] On 31 August 2016, the adviser wrote to the advocate accepting his offer to be an independent contractor to him with sole responsibility to assist his clients.

[7] This was followed by the adviser (described as an "Associate Migration") entering into an independent contractor agreement with the advocate (described as an "Employment Advocate") on 1 October 2016. The agreement stated that the adviser would take direction from the advocate in respect of immigration services. The adviser's sole responsibility was to provide professional immigration advice to all migrant clients of the advocate's company.

[8] On about 27 April 2017, the adviser signed (as "Associate Migration") a blank template letter on the letterhead of "[the advocate's company] & Associates" addressed to the client and confirming the provision of services for a residence visa. There was a place for the advocate's signature, but it was unsigned.

[9] Prior to the loss by the advocate of his licence, the client and her husband had signed a client services agreement with the advocate's company on 2 March 2015. She is a national of the Philippines. The advocate agreed to prepare and present a work visa application (in the partnership category), then a second work visa application 12 months later, followed by a residence application (including a medical waiver). The fee was $4,000.

[10] Immigration New Zealand declined a visa for the client in late 2015 and subsequent requests and appeals by the advocate were unsuccessful. The decision letter has not been sent to the Tribunal.

Advocate writes to various Ministers

[11] On 25 October 2017, the advocate wrote to the Prime Minister. His letterhead and footer read *(verbatim)*:

> Letterhead
> [the advocate's company] & Associates:
> Employment – Governance Advocate's & Associate Migration Advocate's
>
> Footer
> Advocate for Mediation – Settlement – School & Lobbyist 4 Good Governance

[12] In his letter to the Prime Minister, the advocate said he was a New Zealand citizen acting as an advocate for the client's husband, another New Zealand citizen, seeking a "pardon" for her. She had been exonerated of any wrongdoing. Furthermore, Immigration New Zealand had wrongly questioned her health. The claimed annual cost of treating her was totally disproved. He relied on a specific decision of the Immigration and Protection Tribunal (the IPT) which had allowed the appeal of a person convicted of manslaughter and attempted murder. The advocate signed off the letter as an "Advocate".

[13] On 1 November 2017, the advocate sent an email to the Minister of Immigration, copied to the advocate's lawyer (now also counsel for the adviser). The advocate introduced himself as the advocate for the client and her husband. He referred to his submission to the Prime Minister seeking a pardon. He seriously questioned Immigration New Zealand's decision-making and adherence to rights. As an advocate who was not

giving immigration advice to any aspiring migrant, he was not doing anything to infringe Immigration New Zealand's codes of practice or codes of professionalism.

[14] The advocate then sent a letter on 7 November 2017 to the Minister of Immigration. He described himself as an advocate for the client and called for a full and independent investigation into Immigration New Zealand. He explained that she had been arrested in Hong Kong and sentenced to six months detention, then deported back to the Philippines in 2002. This was due to a corrupt policeman in the Philippines. Due to court action there, the client succeeded in getting back some of the funds fraudulently taken from her. She was given a clear police certificate to obtain a visitor visa for New Zealand. It was not known whether she declared the deportation from Hong Kong on entering New Zealand.

[15] According to the advocate, the client came here and married. Immigration New Zealand had unfairly questioned the validity of the marriage and the state of her health. The character assessment was biased. The decline decision was made on a date which negated the right of appeal to the IPT. The advocate stated that he continued to advocate for all his clients "through my lawyer's assistance; plus also my associate who deals specifically in immigration matters".

[16] On 13 November 2017, the private secretary to the Associate Minister of Immigration wrote to the advocate stating that his correspondence could not be accepted as he was an unlicensed immigration adviser.

