

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

Decision No: [2012] NZIACDT 85

Reference No: IACDT 006/11

**IN THE MATTER**

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

**BY**

**Immigration Advisers Authority**

Authority

**BETWEEN**

**Dip Chand and Sant Kumari**

Complainants

**AND**

**Richard Uday Prakash**

Adviser

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**DECISION**  
IMPOSITION OF DISCIPLINARY SANCTIONS

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**REPRESENTATION:**

**Complainants:** In person

**Adviser:** Mr S Laurent, Laurent Law, Auckland; and Mr Prakash in person

Date Issued: 3 December 2012

## DECISION

### Introduction

- [1] This complaint was upheld in a decision issued on 28 September 2012.
- [2] The key elements of the findings were as follows:
  - [2.1] Mr Prakash is a licensed immigration adviser and assisted Mr Chand with immigration services. It is only the final part of the professional relationship that was in issue.
  - [2.2] Matters had reached the point where Mr Chand had to leave New Zealand as he had not been able to obtain a further visa. Mr Prakash made some further attempts to assist Mr Chand, but they were not successful.
  - [2.3] Mr Prakash did not comply with the Licensed Immigration Adviser's Code of Conduct ("the Code") in relation to an agreement to provide the additional services.
  - [2.4] Close to the time Mr Chand was required to leave New Zealand, Mr Prakash withheld Mr Chand's passport, in order to force him to pay the fee claimed to be owing.
  - [2.5] Mr Prakash accepted he did not comply with the Code in relation to having a written agreement, but denied withholding the passport.
  - [2.6] The Tribunal upheld the complaint both in respect of the failure to have a written agreement, and withholding the passport, and concluded it was withheld as leverage in order to make Mr Chand pay fees.

### Submissions from Mr Prakash on Penalty

- [3] Mr Prakash provided submissions on the sanctions that may be imposed through his counsel Mr Laurent.
- [4] Key elements in the submissions as to the circumstances were that Mr Prakash:
  - [4.1] Has always accepted that he did not have a written agreement for the additional work he performed.
  - [4.2] Now accepts that withholding Mr Chand's passport to secure the payment of fees was "attributable to him", and he apologised to Mr Chand and Ms Kumari, and the Tribunal. Further, he accepted the Tribunal was "entitled to come to the conclusions that it did".
  - [4.3] The issue relating to withholding the passport was in isolation, and in contrast with his usual conduct.
  - [4.4] Mr Prakash was under heavy work pressure at the time, and the issue was an isolated example of human frailty.
- [5] Mr Laurent addressed the issue of potential loss of licence. The Tribunal had signalled the allegations were sufficiently serious for that to be in issue.
- [6] Mr Prakash had a lengthy history in providing immigration services from 1997, and has been practising as a principal since 2007.
- [7] Mr Prakash is approaching 60 years of age, and the loss of his licence would impact on him severely, as it would on his employees and family. His family includes dependent children, his wife's mother and his parents.

- [8] Mr Laurent placed particular emphasis on the complaint being an isolated incident, and contrasted it with other cases where licences had been cancelled where there was systemic irresponsibility and bad faith.
- [9] The submission indicated that Mr Prakash had a busy practice, and said he was a sound practitioner. A client contact report was produced to support that claim.
- [10] Mr Laurent attached testimonials. One was from Hasmukh Patel, a barrister. In addition to attesting to Mr Prakash being a sound practitioner, it also addressed the principle that depriving a person of the ability to work as a member of their profession is a last resort, and drew attention to the financial consequences for Mr Prakash, his employees and family.
- [11] Another testimonial from Mr Jayati Prasad is discussed further below. It spoke of Mr Prakash's community involvement, character and family responsibilities. There were a number of other testimonials from clients and people in the community that also spoke of Mr Prakash's community, professional, and family responsibilities and how he successfully met them.
- [12] A letter from the Mount Roskill Business and Community Groups Association Inc pointed out that Mr Prakash had been the founding President of the Association, and spoke of his respect, standing and contribution to the community. The letter noted that Mr Prakash had resigned as president due to this complaint.
- [13] A medical report also referred to Mr Prakash's aging parents and their frailty.
- [14] Mr Laurent urged that a sanction short of loss or suspension of licence was appropriate.
- [15] Mr Laurent sought name suppression on the grounds that:
- [15.1] Publication would adversely affect his reputation in the community, which was hard earned, and particular reference was made to the Mount Roskill Business and Community Groups Association Inc.
- [15.2] Publication would impact on his parents.
- [16] Mr Prakash also made a personal statement. The key elements were:
- [16.1] He expressed contrition and acceptance of the findings, and apologised.
- [16.2] He reiterated the family and business circumstances that were identified in Mr Laurent's submission.
- [16.3] The impact of the loss of his licence, as discussed.
- [16.4] Mr Prakash discussed the impact of publication and its potential effect on his business and family.

