

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

Decision No: [2013] NZIACDT 23

Reference No: IACDT 008/12

**IN THE MATTER**

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

**BY**

**Immigration Advisers Authority**

Authority

**BETWEEN**

**LG**

Complainant

**AND**

**Hakaoro Hakaoro**

Adviser

**THE COMPLAINANT'S NAME IS NOT TO BE PUBLISHED**

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**DECISION**

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**REPRESENTATION:**

**Complainant:** Tuulata Titimanu, solicitor, Otara Community Law Centre, Otara.

**Adviser:** In person.

Date Issued: 3 April 2013

## DECISION

### Introduction

- [1] Mr Hakaoro is an immigration adviser. The complainant was in New Zealand unlawfully, she consulted Mr Hakaoro regarding her status.
- [2] Mr Hakaoro charged a fee of \$3,000, after advising her she could apply under discretionary powers exercised by Immigration New Zealand. Mr Hakaoro did not lodge an application, and the complainant was deported.
- [3] When Mr Hakaoro did not progress matters, she sought legal assistance. The lawyers made inquiries with Mr Hakaoro. They said he was rude and abusive.
- [4] The issue to be determined is whether Mr Hakaoro was acting genuinely, or whether he took fees from the complainant knowing her case was hopeless, with the intention of doing nothing, and keeping the fees when she was deported.
- [5] In addition, the Tribunal has to determine whether Mr Hakaoro did respond unprofessionally when questioned.
- [6] The Tribunal has found Mr Hakaoro engaged in a dishonest enterprise where he neither provided services nor intended to provide services, and endeavoured to hide his misconduct through abuse and bullying.

### The Complaint

- [7] The allegation against Mr Hakaoro is as follows.
- [8] The complainant was in New Zealand unlawfully, as she did not have a valid visa. She approached Mr Hakaoro to gain professional assistance to put her immigration status in order.
- [9] Mr Hakaoro entered into an agreement with the complainant dated 13 August 2011. The agreement was based on what Mr Hakaoro described as a "Fixed Fee Structure", the fee being \$3,000 which was said to be the fee for "Overstayer written submissions under section 61 of the Immigration Act 2009".
- [10] The agreement emphasised Mr Hakaoro was "a fully licensed immigration adviser", and the integrity and professionalism of Mr Hakaoro.
- [11] The agreement said that fees were not refundable and had to be paid in advance. A letter dated 12 August said that the fee was to cover "our professional immigration advice which includes our time to research and prepare a special submission on your behalf and advocate for and represent you before Immigration New Zealand".
- [12] The complainant paid the fee of \$3,000 on 12 August 2011.
- [13] On 10 October 2011 the complainant was concerned that Mr Hakaoro had not appeared to have taken any action. She attended the Manukau Counties Community Law Centre to seek advice. Mr Greening, the lawyer advising the complainant formed the view that Mr Hakaoro was in breach of the Licensed Immigration Advisers Code of Conduct 2010 ("the Code"), as he had failed to perform the instructions he had received.
- [14] Mr Greening telephoned Mr Hakaoro while the complainant was with him. Mr Hakaoro was upset that the complainant had taken legal advice. Mr Greening explained that there had been a lapse of some two months, and that was a matter for concern. Mr Hakaoro purported to unilaterally cancel the agreement to provide professional services.
- [15] On 4 November 2011 Ms Schaaf, a lawyer with whom the complainant was dealing in relation to her deportation, wrote to Mr Hakaoro. The letter explained that the complainant was being

deported, raised the issue of the fee of \$3,000 and apparent lack of service provided, and requested Mr Hakaoro to "return the \$3,000 that the family paid to you".