[17] The advocate wrote again to the Prime Minister on 16 November 2017, copied to numerous people, including the Minister and Associate Minister of Immigration, his lawyer and the media. As a New Zealand citizen and advocate for another citizen, the client's husband, he had sent a submission to her (the Prime Minister). It had not been accepted, as he was regarded as an unlicensed immigration adviser, which was correct. But he was not giving any immigration advice to a migrant. The allegation that he was acting contrary to immigration law was unfounded and was being used to cover up the truth of serious mistakes by Immigration New Zealand in the treatment of this couple. As a citizen, the advocate asserted he had a right to be an advocate for a fellow citizen. He was not providing any advice that was not in the public domain. The Prime Minister was asked to review his submission.

[18] Undeterred by the failure by the Prime Minister or Ministers to respond, the advocate continued to write to them, with copies to his lawyer, the media and others. In his letter of 6 December 2017 to the Prime Minister, the advocate acknowledged not being an immigration adviser, repeating that he was an advocate for a fellow New

Zealander who sought fairness and justice in the treatment of him and his wife by Immigration New Zealand. The negative attitude of the agency and the Authority had been directed at the advocate with the cancellation of his licence. A vendetta had been waged against him. This had led him to appoint an associate for all immigration matters for his clients.

[19] The advocate contended that the human rights of the couple had been breached by the findings made by the agency concerning the client's health, character, marriage and the timing of the decision. A High Court Judge had rejected or totally ignored the affidavits presented by the couple's lawyer, and the Ombudsman had refused to intervene. Immigration New Zealand had acted corruptly to decline the client's application and then used that as a tool to deny the advocate a licence. The agency and the Authority had corrupted immigration purposes, which required an independent investigation.

[20] A similar letter was written by the advocate to the Associate Minister on 8 January 2018. Much of it was about himself, his work history (25 years as an employment and immigration advocate) and his relationship with Immigration New Zealand. It was a general complaint about the agency and the Authority. The letter concluded by expressing the belief that he and the couple should be interviewed.

[21] The private secretary to the Associate Minister replied on 11 January 2018 to the advocate's letter of 8 January. She advised that the Minister had no ability to issue a pardon for a deportation decision made by an offshore jurisdiction.

[22] This was followed by an email from the advocate on 22 January 2018 and then a letter on 23 January to the private secretary of the Associate Minister. His previous letter provided crucial information. Sending the information back to him compromised fairness and natural justice, so he was resending it. The particular case had international ramifications at the International Court of Justice given the treatment of the elderly couple. The Associate Minister was urged to adjudicate. The advocate said he would be guilty of not exercising his rights as a citizen if he did not assist a fellow citizen and his wife.

[23] The Associate Minister wrote to the advocate on 7 February 2018. It was not his normal practice to comment on the processing of applications and any complaints should be directed to Immigration New Zealand. Alternatively, the client could engage the services of a licensed immigration adviser or a lawyer.

The adviser is instructed

[24] On 14 February 2018, the client and her husband signed an authority for the adviser to assist as a licensed immigration adviser. The adviser was asked to approach the Minister to provide all the necessary information, so there could be an independent and honest review of their situation.

[25] The adviser duly wrote to the Associate Minister on 20 February 2018. The client had requested his representation in regard to her immigration situation. He was the only authorised person, but there could be legitimate contributions by others acting in the best interests of the couple. He begged that the contribution of the husband's advocate be accepted as essential to understanding what had happened. The advocate had been totally hamstrung by the intransigence of the immigration system which had denied him his licence. A submission had been presented to the Prime Minister on 25 October 2017 requesting a pardon, but it had been continually sent back to the advocate. In conclusion, the adviser requested that there be no deportation until a review took place.

[26] Numerous documents were sent to the Associate Minister by the adviser. This included a letter addressed to the Associate Minister from the advocate's lawyer (dated 19 February 2018).[1] He asserted that the advocate had a democratic right as a citizen to assist another citizen in the support of his wife. The advocate's action as a licensed adviser and then as an advocate were of the highest standard. It had personally cost him in excess of $20,000.

