BEFORE THE IMMIGRATION ADVISERS COMPLAINTS AND DISCIPLINARY TRIBUNAL

Decision No: [2018] NZIACDT 3

Reference No: IACDT 017/16

IN THE MATTER	of a referral under s 48 of the Immigration Advisers Licensing Act 2007
BY	**The Registrar of Immigration Advisers** Registrar
BETWEEN	**Andrej Stanimirovic** Complainant
AND	**Howard Levarko** Adviser

DECISION

REPRESENTATION:

Registrar: Mr G La Hood, lawyer, MBIE, Wellington.

Complainant: In person.

Adviser: Mr K Lakshman, Barrister, Wellington.

Date Issued: Thursday, 22 February 2018

DECISION

Preliminary

[1] This is a complaint against Mr Levarko, a licensed immigration adviser who practices in Wellington.

[2] Licensed immigration advisers are required to practise within a strict regulatory regime, which has some exceptional features. One feature is that New Zealand law makes it illegal for anyone to assist with New Zealand immigration processes unless they are a licensed immigration adviser, lawyer or included in certain other specific categories of persons. There are some limited exceptions to the general principle, but the restriction applies everywhere in the world.

[3] The regime requires licensed immigration advisers to perform the services personally. They are different from other professionals who can usually allow non-qualified staff to provide many services under the supervision of a qualified professional.

[4] Unfortunately, there have been a series of complaints addressed by this Tribunal concerning a practice known as “rubber-stamping”. Typically, this has arisen where a licensed immigration adviser has used off-shore agents who recruit clients, prepare immigration applications, send them to the licensed immigration adviser to sign off and file them with Immigration New Zealand (INZ). This Tribunal has made it clear the activity is unlawful, deprives potential migrants of the protections afforded by the Immigration Advisers Licensing Act 2007 (the Act) and accordingly raises serious professional conduct issues for any licensed immigration adviser involved in the practice. The gravity is underlined by the fact the activity involves committing offences against the Act under which the adviser is licensed.

[5] This complaint against Mr Levarko alleges that he engaged in “rubber-stamping”. There are three elements to the complaint, which the Registrar has particularised:

[5.1] First, that Mr Levarko entered into arrangements with a Canadian enterprise which would recruit clients, prepare immigration applications and send them to him for final checking and sign-off. The Registrar says that by doing so, Mr Levarko failed to obtain informed lawful instructions from clients and acted in breach of the immigration legislation. The complaint is specifically in relation to Mr Stanimirovic and how Mr Levarko’s service delivery practices affected him.

[5.2] The Registrar also raises the issue of how Mr Levarko responded when Mr Stanimirovic contacted him regarding his immigration situation. The Registrar alleges that Mr Levarko dishonestly assured Mr Stanimirovic

that his immigration application was in order, when in fact he had no reason to suppose that was the case. Instead, Mr Levarko was aware that any immigration services provided had been provided improperly by unlicensed persons.

[5.3] The third ground particularised in the complaint is that after Mr Stanimirovic contacted Mr Levarko, Mr Levarko failed to carry out the client engagement process in accordance with the requirements of the Licensed Immigrations Advisers Code of Conduct 2014 (the 2014 Code).

[6] Mr Levarko's response to the complaint is that he had a contract with the Canadian enterprise that dealt with Mr Stanimirovic. He says the contract appropriately regulated his relationship with the relevant parties. He says that entities in Canada engaged with Mr Stanimirovic outside the terms of the contract and the understanding he had with them. He says, he had no responsibilities towards Mr Stanimirovic. When Mr Stanimirovic contacted him and identified that Mr Levarko's licence was being used by the Canadian entities, Mr Levarko says he was helpful. However, Mr Stanimirovic was not a client and Mr Levarko properly discharged his duties to Mr Stanimirovic by discussing matters with him and suggesting that the entities in Canada should deal with his concerns.

[7] The complaint focuses solely on the circumstances relating to Mr Stanimirovic. However, it is necessary to consider the structure and arrangements Mr Levarko created with the Canadian entities. The Tribunal must consider how what happened to Mr Stanimirovic was connected to Mr Levarko's arrangements with the Canadian entities. That will determine what responsibility Mr Levarko had. Mr Levarko says what happened to Mr Stanimirovic was completely outside the relationship he had with the Canadian parties, so he had no responsibilities. However, the merits of that can only be understood by considering what the arrangements were.

[8] A key question is whether Mr Levarko was responsible for what happened to Mr Stanimirovic, or whether the parties in Canada stepped outside Mr Levarko's arrangements with them to a degree that absolves Mr Levarko of responsibility for what happened with Mr Stanimirovic.

[9] The Tribunal has upheld each of the grounds of the complaint on the basis that Mr Levarko established a crude "rubber-stamping" operation. This led to the following:

[9.1] Mr Levarko contemplated and operated expecting that unlicensed persons would provide immigration services under the arrangements.

[9.2] Mr Levarko knew those arrangements would result in the loss of the protections afforded by New Zealand immigration legislation to consumers affected by these arrangements.

[9.3] Mr Stanimirovic was given an assurance that a New Zealand licensed immigration adviser was involved in his immigration applications.

[9.4] Mr Stanimirovic contacted Mr Levarko and put him on notice as to what had happened.

[9.5] Mr Levarko had personal knowledge of the fact that unlicensed persons were providing immigration services to Mr Stanimirovic, and he encouraged Mr Stanimirovic to think that was appropriate and further facilitated the unlawful provision of immigration services.

[9.6] Mr Levarko failed to engage with his client properly and did not comply with the 2014 Code, including failing to have a written agreement for the provision of professional services.

The Complaint

The background facts

[10] The Registrar filed a statement of complaint, set out a factual narrative, and identified three grounds for complaint. The main elements of the factual background in the statement of complaint are as follows:

The parties

[10.1] Mr Stanimirovic engaged TEC Employment Services Limited (TEC) a recruitment company based in Canada. He entered into a written agreement with TEC and paid a fee of US$2,500. The fee related to securing employment in New Zealand.

[10.2] The complainant is Mr Stanimirovic, and Mr Levarko is the licenced immigration adviser.