- [16] Mr Hakaoro called Ms Schaaf upon receiving the faxed letter. In this telephone call Mr Hakaoro was angry regarding Ms Schaaf's proposition to have a family member come and collect the money from Mr Hakaoro. Ms Schaaf pointed out that his conduct was such that a complaint to the Authority would be made. He threatened to report Ms Schaaf to the Law Society. Due to Mr Hakaoro's verbal aggression and unwillingness to address the issues, Ms Schaaf terminated the telephone conversation.
- [17] Ms Schaaf, after that telephone conversation, wrote to Mr Hakaoro asking what work he had done, and noting that Mr Greening would continue to deal with Mr Hakaoro's failure to provide professional services. Ms Schaaf explained she sought the information so she could provide professional assistance with the deportation procedure.
- [18] Ms Schaaf had ascertained that the complainant's immigration history was such that there was no prospect of a visa being granted then or in August when the complainant had approached Mr Hakaoro. The complainant had made numerous applications which were subsequently declined and there had also been a "ministerial" decision.
- [19] Mr Hakaoro sent a letter dated 7 November 2011 to Ms Schaaf. The letter commenced by commenting on the nationality of persons connected with the complaint, and referred to their "community and their social mores". It was evident he held them in low regard. He then went on to say Ms Schaaf's letter was "quite rude, arrogant, heavy-handed and downright offensive".
- [20] The letter went on to characterise the demand for the immediate return of money as unreasonable. Mr Hakaoro did not explain why he thought that to be so. It appears he was aware:
- [20.1] the situation was urgent,
- [20.2] his client had been taken into custody,
- [20.3] was facing imminent deportation, and
- [20.4] he had been paid \$3,000 to prevent that happening.
- [21] Mr Hakaoro said he agreed that the complainant would not get a visa. He also said that Ms Schaaf had lied in her letter recording the telephone conversation. Mr Hakaoro repeated the threat of a complaint to the Law Society, saying it related to Ms Schaaf's written and oral communications.
- [22] In an email of 7 November 2011, Ms Schaaf pointed out to Mr Hakaoro that the complainant was on a Limited Visa and he should not have taken money from her, as he could not achieve any different outcome from that which she faced. It appears that about the time she instructed Mr Hakaoro she had been apprehended by Immigration New Zealand, and released so she could depart voluntarily. In the circumstances there was no prospect of being granted a visa.
- [23] The complainant was deported from New Zealand on 7 November 2011, and Mr Hakaoro had still failed to take any action under section 61 by that date.
- [24] Mr Hakaoro did not refund the money he received from the complainant.
- [25] Ms Schaaf wrote to the Authority on 7 November 2011 supporting the complaint regarding Mr Hakaoro's conduct.

### **The Response**

- [26] Mr Hakaoro, by his agent Mr Ka sent emails to the Authority dated 14, 17 and 20 February 2012 claiming the complaint was not legally a complaint under the Act. The reasoning

provided in such emails lacked any sensible connection with the complaint. There were other emails which similarly failed to address the complaint in a sensible manner.

- [27] Mr Ka sent an email to Mr Greening dated 29 February 2012. The letter attributed the complaint to the ethnicity of the lawyers saying they, with the complainant, had engaged in “fraud, forgery, misrepresentation and deceit”. It said Mr Greening lied. For present purposes it is sufficient to record that the material failed to address the issues raised by the complaint in any responsible manner, and in itself may amount to serious misconduct on the part of Mr Hakaoro to the extent he is associated with it. The material appears to denigrate a particular national group, attributes serious criminal conduct to professional people who made a well supported complaint, and fails in any sensible way to address the complaint.
- [28] Mr Ka filed a memorandum dated 15 March 2012 with the Tribunal. The memorandum questioned whether Mr Hakaoro should “file a defence” as the complaint was:
- [28.1] Clearly a fraud and forgery.
- [28.2] Invalid under the Act.
- [28.3] The application under section 61 required a “job offer”, getting one was the complainant’s responsibility.
- [28.4] Mr Hakaoro prepared the section 61 application; it could not be filed due to the absence of a job offer.
- [28.5] Mr Hakaoro assured the complainant that he had prepared the application, and she needed to get a job offer.
- [28.6] Ms Schaaf was threatening to send a “bounty debt collector to intimidate [Mr Hakaoro] into paying back his professional fee”.
- [28.7] The Authority accepted the complaint without legal authority.
- [28.8] Mr Greening and Ms Schaaf were in breach of the Privacy Act.
- [28.9] Ms Schaaf was not instructed by the complainant as she was in custody; it appears Mr Ka’s implication is that Ms Schaaf invented the instructions.
- [28.10] Mr Greening is dishonest, as he fabricated that the complainant was in his office at a time when she had been deported. He forged a client agreement dated 14/11/2011.