[27] The adviser sent an email to Immigration New Zealand on 21 February 2018 expressing concern at the undue pressure being put upon the client to depart New Zealand while the Associate Minister was considering her case. This did not reflect well on the agency. He was now representing the couple, so all correspondence should be sent to him.

[28] The Associate Minister's secretary wrote to the adviser on 22 February 2018 advising that his request would be considered as soon as possible. As inquiries could be made by the Minister's office in respect of any individual, any objection to this had to be notified within five working days.

[29] The adviser replied on 2 March 2018 seeking a reasonable time frame to respond to the letter of 22 February 2018. The Minister's office gave him one week to provide submissions if he objected to enquiries being made.

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[1] The lawyer, Mr David Parris, does not state that he was instructed by the couple, only that he was "associated with the case", Registrar's documents at 55.

[30] The advocate sent an email to the Associate Minister on 12 March 2018 attaching a formal complaint made to the Minister for "MBIE" (dated 11 March 2018). The advocate made allegations against named senior managers of Immigration New Zealand concerning a vendetta against him as a licensed immigration adviser. They had collectively used all efforts to debar him.

[31] According to the advocate, there was a vendetta "against my representation of my clients". The senior managers colluded with the Registrar to eventually deny his rights as a licensed adviser. Their conduct was designed to curtail his livelihood. They had maintained "secret sensitive files" against individuals they "have umbrage against". No doubt, they had such a file on him.

[32] The advocate contended that there had been adverse action against innocent migrant clients in the overzealous attempts to discredit him. There had been horrific instances of Immigration New Zealand's incompetence, incorrect decision making and dysfunctional processing which had led to extreme stress being suffered by untold people and families. He sought an examination of the agency's operations. He asserted that every New Zealand citizen had a right of speech.

[33] On 13 March 2018, the adviser copied *verbatim* to the Associate Minister's secretary a message from the advocate. He was doing so as a Christian given the harrowing situation of the humble couple. In the message, the advocate stated that undue pressure was being put on the elderly couple by Immigration New Zealand. At a cost to the advocate of $1,700, a further flight booking had been made. The husband's health had been very poor and he would probably die if his wife of three years was expelled. She had been caring for his daily needs since two periods of hospitalisation. A doctor's letter had been sent to the Minister. It would be a tragedy if the husband passed away due to injustice and inhumane treatment.

[34] The adviser informed the Associate Minister's office on 18 March 2018 that the advocate had re-booked the client on a flight to Manila, providing details of the flight.

[35] The adviser again told the Associate Minister's office on 20 April 2018 of a changed booking made by the advocate. He also sent a media article concerning the couple. It stated that the advocate, who was described as such, was fighting for the couple and spending his own money to help them.

[36] On 28 April 2018, the adviser sent a further media article to the Associate Minister's office. He attached a letter written by the advocate to a journalist setting out the client's immigration situation.

[37] Then on 23 May 2018, the adviser informed the Associate Minister's office of another booking change by the advocate. He also sent a letter from the advocate to the Associate Minister. In his letter of 23 May 2018, the advocate updated the Minister as to the couple's circumstances "via [the adviser] … an Associate of my company [who] handles all company immigration matters". He said he had made a formal complaint against three managers. The client was caring for her ailing husband whose health issues were the result of the agenda of an immigration manager. There was sufficient evidence to take the case to the International Court of Justice.

[38] On 26 June 2018, the adviser once again informed the Associate Minister's office of a re-booking by the advocate. He also sent to the Minister a letter from the advocate (26 June 2018) repeating the couple's circumstances.

Immigration New Zealand issues visa

[39] A senior manager from Immigration New Zealand wrote to the adviser on 29 June 2018 concerning the request for Ministerial intervention. He would grant the client a character waiver for her Hong Kong conviction and the failure to declare both it and the deportation when she sought visitor visas to New Zealand. She would be granted a work visa for 12 months. The client would then be able to apply for residence under the partnership category.