### **Submissions from Ms Kumari and Mr Chand on Sanctions**

- [17] Ms Kumari produced submissions by email dated 4 November 2012.
- [18] She first commented on Mr Prasad's testimonial which contained unfortunate and unjustified criticism of her and Mr Chand. She stated that while Mr Prasad may characterise this complaint as a "petty" matter, it was not as far as she was concerned.
- [19] The matter was very important to Ms Kumari and Mr Chand as they were very concerned to ensure Mr Chand did not become an overstayer. They were both well aware that failure to comply with an immigration visa could lead to adverse consequences for Mr Chand's opportunity to ultimately live in New Zealand. That was very important to them, as they had two children of the family living in New Zealand since they were 2 and 3 years of age.

Ms Kumari was entitled to live in New Zealand, and if Mr Chand could not live in New Zealand there was the potential for the breakdown of their marriage.

- [20] Ms Kumari emphasised that the complaint was not brought as a “grudge”, or “revenge”. There were serious consequences from Mr Prakash’s conduct, and they considered Mr Prakash has not recognised that.
- [21] Ms Kumari noted that while Mr Prakash attributed his offending to work pressure, she had found the circumstances very difficult herself.
- [22] Ms Kumari opposed name suppression, as she considered Mr Prakash should face the consequences of his conduct being known.
- [23] In addition, Ms Kumari questioned Mr Prakash’s competence. However, they are matters that extend outside the complaint that has been determined, and it is not appropriate to have regard to them.

### **Further Submissions from Mr Prakash**

- [24] Following the submissions discussed above, Mr Laurent and Mr Prakash both provided further submissions. They are considered in some detail below.

### **Decision**

#### *Gravity of the misconduct*

- [25] There are two elements in the misconduct. The first is significant, though falls well short of being grounds for cancellation of Mr Prakash’s licence. He failed to enter into a written agreement in relation to work he undertook. The circumstances are less serious than is sometimes the case, as Mr Prakash had a written agreement in relation to earlier work, and the extent of the additional work was limited. A modest financial penalty would adequately address that matter.
- [26] Far more serious is the withholding of Mr Chand’s passport to force him to pay fees.
- [27] An elementary principle all licensed immigration advisers must understand is that there is never a justification for withholding travel documents to force a person to pay fees; or indeed for any other purpose.
- [28] Travel documents must be entrusted to licensed immigration advisers, as they have to submit them to Immigration New Zealand. Clause 1 of the Code requires that a licensed immigration adviser must return passports without delay.
- [29] A person’s travel documents are official papers issued by the country where the holder is a citizen. The documents are important for various purposes relating to identification while the person is in New Zealand. It is also necessary to have the travel documents to leave New Zealand.
- [30] New Zealand immigration law and policy proceeds on the basis that a person is required to leave New Zealand within the time allowed in a temporary permit. Failing to leave on time is regarded as intentional non-compliance with New Zealand law, with significant consequences.
- [31] It is intolerable for a licensed immigration adviser to be a party to making it impossible for a person to leave New Zealand and meet their obligations under New Zealand law.
- [32] Such conduct is aggravated when the motive is to pressure a person to make payments to them.
- [33] Withholding passports to force the payment of fees is the very sort of conduct that led to the creation of the Act and establishment of the profession of licensed immigration advisers.