### **The Tribunal’s First Minute**

- [29] On 14 November 2012 the Tribunal issued a Minute which explained that the Tribunal had conducted a review of the material then before the Tribunal. The Minute identified apparent issues, potential factual findings, and emphasised that the parties would have the opportunity to respond, and that the Tribunal had reached no conclusions at that point.
- [30] The key elements of the complaint, and the response identified in the Minute, were as outlined above.
- [31] The Authority and the complainant do not lay charges, and are not responsible to prove them. The Tribunal is an expert inquisitorial body, which receives complaints, and determines whether the proof before it is adequate to uphold the complaint, and if so in what respects. Accordingly, the Minute identified issues and potential conclusions on the material presented before the Tribunal in order to give the parties the opportunity to consider their positions and provide submissions and further proof if they wish.

*The issues to be determined*

- [32] The Minute identified the relevant professional standards identified as follows.
- [33] Clause 1 of the Code of Conduct requires:
- [33.1] A licensed immigration adviser to act with professionalism. In doing so, they must ensure that the terms of professional engagements are fair and appropriate; and presented to the client honestly.
- [33.2] That a licensed immigration adviser discharge professional engagements with due care, diligence and respect. That requires them to ensure that their professional service delivery meets proper standards.
- [34] Clause 4 of the Code treats receipts, to the extent that they are held on behalf of clients, as trust funds and a licensed immigration adviser must bank them separately.
- [35] Clause 5 of the Code requires that a licensed immigration adviser must not misrepresent his business, a client's immigration opportunities, or New Zealand's immigration requirements.
- [36] Clause 8 of the Code prohibits a licensed immigration adviser setting a fee that is not "fair and reasonable". Clause 3 requires any refunds of fees that are payable on the cessation of a contract for services are refundable.
- [37] Section 44 of the Immigration Advisors Licensing Act 2007 ("the Act") provides that breaches of the Code, negligence, incompetence, dishonesty and misleading behaviour are all grounds for complaint.
- [38] The issue for the Tribunal to determine is whether it is satisfied Mr Hakaoro breached any of these professional standards.

*Potential Conclusions*

- [39] The Minute emphasised its purpose was to identify potential findings on the basis of material presently before it, and quite different conclusions may follow if further information was presented, or submissions made as to the effect of the material presently held.
- [40] The Minute related the potential factual findings to the professional standards required under the Code, and the Act.
- [41] The Minute stated, on the papers before the Tribunal at the time, the following findings below appeared to be open.

*Procuring fees for a hopeless case, failing to provide services and intending to keep the fees*

- [42] A potential view of the facts was that Mr Hakaoro was aware that the complainant's case was hopeless, and there was no prospect that an application under section 61 could succeed.
- [43] The complainant was in a situation where she had exhausted every potential avenue, and been granted an indulgence by Immigration New Zealand to leave New Zealand voluntarily. An application under section 61 was bound to fail.
- [44] In dealing with the client engagement Mr Hakaoro, if acting honestly, professionally and in accordance with the Code, would be expected to have set fees that were fair and reasonable, and endeavoured to assess the complainant's immigration opportunities. He would be expected to hold a written record documenting that he:
- [44.1] Inquired into the complainant's immigration history, both with the complainant and with Immigration New Zealand as necessary.