Service agreement with the client

[40] On 24 July 2018, the adviser wrote to the client and her husband on the letterhead of the advocate's company confirming "we" would act for her in respect of a partnership-based residence visa.

[41] A service agreement was enclosed with the adviser's letter. The parties were the advocate (expressed to be trading under the name of his company), the client and her husband. The copy produced to the Tribunal (dated 25 July 2018) was signed by the client, her husband and the adviser. The adviser signed on behalf of the advocate's company (which appears to be the intended party, not the advocate). There was a place for the advocate's signature, but the agreement was unsigned by him.

[42] According to the advocate, the client's residence was approved by Immigration New Zealand on 13 January 2020.[2]

[2] Advocate's affidavit (22 September 2020) at [25].

COMPLAINT

[43] As a result of an earlier investigation of the advocate on an unrelated file, the Authority contacted the adviser concerning his involvement with the client.

[44] The Authority was advised by the client that she had spoken to the adviser only once and that he was not involved in the creation of the letters to the Ministers. The adviser confirmed to the Authority's investigator on 11 July 2018 that he did not write the letters.

[45] On 16 July 2018, the adviser stated in an email to the Authority that the advocate explained to him that, as both of them were citizens, they had the right to discuss any matter together, including immigration matters. The advocate accepted that he could not dispense immigration information to any migrant. The advocate had told all his clients about his situation and that any matter needing attention would be handled by his lawyer, with the adviser's assistance.

[46] The Authority formally wrote to the adviser on 28 August 2019 advising him that, on 2 October 2018, the Registrar had raised an own motion complaint regarding the client. Details of the complaint were set out and his explanation was invited.

Explanation from the adviser

[47] The adviser wrote to the Authority on 18 September 2019. He described himself as an associate of the advocate and his company. The advocate was a very professional and honourable person who had hundreds of very satisfied migrant clients.

[48] According to the adviser, the advocate dealt with matters other than immigration, with all migrant situations coming to the adviser for assessment, preparation and presentation to Immigration New Zealand. As all the clients were those of the advocate's company, the advocate was aware of all their matters, but that did not make him guilty of giving immigration advice to any client. He had given no advice to the client whatsoever.

[49] The adviser said that Mrs McKelvey was a client of the advocate's company but he (the adviser) had acted for her on immigration matters after the advocate's licence was unfairly and unjustly refused. The advocate's approach to the Minister on behalf of the client was as a citizen approaching another citizen to obtain a review of what was a total denial of her human rights. The adviser said that the advocate's actions concerned that of a New Zealand citizen and an alleged miscarriage of justice. He was advising government officials of a travesty of justice.

[50] The allegation that there was no client agreement with the client was false. There was a continual ongoing agreement with the advocate's company since 2015. She paid a small fee in 2015, but no fee had been charged since then. The advocate had personally paid the client's immigration medical costs costing many thousands of dollars and provided the couple with a smart phone to use in a medical emergency.

[51] Furthermore, the advocate was in effect the adviser's employer and was able to direct him in the best interests of the client. He did what was directed by him, with which he was in complete agreement.

[52] In conclusion, the adviser stated that the allegations of criminality against the advocate were unfounded and mischievous, injurious to the reputation of both of them and defied natural justice.

[53] The advocate wrote to the Authority on 17 September 2019. He believed that the Authority's action against the adviser was a continuation of the harassment of himself, with the collusion of Immigration New Zealand. The allegation that he was providing advice to migrants was totally false. His communications were all with Ministers who were citizens. The adviser was contracted to his company and acted in the best interests of its clients. He would make a formal complaint to the appropriate authority as the Authority's actions were unfair, unjust and biased.

[54] On 18 September 2019, the adviser's counsel wrote to the Authority denying all the allegations. Any responsible person would have a great deal of sympathy for the client. In taking up the cudgels on her behalf, the adviser had not done anything which justified the strenuous efforts to attack him.