[10.3] The two Canadian entities to consider are:

[10.3.1] TEC and its officers Mr Franklin and Mr Siegfried H de Melo; and

[10.3.2] Gateway Staffing and Recruitment (Gateway), and its officers Ms King and Mr King.

[10.4] None of the persons associated with TEC or Gateway are licenced immigration advisers. Only Mr Levarko held a licence.

TEC makes arrangements for Mr Stanimirovic

[10.5] A written agreement Mr Stanimirovic had with TEC said that once he received and accepted a job offer, all the necessary information would be given to the "employer's immigration representative", who would then prepare and submit all the necessary paperwork to INZ.

[10.6] TEC told Mr Stanimirovic it obtained employment for him as a welder in Christchurch. It sent Mr Stanimirovic an employment agreement, which identified "Gateway Staffing and Recruitment" as the employer. That agreement was signed by Ms King as, or on behalf of, "Gateway Staffing and Recruitment".

Gateway's involvement with immigration issues

[10.7] Mr Levarko had a business relationship with Gateway, and Mr and Ms King, who were apparently the principals of Gateway.

[10.8] On 18 September 2015, Ms King sent a partially completed work visa application to TEC, with instructions for Mr Stanimirovic to sign and complete certain sections of the form. TEC sent the application form to Mr Stanimirovic.

[10.9] Mr Levarko's identity was referenced on the form that Ms King had prepared, in the section identifying the licensed immigration adviser who was assisting with the process. Mr Stanimirovic completed the relevant sections of the form and returned it to TEC together with his passport and other documents.

Problems with immigration issues and contact with Mr Levarko

[10.10] On 17 October 2015, TEC informed Mr Stanimirov there had been a delay in processing his work visa application. TEC said that the application had been "submitted to New Zealand for processing", couriered to the UK for approval and then due to some irregularities, it had been sent "to the US head office for further processing".

[10.11] At this point, Mr Stanimirov contacted Mr Levarko via Skype to discuss his immigration matter and enquire about the delays with his visa application. He was able to do so using the reference on the form to Mr Levarko's identity.

[10.12] During the conversation with Mr Stanimirov, Mr Levarko emailed Ms King stating "I've got Andrej Stanimirovic on Skype now, wanting to know about his work visa, can you contact me asap on Skype please & advise him accordingly".

[10.13] The following day, 20 October 2015, Ms King replied to Mr Levarko's email saying that Mr Stanimirovic's application was intended "to be submitted to London, but we pulled it as we were not sure what was happening with the applications in Washington".

Second contact between Mr Levarko and Mr Stanimirovic

[10.14] On 20 October 2015, Mr Stanimirovic contacted Mr Levarko again by Skype and had further queries about his visa application. Mr Levarko confirmed his application was in Washington DC.

Change of immigration strategy and Mr Levarko gives advice on it

[10.15] On 22 October 2015, TEC emailed Mr Stanimirovic saying that his visa application had been returned to Gateway's head office at the request of Gateway, because the application was taking too long.

[10.16] Mr Franklin proposed a "solution" for Mr Stanimirovic, saying that he would submit an application for a visitor visa to INZ to allow Mr Stanimirovic to travel to New Zealand faster "and then in the first week of being in New Zealand we will transfer your Visitor Visa to a Work Visa".

[10.17] On 26 October 2015, Mr Stanimirovic contacted Mr Levarko via Skype to enquire about "transferring from a visitor visa to a work visa". Mr Levarko told Mr Stanimirovic that he could apply for a work visa while he was in New Zealand on a visitor visa.

[10.18] On 31 October 2015, TEC told Mr Stanimirovic that they would pay for his flight to Christchurch once his visa had been approved, and transfer his visitor visa to a work visa free of charge once he obtained a position of employment.

[10.19] On 11 November 2015, TEC submitted a visitor visa application to INZ on behalf of Mr Stanimirovic. INZ approved the visitor visa application and TEC arranged flights for Mr Stanimirovic to travel to New Zealand. When he arrived in New Zealand he was denied entry on the basis he was not a bone fide visitor. INZ suspected that Mr Stanimirovic had travelled to New Zealand looking for employment opportunities rather than as a tourist.

[10.20] TEC told Mr Stanimirovic that it would assist him, and said they would discuss the matter with Mr Levarko.

The grounds of complaint identified by the Registrar

[11] The Registrar identified grounds for complaint. They are:

"Rubber-stamping" services of unlicensed persons

[11.1] The first allegation is a breach of cl 2(e) of the 2014 Code. It requires that a licensed immigration adviser must "obtain and carry out the informed lawful instructions of the client". The allegation includes a breach of cl 3 of the 2014 Code, which requires that a licensed immigration adviser must act in accordance with New Zealand immigration legislation.

[11.2] The particulars of this first ground of complaint effectively allege Mr Levarko set up a rubber-stamping structure, the particulars being:

[11.2.1] in April 2015, Mr Levarko established a business relationship with Gateway, to assist with facilitating migrants coming to New Zealand and obtaining work visas, primarily for the Christchurch rebuild; and

[11.2.2] the agreement was that Gateway would assist candidates obtaining employment in New Zealand, and Mr Levarko would provide any immigration services because neither Mr King nor Ms King, the principals of Gateway, were licensed to provide immigration advice.

[11.3] In Mr Stanimirovic's case, what in fact occurred to deliver immigration services to him was that:

[11.3.1] Ms King prepared the word visa application and sent it to TEC with instructions for the next step;

[11.3.2] TEC engaged with Mr Stanimirovic to gather the necessary documents and provide advice on the documents required to be submitted to INZ;

[11.3.3] TEC provided updates on Mr Stanimirovic's work visa application and an explanation for delays in processing his application at INZ; and

[11.3.4] TEC prepared a visitor visa application, sending it (or taking responsibility for sending it) to INZ on Mr Stanimirovic's behalf.

[11.4] When Mr Stanimirovic contacted Mr Levarko for advice, Mr Levarko told him he did not remember his application coming through to him so

suggested he should contact Ms King. Mr Levarko told Mr Stanimirovic that if he could not reach her himself, then he would follow it up and try to find out what was happening with his work visa application.