- [44.2] Evaluated the complainant's immigration opportunities.
- [44.3] Informed her of the prospects of having the discretion in section 61 exercised favourably.
- [44.4] Recorded in writing what her immigration status was, and the advice regarding a course of action.
- [44.5] Adequately informed her of the process and timing for lodging an application under section 61.
- [44.6] Made an evaluation of the proper cost of the professional services required, and satisfied himself the amount he charged was fair and reasonable.
- [44.7] Disclosed to and obtained from the complainant informed instructions for an agreed course of action.
- [45] The Code (clause 3) requires Mr Hakaoro to maintain complete client records for 7 years and confirm, in writing, the details of material discussions with clients. Accordingly, he should be in a position to present a fully documented record of the professional engagement which is subject to the complaint, and his report to the complainant. He had not produced that material to the Authority or the Tribunal.
- [46] In the absence of such material the Tribunal would potentially conclude the fee of \$3,000 was grossly excessive, as little or nothing could be done that would be beneficial for the complainant. A finding may follow that Mr Hakaoro intended to procure the fee; he anticipated that the complainant would be deported with little opportunity to seek redress, and he intended to retain the fee without providing services.
- [47] In addition to the failure to produce a record of a proper professional evaluation on engagement, the Tribunal would potentially have regard to the following conduct to support a potential conclusion that Mr Hakaoro was acting dishonestly:
- [47.1] Mr Hakaoro did not lodge an application under section 61. When a person is unlawfully in New Zealand the passage of some weeks is, without explanation, excessive. The person may well be deported before action is taken.
- [47.2] Mr Hakaoro has provided an explanation for failing to lodge the application (waiting for a job offer) that lacks substance (discussed below).
- [47.3] He had responded to responsible and professional written inquiries from lawyers in a disgraceful and threatening manner. His written response has included attribution of negative characteristics based on nationality, and also threats of referral to the Law Society. The Tribunal would potentially take the view from the written record that the letters the lawyers sent were entirely reasonable and appropriate, and Mr Hakaoro's written responses were wholly unreasonable and threatening.
- [47.4] The Tribunal would also potentially accept the lawyer's reports of Mr Hakaoro's oral threats and inappropriate conduct. Their reports of the oral communications appeared consistent with what is evident in the written record.
- [47.5] The response which Mr Hakaoro had lodged to the complaint was in itself gross professional misconduct, and consistent with the complaint.
- [48] In relation to Mr Hakaoro's claim that he had prepared an application under section 61 and not lodged it as the complainant had not produced a job offer, the Tribunal may regard that as having no validity in terms of immigration law and practice.
- [49] In the memorandum of 15 March 2012 filed on Mr Hakaoro's behalf, the justification for not filing the application was:

"[The complainant] could not pay the 'Job Offer' fee of \$3,000 so she undertook to get one herself so that she would not pay for one."

[Mr Hakaoro] then proceeded to prepare a section 61 application in readiness for the arrival of [the complainant's] job offer and files them together with Immigration New Zealand.

On the first of the two later visits [the complainant] made to [Mr Hakaoro's] office, his file notes recorded him to have had informed [the complainant] that the section 61 application was ready and waiting on her for the Job Offer; and she is recorded to have asserted upon [Mr Hakaoro] that a Job Offer 'was coming'".

- [50] Mr Hakaoro stated in his letter of 7 November 2011 to Ms Schaaf, that he did not regard a job offer as a necessary part of a section 61 application, but had claimed to be waiting for a job offer. He acknowledged:

"Over the years I have filed many cases with and without a job offer."