Reference to Tribunal

[55] The Registrar filed a statement of complaint (6 November 2019) in the Tribunal, with supporting documents. It is alleged that:

1. The adviser was negligent –

    1.1 relying on the advocate to communicate with the client and write correspondence to the Associate Minister, thereby facilitating the provision of immigration advice by an unlicensed person; and

    1.2 failing to personally obtain and carry out the client's informed instructions.

2 Alternatively, the adviser breached the Code by –

2.1 acting in an unprofessional manner and failing to exercise diligence and due care in relying on an unlicensed person to communicate with the client, in breach of cl 1;

2.2 failing to obtain and carry out the client's informed instructions, in breach of cl 2(e); and

2.3 facilitating the provision of immigration advice by an unlicensed person, in breach of cl 3(c).

JURISDICTION AND PROCEDURE

[56] The grounds for a complaint to the Registrar made against an immigration adviser or former immigration adviser are set out in s 44(2) of the Act:

(a) negligence;

(b) incompetence;

(c) incapacity;

(d) dishonest or misleading behaviour; and

(e) a breach of the code of conduct.

[57] The Tribunal hears those complaints which the Registrar decides to refer to the Tribunal.[3]

[58] The Tribunal must hear complaints on the papers, but may in its discretion request further information or any person to appear before the Tribunal.[4] It has been established to deal relatively summarily with complaints referred to it.[5]

[59] After hearing a complaint, the Tribunal may dismiss it, uphold it but take no further action or uphold it and impose one or more sanctions.[6]

[3] Immigration Advisers Licensing Act 2007, s 45(2) & (3).
[4] Section 49(3) & (4).
[5] *Sparks v Immigration Advisers Complaints and Disciplinary Tribunal* [2017] NZHC 376 at [93].
[6] Section 50.

[60] The sanctions that may be imposed by the Tribunal are set out in the Act.[7] The focus of professional disciplinary proceedings is not punishment but the protection of the public.[8]

[61] It is the civil standard of proof, the balance of probabilities, that is applicable in professional disciplinary proceedings. However, the quality of the evidence required to meet that standard may differ in cogency, depending on the gravity of the charges.[9]

[62] The Tribunal has received from the Registrar the statement of complaint (6 November 2019) and supporting documents.

[63] A statement of reply (23 September 2020) was filed by the adviser with supporting documents:

1. Covering letter from the adviser to the Tribunal (23 September 2020);

2. Independent contractor agreement (1 October 2016);

3. Service agreement (25 July 2018) with covering letter from the adviser (24 July 2018);

4. Letter to the Tribunal (13 September 2020) and affidavit (20 January 2020) from Mrs McKelvey;

5. Affidavit from the advocate (22 September 2020);

6. Letter from Mr Parris to the Registrar (21 September 2020).

[64] The adviser repeats his contention that the advocate never provided immigration advice to the client or indeed to the adviser concerning her (after his licence was refused). The adviser, a citizen, communicated with Ministers, also citizens, concerning the human rights of another citizen and a migrant.

[65] According to the adviser, he was a contractor to the advocate's company. From July 2018, he became the client's adviser. He was not her adviser before then. He continued to be subject to direction by the advocate who was the managing director of the advocate's company. Mrs McKelvey was a client of that company. The directions he received were in the best interests of the client.

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[7] Section 51(1).
[8] *Z v Dental Complaints Assessment Committee* [2008] NZSC 55, [2009] 1 NZLR 1 at [97], [128] & [151] (citation omitted).
[9] *Z v Dental Complaints Assessment Committee*, above n 8, at [97], [101]–[102] & [112].

[66] The adviser denies all the allegations in the statement of complaint.