- [34] Through his counsel, Mr Prakash has attempted to characterise his conduct as a misunderstanding. For the reasons discussed in the decision upholding the complaint, the Tribunal has rejected that possibility.
- [35] Mr Prakash had a positive duty to return Mr Chand's passport.
- [36] He only returned the passport after:
- [36.1] Mr Chand and a support person remained in his office for two hours trying to obtain the passport;
  - [36.2] a complaint was lodged with the police; and
  - [36.3] a further complaint lodged with the Authority.
- [37] Those circumstances do not leave open the possibility of confusion. They were consistent only with Mr Prakash withholding Mr Chand's passport, to apply pressure. The pressure was that unless Mr Chand got his passport, he would breach the terms of his permit and imperil his and his family's future.
- [38] Mr Prakash has admitted he was "very well aware of the law regarding holding anyone's passport for the purpose of attempting to force someone to pay fees".
- [39] There are three dimensions to this misconduct:
- [39.1] The conduct is contemptuous of New Zealand immigration law and policy. A licensed immigration adviser is required to uphold the integrity of New Zealand's immigration system (Code clause 2);
  - [39.2] The conduct involves the misappropriation of property that did not belong to Mr Prakash. A passport is a valuable document, and a licensed immigration adviser has no right to hold it;
  - [39.3] The conduct exploited the vulnerability of clients.
- [40] The authorities indicate it is a "last resort" to deprive a person of the ability to work as a member of their profession. However, regard must be had to the public interest when considering whether a person should be excluded from a profession due to a professional disciplinary offence: *Complaints Committee of Waikato Bay of Plenty District Law Society v Osmond* [2003] NZAR 162.
- [41] Rehabilitation of a practitioner is an important factor when appropriate (*B v B* HC Auckland, HC4/92 6 April 1993, [1993] BCL 1093. In *Patel v Complaints Assessment Committee* (HC Auckland CIV-2007-404-1818, 13 August 2007), the Court stressed when imposing sanctions in the disciplinary process applicable to that case, it was necessary to consider the "alternatives available short of removal and explain why lesser options have not been adopted in the circumstances of the case".
- [42] The purpose of professional disciplinary proceedings was affirmed by the Supreme Court in *Z v Dental Complaints Assessment Committee* [2008] NZSC 55, [2009] 1 NZLR 1 at [97]:
- [T]he purpose of statutory disciplinary proceedings for various occupations is not to punish the practitioner for misbehaviour, although it may have that effect, but to ensure that appropriate standards of conduct are maintained in the occupation concerned.
- [43] The statutory purpose is achieved by considering at least four factors which materially bear upon maintaining appropriate standards of conduct:
- [43.1] *Protecting the public*: section 3 of the Act states "The purpose of this Act is to promote and protect the interests of consumers receiving immigration advice ..."

- [43.2] *Demanding minimum standards of conduct: Dentice v Valuers Registration Board* [1992] 1 NZLR 720 (HC) and *Taylor v General Medical Council* [1990] 2 All ER 263 (PC), discuss this aspect.
- [43.3] *Punishment*: the authorities, including *Z v Dental Complaints Assessment Committee*, emphasise that punishment is not the purpose of disciplinary sanctions. Regardless, there is an element of punishment that serves as a deterrent to discourage unacceptable conduct (*Patel v Complaints Assessment Committee* (HC Auckland CIV-2007-404-1818, 13 August 2007).
- [43.4] *Rehabilitation*: it is an important object to have the practitioner continue as a member of the profession practising well, when practicable (*B v B* HC Auckland HC4/92, 6 April 1993, [1993] BCL 1093).

#### *Background to regulating this profession*

- [44] In *ZW v Immigration Advisers Authority* [2012] NZHC 1069, Priestley J observed at [41]:

In passing the Act, Parliament has clearly intended to provide a system of competency, standards, and a Conduct Code to clean up an industry which hitherto had been subject to much justified criticism. The Registrar and Tribunal have a Parliamentary mandate to enforce standards.