- [51] Accordingly the view appeared open that Mr Hakaoro should have made inquiries into the complainant's circumstances and immigration history, first with the complainant, and then with Immigration New Zealand. It would have been evident that the complainant was in no position to seek a work permit. Unless she could get a work permit, she could not expect to get an offer of employment; and having one would not assist with an application under section 61.
- [52] Where a person has had some irregularity with a work permit, the Tribunal might conclude an offer of employment may well be relevant to an application under section 61. However, in the complainant's circumstances there is nothing before the Tribunal that suggests either that there was any prospect of a section 61 application having a possibility of success, or that a job offer could have any relevance.
- [53] Accordingly, the Tribunal would potentially conclude Mr Hakaoro embarked on a dishonest enterprise in which he intended to take fees for services he could not provide, performed no professional services, and then used threats and bullying to avoid having to repay the fees.

*Failure to account for client funds*

- [54] The Minute gave Mr Hakaoro notice that the whole payment of \$3,000 appeared to be client funds, as Mr Hakaoro had the fees paid in advance, and he was not entitled to the fees (having not provided the services).
- [55] Clause 4 of the Code requires that client funds paid in advance for fees must be banked separately. They are in effect funds held in trust, and Mr Hakaoro was required to account for them as a trustee.
- [56] Mr Hakaoro was invited to provide evidence of him banking the fees and dealing with them as client funds. In the absence of such evidence, the view may be open that Mr Hakaoro misappropriated the funds.

*Demanding and retaining excess fees*

- [57] The Minute also gave Mr Hakaoro notice that on the material before the Tribunal (regardless of the potential finding of dishonestly procuring the fees), the view was open that Mr Hakaoro did not provide professional services that reflected the fees he demanded and retained.
- [58] Mr Hakaoro was put on notice that the view may be open that:

[58.1] Clause 8 of the Code obliged him to set fees that were fair and reasonable.

[58.2] The fee was not fair and reasonable, either at inception, or when his engagement terminated.

[58.3] That clause 3(d) of the Code required him to provide a refund of fees payable when his engagement ceased.

[58.4] That the fees were repayable as they were not fair or reasonable, and he could no longer lawfully provide the professional services he agreed to supply.

[58.5] He breached the Code by failing to refund fees.

*Unprofessional threats and misconduct*

[59] The Minute also gave notice to Mr Hakaoro that the Tribunal may conclude on the material supporting the complaint that Mr Hakaoro made improper threats, and reacted unprofessionally to responsible professional inquiries by lawyers. Further that he did so with the intention of avoiding the professional accountability the Act and the Code provided for the complainant.

*Mr Hakaoro's claim there is no complaint in law*

[60] The Minute noted that Mr Hakaoro's claim that there was no legally valid complaint before the Tribunal appeared not to be grounded in law or sensible reasoning.

*Unprofessional conduct in responding to the complaint*

[61] The Minute identified unprofessional conduct in relation to Mr Hakaoro's response to the complaint, concerning him disparaging persons of a particular nationality, and allegations the complaint was advanced by lawyers acting fraudulently.

[62] The Minute gave notice to Mr Hakaoro that the threats and correspondence prior to the complaint being lodged would be treated as an aspect of the complaint.

[63] However, the subsequent conduct before the Authority and the Tribunal would not be treated as a ground of the present complaint. Although such conduct could well be grounds for a complaint, it would be a separate complaint and the Tribunal does not initiate complaints.

[64] However, Mr Hakaoro was notified the Tribunal may well have regard to the subsequent conduct in assessing the veracity of the evidence. Further, if the complaint was upheld it may well have a bearing on the nature of the sanctions imposed.

[65] Mr Hakaoro was put on notice that the Tribunal may well express the view that Mr Hakaoro's allegations against Ms Schaaf and Mr Greening were without foundation and a wholly unprofessional response to this complaint, being neither well founded nor relevant to Mr Hakaoro's professional conduct with which this Tribunal is concerned.

[66] Mr Hakaoro is put on notice he may wish to consider this aspect of his response, and he had the opportunity to make any further comments on it to the Tribunal.

*The complaint may be upheld*

[67] The Minute concluded that the material it had before it would potentially result in the conclusion:

[67.1] The facts alleged in the complaint were correct.

[67.2] Mr Hakaoro breached the Code.

[67.3] Mr Hakaoro engaged in dishonest and misleading behaviour.