ASSESSMENT

[67] The Registrar relies on the following provisions of the Code:

> **General**
>
> 1. A licensed immigration adviser must be honest, professional, diligent and respectful and conduct themselves with due care and in a timely manner.
>
> **Client Care**
>
> 2. A licensed immigration adviser must:
>
> …
>
> e. obtain and carry out the informed lawful instructions of the client, and
>
> …
>
> **Legislative requirements**
>
> 3. A licensed immigration adviser must:
>
> …
>
> c. whether in New Zealand or offshore, act in accordance with New Zealand immigration legislation, including the Immigration Act 2009, the Immigration Advisers Licensing Act 2007 and any applicable regulations.

What is "immigration advice"?

[68] Before addressing the specific heads of complaint, it is critical to assess whether the advocate has provided "immigration advice", a defined term in the Act. The Act prohibits any person from providing immigration advice unless that person is licensed as an adviser under the Act, or exempt from the requirement to be licensed.[10] The advocate is not exempt.

[69] Section 7(1) of the Act defines immigration advice:

> **7 What constitutes immigration advice**
>
> (1) In this Act, **immigration advice**—
>
> (a) means using, or purporting to use, knowledge of or experience in immigration to advise, direct, assist, or represent another person in regard to an immigration matter relating to New Zealand, whether directly or indirectly and whether or not for gain or reward; but

[10] Immigration Advisers Licensing Act 2007, s 6.

> (b) does not include—
>
> (i) providing information that is publicly available, or that is prepared or made available by the Department; or
>
> (ii) directing a person to the Minister or the Department, or to an immigration officer or a refugee and protection officer (within the meaning of the Immigration Act 2009), or to a list of licensed immigration advisers; or
>
> (iii) carrying out clerical work, translation or interpreting services, or settlement services.
>
> …

[70] The "clerical work" exception is defined in s 5:

> **clerical work** means the provision of services in relation to an immigration matter, or to matters concerning sponsors, employers, and education providers, in which the main tasks involve all or any combination of the following:
>
> (a) the recording, organising, storing, or retrieving of information:
>
> (b) computing or data entry:
>
> (c) recording information on any form, application, request, or claim on behalf and under the direction of another person

[71] The title of the statutory term "immigration advice" is somewhat inapt given the ambit of work covered by the definition. It is not just about the advice or information given to the prospective migrant and/or any spouse. It is also about what services were being performed on behalf of "another person in regard to an immigration matter".

Did the advocate provide immigration advice?

[72] Clearly, in this case the advocate was giving advice and information to the client and her husband. He was also performing services, namely writing letters to Ministers. All of that advice and letter writing was to assist or represent another person, essentially the client rather than her husband. It is equally obvious that the advice and other work concerned an immigration matter.

[73] In terms of the statutory definition, the critical question though is whether the advocate, in writing to the Ministers, was "using … knowledge of or experience in immigration". This is an essential element of immigration advice, as defined. It is not enough that the advocate was advising or assisting another person in relation to an immigration matter. There has to be some use, even if only purported, of specialist knowledge or experience beyond that of an ordinary person with access to publicly available information.

[74] The mere fact the advocate was communicating with the appropriate Ministers cannot, of itself, be such knowledge or experience. The identity of the Prime Minister and the appropriate Ministers who deal with immigration matters is public knowledge, an exception to the definition of immigration advice. I note also that directing a person to the Minister is also expressly excluded from the definition of immigration advice.

[75] So, the question as to whether the advocate was performing a service caught by the definition of immigration advice is to be answered by looking at the content of his letters and emails. Did he use knowledge of or experience in immigration in writing those communications?

[76] What is striking about the advocate's communications is the complete absence of knowledge of immigration law or criteria, with one exception which I will discuss shortly. The advocate traverses at length the circumstances of the client and her husband and her immigration history. In colourful hyperbole, the advocate makes unfounded allegations against named immigration managers. His communications might be described as an emotive diatribe. Much of their content concern the alleged conspiracy against himself. The client is alleged to be a victim of the vendetta against him personally.