- [45] The Act has established a regime in which, with limited exceptions, licensed advisers have an exclusive right to provide immigration advice. That exclusive right is enforced by criminal sanctions.
- [46] Until the profession was regulated, the great majority of advisers were professional people acting responsibly and providing skilled services. A small minority of unskilled and unscrupulous people provided immigration services. Immigrants are a vulnerable group and, in some instances, suffered serious harm from such people. Immigration advisers have an important professional role in assisting clients. Their honesty, professionalism, and competence are fundamental requirements.
- [47] The Act records its purpose in section 3:
- [T]o promote and protect the interests of the consumers receiving immigration advice, and to enhance the reputation of New Zealand as a migration destination, by providing for the regulation of persons who give immigration advice.
- [48] When the Act came into force, many people had experience of giving immigration advice. There were no professional qualifications specifically targeted at New Zealand immigration advisers; though of course there were various relevant qualifications that some advisers held.
- [49] To establish the profession, a relatively low threshold was applied. It required a person demonstrate competent handling of immigration applications in the past, a knowledge and understanding of the new professional environment, and also language and communication skills. A significant number of people who had relied on providing immigration advice for their livelihood could not meet those standards. They lost their livelihoods.
- [50] The inevitably low threshold for entry into the profession, in that entry has not required a long period of academic training with mentored experience, has resulted in some people entering the profession with no real commitment to maintaining professional standards. It is important that this Tribunal exercise the power to remove people from the profession who are in this category.
- [51] In a sense, the transitional entry has put a correlative obligation on entrants to the profession to ensure they attain professional standards, having been entrusted with the privilege of entry to the profession.

*Alternatives short of cancellation of licence*

- [52] The complaint concerns intentional wrongdoing, rather than incompetence or lack of care.
- [53] Section 51 provides for various sanctions. The key options short of cancellation or suspension of a licence are punishments intended to effect deterrence; namely censure, and financial penalties not exceeding \$10,000.
- [54] In relation to licences there are three options:
- [54.1] cancellation and a direction that the person may not apply for a licence for up to two years;
- [54.2] suspension; or
- [54.3] cancellation of a full licence and the holder of the licence permitted to apply for a different class of licence. In this way a person may be prevented practising on their own account, and put in a situation where they are practising under supervision while they hold a provisional licence.
- [55] Other possibilities such as training, and specified conditions, are more relevant to competence issues. There are also powers relating to imposing costs and compensation liabilities for misconduct.
- [56] In this decision I am satisfied the range of possibilities to weigh are:
- [56.1] cancellation of Mr Prakash's licence and a prohibition on reapplying for a licence;
- [56.2] cancellation of Mr Prakash's full licence, and allowing an application for a provisional licence (with supervision conditions);
- [56.3] a financial penalty on its own, or in combination with the preceding directions.
- [57] Suspension appears to have limited utility in the circumstances, as restriction to a provisional licence would likely be more effective in rehabilitation. Although suspension has a potential role in ensuring that a proportional consequence is imposed: *A v Professional Conduct Committee* HC Auckland CIV-2008-404-2927, 5 September 2008.
- [58] In making this decision the Tribunal is required to weight the public interest against Mr Prakash's interests. When dealing with integrity issues there is never any certainty, short of exclusion from a profession, that a person will not reoffend. This Tribunal must carefully weigh the circumstances. It is appropriate to place an element of considered trust in a practitioner who is has shown the capacity and willingness to rehabilitate.
- [59] It is significant that this case involves dishonesty. That is, dishonesty in the sense of using a document to which Mr Prakash had no right, exploiting a vulnerable client, and using the power to put his client in breach of New Zealand law as a means of exercising power.
- [60] Dishonesty points to the need to remove a practitioner from a profession. In *Shahadat v Westland District Law Society* [2009] NZAR 661 the High Court commented:
- [29] A finding of dishonesty is not necessarily required for a practitioner to be struck off. Of course, dishonesty inevitably, although not always, may lead to striking off. But as said in *Bolton v Law Society* [[1994] 2 All ER 486; [1994] 1 WLR 512 (CA)] at pp 491–492:
- If a solicitor is not shown to have acted dishonestly, but is shown to have fallen below the required standards of integrity, probity and trustworthiness, his lapse is less serious but it remains very serious indeed in a member of a profession whose reputation depends upon trust. A striking-off order will not necessarily follow in such a case, but it may well. The decision whether to strike off or to suspend will often involve a fine and difficult exercise of