[11.5] When Mr Stanimirovic asked Mr Levarko whether he should contact Ms King or Mr Levarko, Mr Levarko suggested that he should contact Ms and Mr King, say he had talked to Mr Levarko, and follow their advice.

[11.6] In these circumstances, the adviser failed to obtain Mr Stanimirovic's informed lawful instructions and ensure that only a licensed immigration adviser provided professional services. He accordingly breached the provisions set out above.

Dishonest or misleading behaviour

[11.7] The next potential professional breach the Registrar identified is put in the alternative. Either dishonest or misleading behaviour (s 44(2)(d) of the Act), or and a failure to maintain professional standards under cl 1 of the 2014 Code. That provision of the 2014 Code provides that a licensed immigration adviser be "honest, professional, diligent and respectful and conduct themselves with due care".

[11.8] In relation to this aspect of the complaint, the Registrar identified the events that occurred when Mr Stanimirovic made contact with Mr Levarko in October 2015. TEC had told Mr Stanimirovic that his visa application had been sent to "the US head office for further processing". Mr Stanimirovic knew Mr Levarko was his immigration adviser, from the application form Gateway drafted. He made contact with him on 20 October 2015. The Registrar identified as a potentially dishonest misrepresentation that Mr Levarko said the visa papers were in Washington DC, and he was expecting to hear from the New Zealand embassy in Washington regarding the matter.

[11.9] The Registrar says that when Mr Stanimirovic asked for a reference number for his visa application, Mr Levarko responded by saying, "Well what makes you think that if you check it you'll have a different answer than what I have?". The Registrar alleges Mr Levarko then went on to assure Mr Stanimirovic that "everything was going very, very smoothly and then all of a sudden something happened at Washington and now we're trying to get it back on track".

[11.9.1] In fact, the Registrar says no work visa application had been submitted to INZ for Mr Stanimirovic. Accordingly, his representations were false.

[11.9.2] The Registrar alleges that Mr Levarko may have provided misleading information to Mr Stanimirovic, and did so dishonestly to mislead him, or failed to meet his obligations to be "honest, professional, diligent and respectful and to conduct [himself] with due care".

Failure to carry out the client engagement process

[11.10] The Registrar has identified the obligation that a licensed immigration adviser has to ensure that when a client decides to proceed with a professional engagement, they must provide the client with a written agreement (cl 18(a) of the 2014 Code).

[11.11] The Registrar has identified that this aspect of the complaint relates to the point in time when Mr Stanimirovic contacted Mr Levarko. The Registrar says that Mr Levarko engaged in discussions with Mr Stanimirovic. Those discussions related to his visa application to take up employment in Christchurch; however, Mr Levarko failed to enter into a written agreement at that point in time.

Procedure

[12] The Tribunal hears complaints on the papers under s 49 of the Act, but may in its discretion request either information or for persons to appear before the Tribunal.

[13] In this case, Mr Stanimirovic and Mr Levarko both gave oral evidence. Accordingly, the Tribunal directed that the documents on the Tribunal's record would form part of the record for the purpose of hearing, and it was not necessary to produce that material through witnesses.

[14] The oral part of the hearing proceeded in the conventional way with Mr Stanimirovic and Mr Levarko giving evidence and being subject to cross-examination.

Mr Levarko's answer to the complaint

[15] Mr Levarko said he had no involvement whatsoever with TEC, and equally had no involvement with Mr Stanimirovic until he communicated with him in October 2015. Mr Levarko does accept that he had a relationship with Gateway. Apparently, Gateway is the trading name of Mr and Ms King, and there are also one or more companies apparently under the control of Mr and Ms King. However, Mr Levarko's perspective is that he entered into an agreement with Mr and Ms King personally and they operated a recruitment/employment entity based in Canada, which engaged foreign workers, including for work in New Zealand. He says he entered a formal agreement with Mr and Ms King which provided that:

[15.1] Mr Levarko would provide immigration advice to Gateway and have overall responsibility for preparing and lodging applications for visas with INZ;

[15.2] the staff at Gateway could perform "clerical work;

[15.3] no application for a visa could be lodged in Mr Levarko's name, unless he perused it and approved it; and

[15.4] Gateway would remunerate Mr Levarko for these services.

[16] Mr Levarko says that his client was Gateway and the workers were not his clients. He says that the agreement did not provide for him to enter into separate or collateral contracts with the workers.

[17] Mr Levarko says that he consulted with and obtained advice from the New Zealand Immigration Advisers Authority (the Authority). From them he received confirmation that these proposed arrangements with Gateway were appropriate and complied with all immigration laws and rules.

[18] Mr Levarko lodged many applications with INZ under these arrangements and kept a record of all such applications.

[19] Mr Levarko says that he had no involvement with Mr Stanimirovic's arrangements with TEC, and was not aware of TEC, Mr Stanimirovic, or any arrangements they may have had between them.

[20] Mr Levarko says TEC secured employment for Mr Stanimirovic with Gateway — that is in the sense that Gateway purported to be Mr Stanimirovic's employer in New Zealand, and Mr Levarko says he knew nothing of this matter either.

[21] Mr Levarko acknowledges that Gateway completed what he described as "the clerical work" that was required to complete the work visa application form for Mr Stanimirovic, but he had no knowledge of that.

[22] Now that Mr Levarko has examined the form prepared by Gateway, he notes that:

[22.1] Gateway provided its own name and address for the purpose of communication regarding the application;

[22.2] Gateway represented that it was authorised by Mr Stanimirovic to act on his behalf;

[22.3] Gateway represented that it had received immigration advice in relation to the application;

[22.4] Gateway provided Mr Levarko's licence number;

[22.5] he never provided immigration advice to Gateway or to Mr Stanimirovic directly or indirectly in relation to this application for a work visa. He also had no knowledge of or involvement in the steps Gateway and TEC took when dealing with Mr Stanimirovic;

[22.6] as Mr Stanimirovic was not his client, he did not have to concern himself with TEC's actions because there was no agreement or association;

[22.7] when Mr Stanimirovic contacted him on 19 October 2015, Mr Levarko was not aware of Mr Stanimirovic because Gateway had not informed him about the matter. He says that the purpose of his engagement with Mr Stanimirovic at that point in time was to provide assistance and be helpful. The same applied to the two subsequent occasions when Mr Stanimirovic contacted him. He says that what he told Mr Stanimirovic about his application was qualified, and expressed in a way that would be understood as indications of possibilities; and

[22.8] these communications did not raise the possibility of acting in a professional capacity for Mr Stanimirovic. Accordingly, Mr Levarko contends that he had no professional relationship at all with Mr Stanimirovic, had no responsibility for what had occurred between him, TEC and Gateway, and when he came to know of these matters properly, provided some helpful comments and referred Mr Stanimirovic to Gateway.