[67.4] The complaint would be upheld pursuant to section 44(2)(d) and (e) of the Act.

## Response to the Minute

- [68] The complainant did not respond to the minute, and was not required to do so. It is likely that there have been some issues with communication as she is no longer in New Zealand.
- [69] Mr Hakaoro responded in two documents:
- [69.1] A statement of defence received on 31 January 2013, and
- [69.2] An affidavit from himself dated 29 January 2013.
- [70] The document styled as a statement of defence was neither appropriate, nor constituted a statement of defence. The material will be treated as submissions and evidence as appropriate.
- [71] Materially, the statement of defence:
- [71.1] Rejected elements in the narrative of the complaint.
- [71.2] Denied Mr Hakaoro was aggressive in dealing with Ms Schaaf.
- [71.3] Claimed “privity of contract” has some relevance to how the Tribunal should deal with the complaint.
- [71.4] Asserted Ms Schaaf was acting for the complainant without authority.
- [71.5] Said the complainant would have potentially been granted a visa, as she was the only adult child in her family not in New Zealand. However, she was associated with a convicted rapist who was in New Zealand unlawfully, and accordingly would be assisted by an offer of employment.
- [71.6] Mr Hakaoro furthered his denigration of people of a particular nationality, justifying his comments with claims such as “over 95% of my [clients of that nationality] have misled me and Immigration New Zealand”.
- [71.7] Mr Hakaoro’s fee was a fixed fee, and not refundable, as he had done his part of the work.
- [71.8] Mr Hakaoro did not comply with the requirement to maintain written records as “[t]hat is the life of Polynesians. In effect, therefore, the writing of every visit or conversation in files is neither possible or desirable”.
- [71.9] Mr Hakaoro has extensive experience in immigration law and practice.
- [72] The principal contentions in Mr Hakaoro’s affidavit were:
- [72.1] Mr Hakaoro assisted Immigration New Zealand to arrest a man who was in New Zealand under an assumed identity, apparently after having been deporting for raping a child some years before.
- [72.2] Apparently as an exchange for this, the complainant was delivered to Mr Hakaoro by Immigration New Zealand to assess whether she should apply under section 61. Until that point she had been in custody.
- [72.3] Mr Hakaoro concluded the complainant has a good case under section 61, as she would be the only adult sibling in her country of origin if deported. However, as she was associated with the person who had raped a child and was living in New Zealand under an assumed identity, she “needed a job offer to boost her chances of being granted a section 61”.
- [72.4] The complainant agreed to get a job offer, but did not do so.