judgment, to be made by the tribunal as an informed and expert body on all the facts of the case.

[30] As a Full Court observed in *McDonald v Canterbury District Law Society* (High Court, Wellington, M 215/87, 10 August 1989, Eichelbaum CJ, Heron and Ellis JJ) at p 12:

Even in the absence of dishonesty, striking-off will be appropriate where there has been a serious breach of a solicitor's fundamental duties to his client.

[31] It is important to bear in mind that "dishonesty" can have different connotations. (It may describe criminal acts. But it may comprise acting deceitfully towards a client or deceiving a client through acts or omissions.)

[61] As observed by the Court in *Shahadat*, dishonest conduct "inevitably, although not always, may lead to striking off". The present case is one where it is important to look carefully at whether rehabilitation is realistic.

#### *Weighing the alternatives*

[62] First Mr Prakash's circumstances are such that loss of his licence and the consequent loss of the ability to continue to practice as a licensed immigration adviser are considerable. I accept the submissions made on his behalf regarding the impact for him, his staff, and his family.

[63] However, the consequences of intentionally breaching professional standards are inevitably going to impact harshly. Mr Prakash was well aware of the consequences when he chose to conduct himself in the manner he did.

[64] The primary issue is whether it can be reasonably considered that Mr Prakash will in the future discharge his professional duties in a manner that does "promote and protect the interests of consumers receiving immigration advice", as section 3 of the Act contemplates.

[65] Mr Laurent has rightly pointed to the fact that this complaint involves a single incident.

[66] That fact is important, although loss of membership of a profession arising from a single incident of dishonesty or demonstration of lack of integrity is a real possibility.

[67] I give full weight to there being a single complaint. However, that is simply one factor in determining whether the public will be protected in the event of the practitioner continuing in practice. The key elements that are also important in that evaluation are whether the practitioner shows insight into their misconduct, contrition, and a determination to meet professional standards in the future.

[68] Unfortunately I have had to conclude that Mr Prakash has exhibited none of the qualities that could lead to an expectation that he will in the future act professionally.

[69] Mr Prakash has reacted to the complaint in a manner that has been a sustained perpetuation of his original conduct. It reflects in no small way his lack of respect for his clients and their dignity; which is a foundation of the Code and professionalism.

#### *Mr Prakash's subsequent behaviour*

[70] Until the substantive decision upholding the complaint had been made, Mr Prakash appears to have been acting for himself without the benefit of legal advice.

[71] Unfortunately Mr Prakash had made his circumstances rather more difficult than they may have been due to the manner in which he responded to the complaint.

[72] Mr Prakash made it very clear to the Tribunal he had no respect for his former client, and invited the Tribunal to find the complaint was false. Mr Prakash presented a response to the Tribunal's Minute of 27 June 2012 which drew his attention to the potential implications of the material then before the Tribunal. Mr Prakash said in relation to the most serious allegation:

25. Richard Prakash has been an immigration consultant for over 20 years now and is very well aware of the law regarding holding anyone's passport for the purpose of attempting to force someone to pay fees.
26. **Richard Prakash has never held anyone's passport in his entire career as an Immigration Consultant in particular as a means to force someone to pay.**
- ...
30. The letter of complaint dated 21/12/2010 to [the Authority] is full of false information.

[73] Mr Prakash continued in that vein saying his former client had lied regarding the complaint.