[23] In terms of the specific technical responses, Mr Levarko contends that:

[23.1] he did not provide "immigration advice", therefore Mr Stanimirovic had no basis for making a complaint against him under s 44(1)(a) of the Act;

[23.2] he had no responsibility to take informed instructions, because Mr Stanimirovic was not his client. He claimed he had given no authority to Gateway to act for Mr Stanimirovic, and he and Gateway were at "arm's length", having only a contractual relationship;

[23.3] clause 3(c) of the 2014 Code imposes a generic obligation on the adviser to comply with New Zealand's immigration laws, and he could neither identify what laws it was suggested he breached, nor did he breach any laws;

[23.4] he only had limited information regarding Mr Stanimirovic and his responses to queries raised were honest, professional, diligent and respectful in the context of what he knew of Mr Stanimirovic's circumstances; and

[23.5] he never formed a client relationship with Mr Stanimirovic and accordingly he had no obligation to enter into the client engagement process.

Discussion

The standard of proof

[24] The Tribunal determines facts on the balance of probabilities. However, the test must be applied with regard to the gravity of the potential finding: *Z v Dental Complaints Assessment Committee* [2008] NZSC 55, [2009] 1 NZLR 1 at [55].

[25] Given the allegations of dishonesty, the gravity is at the high end. Accordingly, I make findings on that basis.

Mr Levarko's knowledge of his professional obligations

[26] Both Mr Levarko's reply to the statement of complaint and his evidence were striking. He said he had been a licensed immigration adviser since 2007, and previously had been an immigration officer with INZ. He claimed he was familiar with the legislation and that he has spent a large amount of time and effort promoting proper immigration practices. He said that he presented seminars about proper immigration practices and the regulatory regime, and he claimed to have served in various capacities where he contributed to the development of professional practice and advised other licensed immigration advisers about proper immigration practices.

[27] Notwithstanding Mr Levarko's claims as to his integrity and expertise in relation to immigration practice, his response to the statement of complaint and his evidence indicated he either had no concept of the most elementary obligations regarding client engagement, or feigned a lack of knowledge.

[28] Since 2012, "rubber-stamping" has been identified as a serious breach of professional responsibilities, and the Registrar has drawn attention to the issue.

[29] During the course of Mr Levarko's evidence, I provided him with a copy of one of the Registrar's newsletters to the profession regarding the issue and the following decisions of this Tribunal:

[29.1] *Balatbat v Sparks* [2016] NZIACDT 27;

[29.2] *IAA v Sparks* [2013] NZIACDT 5;

[29.3] *IAA v Maerean* [2013] NZIACDT 6;

[29.4] *IAA v Van Zyl* [2012] NZIACDT 37; and

[29.5] the High Court's decision in *Sparks v IACDT* [2017] NZHC 376.

[30] That series of cases makes it clear what the proper principles are in relation to "rubber-stamping". I took that step because a significant element to determine in this case is whether Mr Levarko was intentionally non-compliant with his professional obligations or failed to understand what they were. This Tribunal has an obligation to make proper enquiries into the issues before it. In *Z v Dental Complaints Assessment Committee* [2008] NZSC 55, [2009] 1 NZLR 1 at [115], the Supreme Court observed in relation to another disciplinary tribunal:

> Consistent with its purpose of public protection, the Act does not extend to those subject to its disciplinary processes all of the protections afforded to a defendant at a criminal trial. This emphasises the significant differences in the two types of proceedings. The Tribunal is engaged in an enquiry rather than a trial. It can receive evidence that would not be admissible in a court of law. It must observe the rules of natural justice, but is mandated take an inquisitorial approach in doing so. The statutory scheme reflects the long established view that proceedings such as those before the Tribunal are not criminal in nature.

[31] Having ensured that Mr Levarko had full opportunity to understand what his professional obligations were, regardless of how he understood them at the time, the Tribunal was then in a position to evaluate Mr Levarko's conduct on the basis of an informed response.

What happened?

Mr Levarko's relationship with Ms King, Mr King and Gateway

[32] Mr Levarko gave evidence about his relationship with Gateway and its principals. He produced a document styled "terms of trade" between himself, described as the adviser, and Mr and Ms King, described as "the client". This agreement was drafted by Mr Levarko rather than by a lawyer. It is less than precise in some respects. It appears to be drafted on the basis that Mr Levarko was to prepare and compile all information required for immigration applications to be lodged with INZ. It says that Mr Levarko will provide Mr and Ms King with advice "as to your options and the best way forward for our client". The agreement has no specified amounts for the cost of services and appears to be styled as an agreement for the provision of professional services by a licensed immigration adviser. The form of the agreement is plainly non-compliant in terms of being a written agreement for the provision of services under the 2014 Code. It is appropriately styled "terms of trade" and appears to be intended to relate to the provision of professional services by Mr Levarko to Mr and Ms King when dealing with their client.

[33] What the agreement says can only be of limited weight. It is also necessary to consider what was in fact occurring and, more importantly, what Mr Levarko knew was occurring at the material time. In this regard, Mr Levarko admits that he was aware that Gateway would engage clients. Gateway would prepare immigration documents, interview clients, and gather the information required to

support immigration applications. While there could be reasons for Gateway or a client to discuss a matter with him, in some cases the first knowledge he would have of a client was the point in time when he received a completed set of immigration documents, together with the supporting material ready to be lodged. As he saw it his function was to peruse those documents and ascertain that an immigration officer in INZ reviewing those documents would be satisfied that they were complete and complied with the relevant requirements for the issue of a visa. If there were some matter in issue, Mr Levarko might speak with the applicant or engage with Gateway, but if the papers were in order he would then complete the document as the licensed immigration adviser. He would know that Gateway had identified him in the documents as the licensed immigration adviser. On some occasions the application form would be already signed by the applicant when he first saw them. On other occasions, he would sign as the licensed immigration adviser and return them for signature by the applicant.