## Discussion

- [73] The Tribunal's Minute identified the issues Mr Hakaoro was required to address, and put him on notice that he should have the records he was required to keep pursuant to the Code.
- [74] Mr Hakaoro has not produced the professional records that he should have. His explanation that due to the ethnicity of himself and/or his clients it is not possible or desirable to keep such records is devoid of merit. He is a licensed professional offering services to the public, and professional obligations do not depend on ethnicity.
- [75] In large part Mr Hakaoro's response to the Minute has been to give further weight to the substance of the complaint. At the core of Mr Hakaoro's response is a claim there was an exchange for assisting Immigration New Zealand. He says Immigration New Zealand delivered the complainant to him. That was in return for him assisting with the arrest of a person who was living in New Zealand under an assumed identity, hiding the reality he had been convicted of raping a child. Mr Hakaoro has provided no independent evidence of this extraordinary claim; it is implausible.
- [76] Regardless of the background circumstances, Mr Hakaoro says that having been engaged by the complainant he assessed that she was likely to be able to make a successful application under section 61. He says that is because she would be the only adult sibling in her family in her country of origin. Section 61 is wholly discretionary, and it is far from likely that such a ground would be successful. Mr Schaaf's professional opinion that the complainant's case was hopeless is entirely consistent with the material before the Tribunal.
- [77] If Mr Hakaoro believed a sensible application could be lodged, it had to be done promptly as the complainant would be deported; he did not do so.
- [78] He claims that as the complainant was associated with the person living in New Zealand under an assumed identity, a job offer would have counterbalanced the negative element. That explanation is wholly fanciful. A job offer would not counter a material connection to a person who had engaged in immigration fraud.
- [79] My specific conclusions regarding the various aspects of the complaint are as follows.
- [80] The Tribunal is required to determine facts on the balance of probabilities; however the test must be applied with regard to the gravity of the finding (*Z v Dental Complaints Assessment Committee* [2008] NZSC 55, [2009] 1 NZLR 1). The allegations in this complaint are at the highest end of the scale, and the determinations have been evaluated on that basis.
- Procuring fees for a hopeless case, failing to provide services and intending to keep the fees*
- [81] I am satisfied the complainant's case was hopeless. I am satisfied Mr Hakaoro was aware of that, as he did not make an application under section 61 which was the only immigration option available. It was an option that had to be pursued with urgency.
- [82] I reject Mr Hakaoro's explanation that he was waiting for the complainant to produce a job offer. I am satisfied his explanation that a job offer would counterbalance her association with an undesirable person is contrived. It would be an irrational exercise of Immigration New Zealand's discretion to engage in such a balancing. It is implausible Mr Hakaoro could genuinely believe that Immigration New Zealand would act in that way.
- [83] Mr Hakaoro was on notice that if he was acting honestly and professionally and in accordance with the Code he should have a file showing he set fees that were fair and reasonable, and endeavoured to assess the complainant's immigration opportunities. That would result in a written record documenting that he:
- [83.1] Inquired into the complainant's immigration history, with her, and as necessary with Immigration New Zealand.
- [83.2] Evaluated the complainant's immigration opportunities.

- [83.3] Informed her of the prospects of having the discretion in section 61 exercised favourably.
- [83.4] Recorded in writing what her immigration status was, and the advice regarding a course of action.
- [83.5] Adequately informed her of the process and timing for lodging an application under section 61.
- [83.6] Made an evaluation of the proper cost of the professional services required, and satisfied himself the amount he charged was fair and reasonable.
- [83.7] Disclosed to and obtained from the complainant informed instructions for an agreed course of action.
- [84] Mr Hakaoro has none of these records. The absence of records is consistent with him taking fees, with the knowledge he could do nothing to assist the complainant, with the intention she would be deported, receive no services, and Mr Hakaoro would keep the fee. That is what in fact occurred.
- [85] Further I am satisfied the fee of \$3,000 was grossly excessive as little or nothing could be done that would be beneficial for the complainant.
- [86] I am satisfied Mr Hakaoro was acting dishonestly:
- [86.1] Mr Hakaoro did not lodge an application under section 61. When a person is unlawfully in New Zealand the passage of some weeks is, without explanation, excessive. The complainant had already come to the attention of Immigration New Zealand. She was likely to be deported in a short timeframe, as she was.
- [86.2] Mr Hakaoro has provided no sensible explanation for failing to lodge the application.
- [86.3] Mr Hakaoro responded to responsible and professional written inquiries from lawyers in a disgraceful and threatening manner. His written response has included attribution of negative characteristics based on nationality, and also threats of referral to the Law Society. I am satisfied from the written record the letters the lawyers sent were entirely reasonable and appropriate, and Mr Hakaoro's written responses were wholly unreasonable and threatening.
- [86.4] I accept the lawyer's reports of Mr Hakaoro's oral threats and inappropriate conduct. Their reports of the oral communications were consistent with what is evident in the written record.
- [86.5] The response which Mr Hakaoro lodged to the complaint was in itself gross professional misconduct, and consistent with the complaint.
- [86.6] His bare denials and failure to explain the written record are unpersuasive.
- [87] The Tribunal concludes Mr Hakaoro embarked on a dishonest enterprise in which he intended to take fees for promised services he could not provide, performed no professional services, and then used threats and bullying to avoid having to repay the fees.
- Failure to account for client funds*
- [88] I am satisfied the whole payment of \$3,000 was client funds, as Mr Hakaoro had the fees paid in advance, and he was not entitled to the fees (having not provided the services).
- [89] Clause 4 of the Code requires that client funds paid in advance for fees must be banked separately. They are in effect funds held in trust, and Mr Hakaoro was required to account for them as a trustee.