[74] When Mr Prakash engaged Mr Laurent, he responded with a memorandum dated 29 October 2012. The material expressed Mr Prakash's contrition and acceptance of the Tribunal's findings. Mr Laurent said in his submission:

[Mr Prakash] also states that the withholding of the passport was out of keeping with his usual practice, and that although he has so far in these proceedings sought to minimise or excuse what took place, he does now accept that – whatever happened – the Complainants perceived that a wrong had been done. They and the Tribunal were entitled to come to the conclusions that they did.

[75] In a personal statement that accompanied Mr Laurent's submissions Mr Prakash said:

From my point of view, the circumstances around returning the passport seem to have been due to a miscommunication. Clearly the situation quickly got out of hand and Mr Chand and his wife were upset. I agree that it is unethical to hold someone's passport in order to force them to pay fees. It is not my practice with my other clients. At the time I did not believe that I was holding their passport back in this way, but they obviously saw it that way and I now accept that this is what happened. I therefore apologise to them and the Tribunal.

[76] Accordingly, Mr Prakash accepted the findings, and excused them as a misunderstanding, though one for which he accepted responsibility. Nonetheless, this explanation does not sit comfortably with the evidence, for the reasons already discussed. The circumstances were only consistent with a wilful refusal to return Mr Chand's passport.

[77] Regardless, the contrition and acceptance of the findings left some scope for the view that Mr Prakash had learned a salutary lesson, which would lead to a new appreciation of the requirement of professionalism and respect for both clients and the New Zealand immigration system.

[78] Matters have developed further.

[79] Mr Prakash has now made it clear to the Tribunal that he rejects the Tribunal's findings against him, does not accept his professional obligation to respect clients, and does not accept his own conduct placed him in the situation he now finds himself.

*Reasons for concluding Mr Prakash does not accept responsibility for his conduct*

[80] A testimonial from Mr Jayati Prasad (21 October 2012) was presented with Mr Laurent's submission. It appears Mr Prasad had not had the benefit of either seeing the Tribunal's findings regarding the complaint or being told what they were. Mr Prasad made an unjustified attack on the complainants. That attack was both personal, and inconsistent with the Tribunal's findings. Mr Prasad said:

I am saddened to learn that [Mr Prakash] has been subjected to unfounded allegations by some disgruntled family over a very petty subject. I take this as a personal attack by someone who has either been set up by someone else, as a revenge to settle a long standing grudge and/or to bring him down in the eyes of the public.