[77] In writing these letters and emails, the advocate has not used any knowledge or experience of immigration to make any useful points. They are the sort of letters that would be written by a person lacking knowledge and experience of immigration, about what was perceived to be an injustice perpetrated on a migrant, to those who would be expected to have the power to remedy the injustice.

[78] To some extent, it might be thought that in those communications the advocate has fashioned the client's circumstances, collecting and emphasising certain factors, based on his immigration knowledge and experience as to what is material to immigration decision-makers. That is not, however, apparent at all. The communications emphasise obvious exculpatory points concerning what happened to the client in Hong Kong and the critical need of her ill husband for her care and support.

[79] The one exception is the reliance by the advocate on the decision of the IPT in the letter of 25 October 2017 to the Prime Minister. This might arguably be excused on the basis that decisions of the IPT are public knowledge and the point being made by the advocate, that if someone with a serious criminal record can be allowed to stay then the client should be, requires only common sense and not any immigration knowledge or experience. On the other hand, I accept that relying on a decision of the IPT can be seen as using knowledge of or experience in immigration. It is, however, an isolated

point in an otherwise unsophisticated polemic any person (lacking balance) could have written. I regard this as a *de minimis* incursion into prohibited immigration advice by the advocate.

[80] There is another reason why the letter of 25 October 2017 is probably not actionable against the adviser and that is it predates his engagement by the client. The evidence is that this commenced on 14 February 2018. There is no evidence the adviser accepted the client as a client before then. The adviser's agreement with the advocate signed on 1 October 2016 is not sufficient to make the adviser responsible for all conduct of the advocate on behalf of any client from that moment.[11]

[81] There is no evidence as to what information or advice the advocate actually gave the client and/or her husband aside from the content of the correspondence with the Ministers. If that correspondence does not amount to immigration advice, it follows that there is no evidence he discussed with them anything that would be regarded as immigration advice under the Act.

[82] It further follows that it does not matter what instructions the adviser did or did not take, or did or did not carry out, in relation to these communications. It does not matter if the adviser relied on the advocate to talk to the client or her husband in relation to them. The letters and emails may concern immigration matters but are not regulated activities.

[83] This complaint will be dismissed. This is not merely because the advocate as a citizen was writing to another citizen in order to assist a different citizen, though essentially that is all that occurred. It is because what he wrote in those communications and presumably discussed with the client required no knowledge or experience in immigration. To the extent it did, it was publicly available information or the infringement was *de minimis*.

Advice to the adviser

[84] The adviser should, however, regard this complaint as a warning concerning his relationship with the advocate and the latter's clients. He should ensure that, in respect of matters satisfying the definition of immigration advice for a client, he has sole responsibility and deals directly with the client. Communication through the unlicensed

[11] There is some confusion on the part of the adviser as to when Mrs McKelvey became his client. He has presented an affidavit from her (20 January 2020) to say it was on 1 October 2016. The adviser says in his statement of reply (23 September 2020) it was from 25 July 2018. The best evidence is that it was from 14 February 2018. The adviser's confusion is reflected in the unsatisfactory state of the contractual documents. This is not an issue material to the current complaint.

advocate would be a breach of the Code. Most immigration matters do involve knowledge and/or experience of immigration.

[85] The adviser should also ensure he has a written client agreement compliant with cls 18 and 19 of the Code. The 2015 agreement the advocate's company had with the client did not identify the adviser and did not therefore cover his work. I am not tasked with reviewing the services agreement of 25 July 2018, but it may not comply with the Code (it is not even clear who are the contracting parties).

OUTCOME

[86] The complaint is dismissed.

ORDER FOR SUPPRESSION

[87] In order with the Tribunal's usual practice, a suppression order was made as part of the original decision. Mrs McKelvey, Mr Yoon and Mr Horan have since applied for the order to be lifted. The Registrar has no objection. Accordingly, the order originally made is lifted.

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D J Plunkett
Chair