- [90] Mr Hakaoro has been asked, but has not provided evidence of him banking the fees and dealing with them as client funds. I am satisfied Mr Hakaoro misappropriated the funds and used them for his own purposes.

*Demanding and retaining excess fees*

- [91] Mr Hakaoro was required to justify the level of fees he charged, as it appeared Mr Hakaoro did not provide professional services that reflected the fees he demanded and retained. I am satisfied he provided no significant services, rather his time was engaged in falsely advising his client she has some prospect of successfully making an application under section 61, knowing that was unrealistic.

- [92] The relevant provisions are:

[92.1] Clause 8 of the Code obliged Mr Hakaoro to set fees that were fair and reasonable.

[92.2] The fee was not fair and reasonable, either at inception, or when his engagement terminated.

[92.3] That clause 3(d) of the Code required him to provide a refund of fees payable when his engagement ceased.

[92.4] That the fees were repayable as they were not fair or reasonable, and he could no longer lawfully provide the professional services he agreed to supply.

- [93] He breached the Code by failing to refund fees.

*Unprofessional threats and misconduct*

- [94] I am satisfied Mr Hakaoro made improper threats and reacted unprofessionally to responsible professional inquiries by lawyers. Further, he did so with the intention of avoiding the professional accountability the Act and the Code provided for the complainant.

*Mr Hakaoro's claim there is no complaint in law*

- [95] Mr Hakaoro's claim that there was no legally valid complaint before the Tribunal is not grounded in law or sensible reasoning.

*Unprofessional conduct in responding to the complaint*

- [96] Mr Hakaoro's response to the complaint, where he disparaged persons of a particular nationality and made allegations the complaint was advanced by lawyers acting fraudulently was unprofessional.

- [97] The threats and correspondence prior to the complaint being lodged are an aspect of the complaint.

- [98] The subsequent conduct before the Authority and the Tribunal will not be treated as part of the present complaint.

**Decision**

- [99] The Tribunal upholds the complaint pursuant to section 50, on the basis:

[99.1] Mr Hakaoro breached the Code, and

[99.2] engaged in dishonest and misleading behaviour;

[99.3] accordingly, there were ground for complaint under section 44(2)(d) and (e) of the Act.

### **Submissions on Sanctions**

- [100] As the complaint has been upheld, section 51 allows the Tribunal to impose sanctions.
- [101] The Authority and the complainant have the opportunity to provide submissions on the appropriate sanctions, including potential orders for costs, refund of fees and compensation. Whether they do so or not, Mr Hakaoro is entitled to make submissions and respond to any submissions from the other parties.
- [102] Any application for an order for the payment of costs or expenses under section 51(1)(g) should be accompanied by a schedule particularising the amounts and basis for the claim.

#### *Timetable*

- [103] The timetable for submissions will be as follows:
- [103.1] The Authority and the complainant are to make any submissions within 5 working days of the issue of this decision.
- [103.2] Mr Hakaoro is to make any further submissions (whether or not the Authority or the complainant make submissions) within 10 working days of the issue of this decision.

### **Publication**

- [104] The Tribunal orders the name of the complainant and any information that may identify her will not be published or disclosed, except as necessary to allow the parties to obtain professional assistance and pursue rights of appeal.
- [105] Subject to the preceding limitation, this decision will be published with the names of the parties after five working days, unless any party applies for orders not to publish any aspect.

**DATED** at WELLINGTON this 3<sup>rd</sup> day of April 2013

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**G D Pearson**  
Chair