[34] The 2014 Code requires that a licensed immigration adviser when first instructed must establish a professional relationship between the adviser and their client, which includes a written agreement, various disclosure obligations, and taking informed instructions. Mr Levarko left that to Gateway, though for the reasons discussed in the authorities referred to in paragraph [29] above only a licensed immigration adviser can perform many of those functions.

[35] Accordingly, Mr Levarko accepts that clients would approach Gateway, he would be identified as their licensed immigration adviser, and only when the documents were complete would he, in some cases, be aware of their existence.

Mr Levarko's arrangements with Ms King, Mr King and Gateway were "rubber-stamping"

[36] The process that Mr Levarko has described is plainly unlawful. The foundation for the practice is to allow unlicensed persons to provide immigration services, contrary to the Act, which has an extraterritorial effect. It deprives potential migrants of the protections under the Act because they are entitled to have a licensed immigration adviser engage with them and get their informed instructions, and a licensed immigration adviser or other person permitted by the Act must perform all the immigration services. Mr Levarko's practice entirely and obviously subverted this process.

[37] "Rubber-stamping" is not a technical infringement. The breach goes to the very heart of the protection afforded by the Act. The way in which Mr Levarko worked is one of the most concerning examples of "rubber-stamping" this Tribunal has seen. Mr Levarko described how his main focus was on ensuring that if he were an immigration officer in INZ, as he formerly had been, that the package of documents would be sufficient for him to issue a visa. One of the core features of the Act is to ensure that licensed immigration advisers and other persons

permitted under the Act engage with clients, stress to them the importance of honesty and take professional responsibility for ensuring that applicants act with integrity (or at least understand the consequences of failing to do so). Immigration fraud is an ever-present concern.

[38] The Act and INZ contemplate that licensed immigration advisers uphold professional standards. A key element of those standards is impressing upon clients the importance of providing wholly true and accurate information when filing immigration documentation with INZ. For that reason, while not abandoning appropriate professional scepticism, INZ will process applications on the basis that where a person has identified themselves as a licensed immigration adviser, there can be some assurance that the applicant has been made aware of the serious consequences of producing false information. Mr Levarko failed to attempt to comply with his duties, and instead he put his skills and knowledge of how an immigration officer would view documentation at the disposal of persons who were unlicensed and had no particular interest in maintaining the integrity of New Zealand's immigration regime.

[39] Mr Levarko first endeavoured to justify the "rubber-stamping" regime he established with Gateway, and eventually grudgingly admitted that perhaps it was not ideal. I found Mr Levarko evasive and he simply failed to engage with the reality that his practices were grossly and plainly non-compliant.

[40] An issue where Mr Levarko's evasive answers were particularly apparent concerned the immigration forms that he would receive and sign as the licensed immigration adviser. In the case of work visa applications, the main category he was dealing with under the "rubber-stamping" procedure, the forms have sections H and I. Section H identifies that there is a licensed immigration adviser and sets out details including the license number. Section I is a declaration that Mr Levarko was required to complete before the application could be lodged with INZ. That section contains a key declaration by the licensed immigration adviser. It is known to every licensed immigration adviser because it is a standard requirement in the forms INZ demand that licensed immigration advisers complete. The certificate is in these terms:

> I certify that the applicant asked me to help and complete this form and any additional forms. I certify that the applicant agreed that the information provided was correct before signing the declaration.

[41] Mr Levarko established a "rubber-stamping" operation where the applicant had not asked him to help them complete the forms. The applicant had asked Gateway to complete the forms. Gateway had completed the forms. Furthermore, Mr Levarko could not certify that the applicant agreed that the information provided was correct before signing the declaration, because he had no dealings with many of the applicants before they signed the application.

[42] One of the most elementary features of practicing as a licensed immigration adviser is the protection afforded by the client engagement process under the 2014 Code. There have been similar provisions in each of the earlier versions of the 2014 Code. The process necessarily requires that a licensed immigration adviser, or any person permitted under the Act, must take informed instructions by discussing with applicants what their immigration objectives are, the alternatives open to them and the risk inherent in the alternative approaches. Further, there is a written agreement for the provision of services identifying the costs, the services to be provided and a number of other disclosure obligations. Unless a licensed immigration adviser has engaged in this process with the potential applicant, and identified they are a licensed immigration adviser, it is patently obvious there is fundamental non-compliance.

[43] The legal provisions underlying these observations are well settled.

The legal prohibition on "rubber-stamping"

[44] Section 63 of the Act provides that a person commits an offence if they provide "immigration advice" without being either licensed, or exempt from the requirement to be licensed.

[45] Section 73 provides that a person may be charged with an offence under s 63 whether or not any part of it occurred outside New Zealand.

[46] The scope of "immigration advice" is defined in s 7 very broadly. It includes:

> 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 ...

[47] There are exceptions to consider. Section 7 provides that the definition does not include "clerical work, translation or interpreting services".

[48] The scope of "clerical work" is important, as otherwise, the very wide definition of immigration advice would likely preclude any non-licence holder working in an immigration practice in any capacity.

[49] "Clerical work" is defined in s 5 of the Act in the following manner:

> **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

[50] The definition is directed to administrative tasks such as keeping records, maintaining financial records, and the like. The definition deals specifically with the role an unlicensed person may have in the process of preparing applications for visas. They may record information "on any form, application, request, or claim on behalf and under the direction of another person".

[51] The natural meaning of those words is that the unlicensed person relying on the "clerical work" exception may type or write out what another person directs.

[52] That other person may properly be the person who is making the application, a licensed immigration adviser, or a person who is exempt from being licensed. The person typing or writing out the form in those circumstances is not giving immigration advice.

[53] The definition does not give any authority for an unlicensed person to make inquiries and determine what is to be recorded on the form. Under "clerical work" they must do nothing more than "record" information as directed.