- [81] Mr Prasad's lack of knowledge regarding the Tribunal's findings may have lessened the value of his views as he did not know that Mr Prakash had been responsible for a serious lapse from professional standards. However, that would have had little relevance to the conclusions the Tribunal would reach.
- [82] Ms Kumari and Mr Chand, as parties to the complaint, received a copy of Mr Prasad's testimonial. Unsurprisingly, they wished to contest Mr Prasad's criticism of them which contradicted the Tribunal's findings.
- [83] In Ms Kumari's submissions of 5 November 2012 to the Tribunal, she said she had spoken to Mr Prasad and told him he was not fully aware of the situation. Ms Kumari's observation was correct.
- [84] Mr Laurent wrote to the Tribunal the following day in a letter of 6 November 2012. He said:
- Jayati Prasad JP, one of those who provided a character reference on behalf of the Adviser, received a telephone call from [Ms] Kumari, one of the Complainants, on 28 October 2012. She apparently challenged Mr Prasad as to why he had provided a reference. He properly told her that he is an independent person and is free to provide references at his own discretion. He was extremely annoyed to be pressured in such a manner.
- [85] Given the fact Mr Prasad has seen fit to denigrate Ms Kumari and Mr Chand in the manner he did, in apparent ignorance of the Tribunal's findings; it can be of little surprise that Ms Kumari would approach him. They are apparently members of the same religious community. Ms Kumari is a lay person in legal matters, and there is no suggestion she was rude or offensive. She told the Tribunal what she had done.
- [86] However, Mr Laurent went on to reason that the Tribunal should attribute surprising consequences to these events. He said in his letter of 6 November 2012 in the paragraphs immediately following the paragraph quoted in above at [84]:
- This event calls into question the *bona fides* of the Complainants who claim to have been distressed by the events of December 2010, and whose word has been relied upon for the events of the day on which they say that they were refused access to Mr Chand's passport. If that was the only motivation for the complaint, then it is hard to understand why they would seek to actively pressurize a character referee. This is especially so when they have already "won" by having the complaint upheld.
- Although the Tribunal has made its decision on the facts before it and is therefore *functus officio* in respect of the substantive complaint, this incident may be an object lesson of the need to treat the allegations of complainants with considerable caution. In the writer's view, the complaints process is increasingly being used for purposes for which it was not intended, including the advancement of ancillary visa applications and the working out of vendettas.
- [87] Mr Laurent did not explain why Ms Kumari's approach to Mr Prasad, which appears entirely unsurprising given the contents of Mr Prasad's testimonial, should undermine her and Mr Chand's credibility. It was always clear why Mr Chand and Ms Kumari were distressed; they had gone to a lot of trouble and expense to ensure that Mr Chand did not become an overstayer. It mattered to them, as they did not wish to be separated and have Mr Chand impaired in his prospects of applying for a further a visa from outside New Zealand.
- [88] I place no weight on Mr Laurent's reasoning and views. It would not be fair to Mr Prakash to assume they reflected his attitude to the Tribunal's findings and Ms Kumari and Mr Chand's credibility.
- [89] However, Mr Prakash subsequently personally communicated with the Tribunal, and I do place weight on this communication.
- [90] In an email to the Tribunal of 13 November 2012, Mr Prakash attacked the complainants and expressed the view that the Tribunal had been "hoodwinked".

- [91] Mr Prakash's foundation for this claim was that a letter sent to the Authority dated 15 January 2011 had a signature that he regarded as different from another signature Mr Chand had used.
- [92] On the strength of his own estimation of the signatures, he said the complaint was furthered by a letter that was "faked", the Tribunal should investigate "who has committed the fraud", and consider reporting the matter to the police.
- [93] Mr Prakash's claims are ill-conceived, and multiple innocent explanations are possible. What is clear is that in the process before the Authority and the Tribunal Mr Chand has been fully aware of that letter and its contents, and never sought to distance himself from it. It is possible initials were used so creating an appearance of a different signature, or that Ms Kumari signed the letter on Mr Chand's behalf with his authority. The claim of fraud is outlandish.
- [94] Mr Prakash's letter has left me in no doubt that the contrition expressed in his initial submission on penalties is not genuine.
- [95] Mr Prakash does not accept the Tribunal's findings; rather he says it was "hoodwinked". He unabashedly continues to blame his former clients, saying they are dishonest and guilty of fraud.
- [96] The attitude of a person after they have had the opportunity to reflect and face the reality of being held to account in a disciplinary process may carry considerable weight; *L v Director of Proceedings* HC CIV-2008-404-2268, 25 March 2009 is an example of a case where that occurred. At para [70] of that judgment, considerable emphasis was given to an expression of regret, commitment to change, and respect for the dignity of the practitioner's profession.
- [97] I am satisfied:
- [97.1] Mr Prakash was guilty of a serious professional offence on clear evidence. It has elements of both dishonesty and undermining New Zealand's immigration system.
- [97.2] He was fully aware of his professional obligations when he offended.
- [97.3] In the course of the complaint being addressed by the Tribunal, he has shown lack of respect for the regulatory processes which govern his profession.
- [97.4] He blames his former clients for his own misconduct, and has directed unpleasant and personal abuse toward them, without justification, during the course of addressing the complaint.