[54] The other exception in s 7 is that immigration advice does not include "providing information that is publicly available, or that is prepared or made available by the Department". This also excludes the possibility of an unlicensed person engaging with the specific factual situation of the person making an application; they may only provide information, not advice.

[55] As noted, the High Court's decision in *Sparks v IACDT* [2017] NZHC 376, *Balatbat v Sparks* [2016] NZIACDT 27; *IAA v Sparks* [2013] NZIACDT 5; *IAA v Maerean* [2013] NZIACDT 6; *IAA v Van Zyl* [2012] NZIACDT 37 discuss these principles.

The evidence – the Skype communications

Background

[56] Both Mr Stanimirovic and Mr Levarko gave evidence relating to interactions between them. Mr Levarko also gave evidence relating to the standing arrangement between Mr King, Ms King, Gateway and himself. Inevitably, in interactions between a professional adviser and a client there is potential for misunderstanding, and recall can be unwittingly influenced by later events. In the present case, the key communications between Mr Stanimirovic and Mr Levarko took place through a Skype connection where the computers record the communication. The Skype connection involved an audio-visual link, and the three occasions when this occurred were recorded and were still available. The Tribunal has had the benefit of seeing both the record of the audio-visual exchanges and written transcripts of the audio. Attached, as a schedule to this decision, is a transcript of the three audio recordings.

[57] It is important to note the intention, context, meaning and other aspects of the communications were contentious. Mr Levarko and Mr Stanimirovic were both cross-examined in relation to those matters.

[58] Having listened to the evidence of Mr Levarko and Mr Stanimirovic, and done so after observing the audio-visual records, I have been left with the very clear impression little or nothing is obscure or uncertain as to what transpired in those communications. Obviously, the inferences to be drawn may well turn on external matters, but what each party was trying to convey to the other appears obvious as far as significant matters for this decision are concerned.

The first Skype call

[59] The first of the three discussions occurred on 19 October 2015. The significant potential information to emerge from this conversation and the evidence of Mr Levarko and Mr Stanimirovic is:

[59.1] Mr Stanimirovic had no prior contact with Mr Levarko.

[59.2] Mr Stanimirovic contacted Mr Levarko because his identity had been associated with immigration services he had already received.

[59.3] While Mr Levarko had no prior dealings with Mr Stanimirovic, he was unsurprised that Gateway and Mrs and Mr King had been providing immigration services to Mr Stanimirovic.

[59.4] Mr Levarko was comfortable with Gateway and Mrs and Mr King providing immigration services to Mr Levarko. Mr Levarko did not think he had yet seen papers relating to Mr Stanimirovic, but was neither concerned nor surprised that was the case.

[59.5] Mr Levarko was content for Ms King to continue providing immigration services and advised Mr Stanimirovic's to take further advice from Ms King.

[59.6] Mr Levarko actively arranged for Ms King to involve herself further in providing immigration services by sending her an email, and indicating he would "chase it up with her".

[60] The Skype communication is entirely consistent with each of those implications. Indeed, it is difficult to sensibly to reach any other conclusion. Mr Levarko was unable to provide any alternative explanation that could explain what he said. Certainly, I am satisfied that those implications would all be evident to a disinterested observer from the conversation. Those findings are reinforced by the fact that, in his evidence, Mr Levarko essentially accepted that Gateway and its personnel were providing immigration services and he was facilitating them to do so by providing advice to them and having his name put on papers to

present to INZ. In some cases his name would be put on documents without any client contact, and he would sign off the documents for presentation to INZ. He was unable to explain why he involved himself in that arrangement when it was obvious the clients who received immigration services did not receive the protections afforded to them by the Act, and the 2014 Code.

The second Skype call

[61] The second Skype communication occurred on 20 October 2015. In addition to providing some consistency with the previous Skype communication, the following implications are potentially taken from this interaction:

[61.1] Mr Stanimirovic understood Mr Levarko was acting as his licenced immigration adviser and expected to obtain information from him.

[61.2] Mr Levarko endeavoured to diminish the significance of his role. He described himself as "just reporting back to you". The subject matter of what he was reporting back on was Mr Stanimirovic's immigration visa for New Zealand.

[61.3] Mr Levarko indicated to Mr Stanimirovic he was engaged in the immigration work and anticipated receiving information from the New Zealand embassy in Washington "hopefully today or tomorrow". He said he was expecting a telephone call from the embassy or an email, but had not received the communication so had nothing to report.

[61.4] Mr Levarko communicated that he had spoken with Ms King and he had "kept her … up-to-date with all the information on what is happening".

[61.5] Mr Levarko endeavoured to communicate to Mr Stanimirovic that he, Mr Levarko, was in control of Mr Stanimirovic's immigration affairs, and dealing direct with INZ through the New Zealand embassy in Washington.

[61.6] Mr Levarko endeavoured to communicate to Mr Stanimirovic that he had direct knowledge that Mr Stanimirovic's "visa application and visa papers were in Washington DC".

[61.7] Mr Stanimirovic endeavoured to obtain a reference number or similar so that he could personally direct his own enquiries to INZ. When Mr Levarko realised that was going to occur, he endeavoured to dissuade Mr Stanimirovic from contacting INZ. He did so by making a representation that he had himself made enquiries with INZ, and discouraged Mr Stanimirovic insisting on getting a reference number by saying "what makes you think that if you check it that you will have a different answer than what I have?".

[61.8] Mr Levarko gave assurances to Mr Stanimirovic that his immigration affairs were under control and that "everybody that is applying or that has gone to Universal Gateway will be placed in New Zealand".

[61.9] He said the delays were occurring because Mr Levarko and Gateway "have got hundreds and hundreds and hundreds of applications at the New Zealand embassy in Washington". He added that the New Zealand embassy in Washington provided "bad customer service".

[61.10] Mr Stanimirovic required information about dates so as he could make arrangements for commencing work. He was assured by Mr Levarko that matters were under control.

[61.11] Mr Stanimirovic directly asked Mr Levarko to say whether he should contact him or whether he should talk to Ms King about his immigration affairs. Mr Levarko said either was appropriate but he suggested going back to Ms King or Mr King and telling them that he had spoken to Mr Levarko and to follow "whatever process they advise".

[61.12] Mr Levarko said "I think you may be one of the ones they are holding off because they don't want your application declined". The implication being that Mr Levarko believed, or intended to cause his client to believe, that Ms King and Mr King were making immigration decisions, including strategic decisions relating to dealing with INZ.

[62] In fact Mr Levarko dishonestly made up the information he gave to Mr Stanimirovic in that he had no dealings with Mr Stanimirovic's application, the application was not in fact at the New Zealand Embassy in Washington, he had no reason to suppose that the Embassy would be in contact with him, there was no reason to suppose the New Zealand Embassy was at fault in relation to Mr Stanimirovic's immigration affairs and Mr Levarko in fact had no personal dealings with Mr Stanimirovic's immigration application and knew nothing about it other than what Mr Stanimirovic told him. Mr Levarko could provide no evidence he had prepared the application, or had any personal involvement with it. The evidence from INZ's records shows the application was not filed, and Mr Levarko has provided no evidence to the contrary.

The third Skype call

[63] The third Skype communication occurred on 26 October 2015.

[64] This conversation was clearly conducted in the light of the two earlier discussions. The implications that flow from this conversation are that Mr Levarko:

[64.1] tended the advice that Mr Stanimirovic could come to New Zealand on a visitor's visa and then when in New Zealand apply for a work visa;

[64.2] tended advice relating to the length of time for which a visitor visa could be granted;

[64.3] gave immigration advice relating to "a specific policy that you can apply for it if you want to come to New Zealand for a visit". That policy concerned looking for work while in New Zealand on a visitor's visa;

[64.4] advised on the period of validity for immigration medical certificates;

[64.5] was asked about the cost of medical insurance (which he deflected); and

[64.6] advised Mr Stanimirovic to use the immigration policy allowing him to come to New Zealand under a visitor's visa and come to New Zealand to seek work.

Conclusions regarding the Skye calls and their context

[65] The whole of the evidence satisfied me that on the balance of probabilities (the standard of proof reflecting the serious allegations that Mr Levarko faces), I must conclude:

[65.1] Mr Levarko put in place a structure where clients would receive immigration services in Canada from unlicensed persons.

[65.2] Mr Levarko did not supervise the provision of those immigration services, though may from time to time provided some input.

[65.3] Mr Levarko must have been aware that clients receiving those immigration services did not have the benefit of the protection afforded by the Act, or the 2014 Code. They did not have the benefit of a licenced immigration adviser providing services and did not go through a proper client engagement process required by the 2014 Code. That client engagement process includes obtaining informed instructions after taking advice tended by a licenced immigration adviser, disclosure requirements and a written agreement which identifies a licenced immigration adviser as the service provider. Mr Levarko was required to understand those provisions and apply them every time he received instructions from a client. There is no scope for regarding Mr Levarko's participation in the rubber-stamping operation as other than a wilful choice to deprive persons who believed he was their immigration adviser of their statutory rights.

[65.4] Mr Levarko, like any licensed immigration adviser, was required to understand it is a criminal offence to be a party to having unlicensed persons providing immigration advice ("immigration advice" is defined very widely in the manner identified above).

[65.5] When Mr Levarko was confronted by Mr Stanimirovic's communication with him, he realised that his name had been used as a licenced immigration adviser to facilitate Mr Stanimirovic's immigration to New Zealand for work as part of his rubber-stamping operation.

[65.6] At that point Mr Levarko actively encouraged Mr Stanimirovic to receive further immigration services from Gateway.

[65.7] Mr Levarko in fact had no knowledge at all of Mr Stanimirovic's circumstances or application. He embarked on a process of deception. He fabricated an explanation that there were "hundreds and hundreds and hundreds" of applications lodged by Gateway and/or himself. The New Zealand embassy in Washington provided poor customer services. Whereas, the true facts were that Mr Levarko had no idea what services had been provided apart from what Mr Stanimirovic told him. He chose to disparage New Zealand's immigration system as part of the deception to hide his own unprofessional actions. It is material to consider the purpose of the Act, s 3 provides:

> The purpose of this Act is to promote and protect the interests of 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

[65.8] Mr Levarko's actions were calculated to undermine both principles.

[65.9] Mr Levarko, at the point in time when Mr Stanimirovic contacted him and informed him he had been identified as his licensed immigration adviser, did not endeavour to correct the situation. Instead he referred Mr Stanimirovic to Gateway, Mrs and Mr King, and invited them to provide further immigration services, notwithstanding that was a criminal offence.

[65.10] When pressed further by Mr Stanimirovic to help him, Mr Levarko embarked upon a process of providing specific immigration advice; in particular, he advised him to enter New Zealand using a visitor permit to seek work.

[65.11] At no point did Mr Levarko undertake the client engagement process required, given that he was in fact providing immigration services to Mr Stanimirovic. He did not obtain informed instructions, enter into a

written agreement to provide the services or undertake the disclosure processes.

[65.12] Instead of entering into a proper client relationship and providing immigration services professionally, Mr Levarko provided advice that was deficient in the circumstances. He advised Mr Stanimirovic to obtain a visitor's visa, travel to New Zealand and seek a work permit when in New Zealand. While the immigration policy allows a person to enter New Zealand and seek work under a visitors visa, the person must not pretend they are a tourist. They must disclose that they are seeking work, and will only take up work if granted a work visa. If a person comes to New Zealand pretending they are a tourist, and in fact intend to seek work, INZ will assume they are seeking to work without a work permit and turn them around at the border. It appears that is what happened to Mr Stanimirovic.

[65.13] Having given the advice, it was imperative that Mr Levarko follow it up by making sure he drafted an appropriate application for a visitor visa that disclosed the true reasons for seeking the visa. Instead, Mr Levarko referred Mr Stanimirovic back to the unlicensed persons to assist him. As it happened, TEC personnel apparently undertook that work. It is unimportant whether TEC or Gateway did that work. The important finding is that Mr Levarko gave immigration advice regarding the sort of permit, and he did not do the work required.

[65.14] Mr Levarko's failure to deliver the professional assistance he should have provided to Mr Stanimirovic led to him being turned around at the airport in New Zealand.