### *Conclusion*

- [98] Mr Prakash's offending was egregious; it is typical of the most serious misconduct the Act was intended to eradicate.
- [99] The statutory disciplinary process has brought Mr Prakash no insight or determination to rehabilitate himself. On the contrary, he blames others for his behaviour and expresses the blame in a disrespectful and unprofessional manner.
- [100] I am accordingly satisfied disciplinary sanctions will not be sufficient to cause Mr Prakash to gain the insight and determination to maintain professional standards. The public will only be adequately protected, and the objectives of the Act achieved, by cancelling his licence.
- [101] I have considered whether allowing Mr Prakash to hold a provisional licence, after establishing a regime of appropriate supervision, is an option. I am satisfied that is not appropriate. If Mr Prakash will not act in a professional and proper manner in the face of a reasoned disciplinary finding against him while addressing the sanctions to be imposed; it is unrealistic to expect him to be willing to respect, accept and learn from a mentor.

- [102] The financial penalty will be moderated having regard to Mr Prakash's loss of ability to continue as a member of the profession. A penalty of \$2,500 will be imposed.
- [103] Mr Prakash is the only person holding a licence in his practice. It appears he has a substantial number of active files, and it will take time to make arrangements for substitute licensed immigration advisers to take over files.
- [104] It is a matter of some concern that Mr Prakash should undertake that process without supervision, however there is no jurisdiction to impose conditions.
- [105] The Tribunal will formally warn Mr Prakash pursuant to section 51(a) of the Act, that he is required to meet the standards of the profession while he continues to hold a licence. Any failure to do so in the face of that warning may be expected to be addressed sternly.

*Publication*

- [106] Mr Prakash has sought non-publication of his name.
- [107] There is no specific statutory direction concerning the power to direct either publication or non-publication. Directions to limit or prohibit publication are a matter within the scope of the Tribunal's power to regulate its own procedure (section 49(1)). However, for a professional disciplinary body in contemporary New Zealand to operate without its decisions being available to the public would be a truly exceptional situation.
- [108] The Court of Appeal in *R v Liddell* [1995] 1 NZLR 538 at 546 per Cooke P said, in relation to the question of name suppression:
- [T]he starting point must always be the importance in a democracy of freedom of speech, open judicial proceedings, and the right of the media to report the latter fairly and accurately as 'surrogates of the public'.
- [109] While the *Liddell* case dealt with a criminal conviction and attendant publication issues, the principles apply to a professional disciplinary body. The function of a professional disciplinary body is concerned with accountability of members of the profession to the public. Public confidence in a disciplinary body achieving fair outcomes, and accountability, is not well served by a secret process, and there is nothing in the Act indicating that it does create such a process. For the Tribunal to operate without being open and publicly accountable would not be in the interests of either the public or the profession.
- [110] Publication of the Tribunal's decisions will follow as a matter of course.
- [111] In the present case Mr Prakash seeks non-disclosure of his identity essentially on the basis of his standing in the community and the impact on his family. However, I cannot regard either factor as of significant weight.
- [112] Mr Prakash cannot be expected to have his conduct hidden from the community. His persistent attempts to mischaracterise what occurred point to the need for the public to have access to the record.
- [113] The impact on Mr Prakash's family, unfortunate as it is, is an inevitable consequence of his behaviour.
- [114] As Mr Prakash's licence is not cancelled immediately, it is also important for clients have access to his status and disciplinary history.
- [115] Accordingly, the decision upholding the complaint and the present decision will be published in the usual way.

**Determination and Orders**

[116] Mr Prakash is:

[116.1] Censured.

[116.2] Ordered to pay a penalty of \$2,500.

[117] Any licence presently held under the Act by Mr Prakash is cancelled, with effect from Friday 25 January 2013.

[118] Mr Prakash is prevented from reapplying for any category of licence as a licensed immigration adviser for a period of two years from the date his licence is cancelled.

[119] Mr Prakash is cautioned that during the period he continues to hold a licence, he is bound by the Code of Conduct. He will be accountable for ensuring he conducts himself in a professional manner, including providing refunds of fees to the extent they are payable, as required by the Code.

**DATED** at WELLINGTON this 3<sup>rd</sup> day of December 2012.

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**G D Pearson**

Chair