[66] It is only necessary to refer to the legal restrictions previously discussed to identify that Mr Levarko engaged in rubber-stamping. Then when a client became embroiled in Mr Levarko's rubber-stamping operation, had been told Mr Levarko was is licensed immigration adviser, and contacted Mr Levarko; then, Mr Levarko failed to accept any professional responsibility. Instead he embarked on an attempt to deceive Mr Stanimirovic. His failure to accept professional responsibility endured through at least part of the hearing before this Tribunal. Mr Levarko eventually accepted there may have been some technical infringement of his obligations.

Mr Levarko's claim the Tribunal has no jurisdiction over his conduct

[67] As noted, Mr Levarko contended that he did not provide "immigration advice", therefore Mr Stanimirovic had no basis for making a complaint against him under s 44(1)(a) of the Act.

[68] This claim is without merit. Mr Levarko did in fact personally provide immigration advice. Mr Levarko, as the transcript of his Skype conversations records, provided immigration advice in a number of respects. Part of that advice was to come to New Zealand on a visitor's permit, seek work and then apply for a work permit. It was that advice that led to Mr Stanimirovic being turned around at the airport in New Zealand.

[69] I have already discussed the breadth of what is included in immigration advice. The "immigration advice" Mr Levarko provided also included his recommendation that Mr Levarko re-engage with Mr King, Ms King and Gateway, his advice that Mr Stanimirovic's application had stalled with the Washington embassy due to "hundreds and hundreds and hundreds" of applications filed by Gateway and the poor customer service offered by the embassy. The fact that it was fabricated and wrong does not deprive of the quality of being "immigration advice". Pursuant to s 7 of the Act, "purporting to use, knowledge of or experience in immigration to advise" is sufficient to amount to "immigration advice". That is what Mr Levarko did when he fabricated information and provided it to Mr Stanimirovic.

Mr Levarko's contention that he had no responsibility to take informed instructions because Mr Stanimirovic was not his client

[70] The merits of Mr Levarko's claim that Mr Stanimirovic was not his client are discussed below under the specific allegations against him. As a general proposition his claim is without merit. Mr Levarko established a structure where his name was used as a licenced immigration adviser and encouraged unlicensed persons in Canada to provide immigration advice. Mr Levarko was fully aware that it was impossible to provide immigration advice consistent with the requirements of the Act in this way.

[71] For the reasons discussed later, Mr Stanimirovic did become a client, he engaged personally with Mr Levarko and was given assistance. Regardless, a licenced immigration adviser developing a structure for unlicensed persons to provide immigration services does not in itself preclude a client relationship. In the present case, it is sufficient to note that these arrangements contemplated that Mr Levarko's identify would be used as the licenced immigration adviser identified on immigration forms to be submitted to INZ. Mr Levarko admitted that at least in some cases he would receive the forms and sign them. In the present case, the forms had not been submitted to INZ. However, Mr Stanimirovic received the forms with Mr Levarko's licence referred to on the forms. That was within the contemplation of the rubber-stamping arrangements; and, in this case, Mr Levarko had direct contact with Mr Stanimirovic and had to personally address the concerns arising out of the rubber-stamping arrangements and their effect on Mr Stanimirovic.

The first ground of complaint – rubber-stamping in respect of Mr Stanimirovic

[72] It is important to be specific in relation to the grounds of complaint identified. As already discussed the allegations particularised are a breach of cl 2(e) and 3(c) of the 2014 Code in relation to unlicensed immigration advice. The relevant provision of cl 2 is that a licenced immigration adviser must obtain and carry out informed lawful instructions of a client. Clause 3 provides that a licenced immigration adviser must act in accordance with New Zealand immigration legislation.

[73] Accordingly, the substance of this aspect of the complaint is that Mr Levarko failed to engage with Mr Stanimirovic and obtain lawful informed instructions, and he chose to breach New Zealand immigration legislation by procuring unlicensed persons to provide advice to a consumer of immigration services.

[74] In terms of the facts the Registrar has generally identified the business relationship between Mr Levarko and Gateway; but, the particulars are directed to the specific dealings with Mr Stanimirovic. Accordingly, this decision only concerns the dealings with Mr Stanimirovic.

[75] For the reasons already discussed, it is inescapable that Gateway would provide the bulk of the immigration services to clients, such as Mr Stanimirovic. Mr Levarko was fully aware Gateway did not have any licenced immigration advisers amongst its personnel. One of the fundamental protections that a consumer of immigration services is entitled to have under the Act is that a licenced immigration adviser engages with them and obtains and then carries out the lawful informed instructions of the client.

[76] Gateway purported to provide an employment opportunity and Mr Stanimirovic required a work permit to take up the purported opportunity. Mr Stanimirovic provided the information required to apply for a work visa, including all of the personal documentation. Mr Stanimirovic was led to believe that the application was submitted to INZ (including by Mr Levarko's representation). In fact, the work visa application was not submitted, and instead an application was made for a visitor permit so that Mr Stanimirovic could come to New Zealand and seek work. I note that a Gateway company had purported to offer employment, but the evidence indicates that it was not an employer of New Zealand personnel. It is not necessary to reach a conclusion as to why a Gateway company was presented to Mr Stanimirovic as an employer. Regardless, it had become apparent Mr Stanimirovic had to seek work with a genuine New Zealand employer.

[77] The particulars of the breach in the statement of complaint focus on what happened when Mr Stanimirovic engaged personally with Mr Levarko. At that point, Mr Levarko failed to obtain and carry out Mr Stanimirovic's lawful informed instructions because:

[77.1] He did not inform him of the true situation regarding his then current immigration affairs and seek instructions to remedy the situation. Instead he deceived Mr Stanimirovic.

[77.2] He gave Mr Stanimirovic advice regarding coming to New Zealand using a visitor's visa, without adequately informing Mr Stanimirovic of the relevant policy. He then failed to carry out the instructions and instead left Mr Stanimirovic to continue dealing with unlicensed persons.

[78] The direct result of Mr Levarko's failure to obtain and carryout Mr Stanimirovic's informed instructions was that he was turned around at the airport when he arrived in New Zealand. The provision of the necessary immigration services in the manner required by the Act and the 2014 Code would have ensured that Mr Stanimirovic could have made an informed decision whether to come to New Zealand, and if so entered New Zealand under the relevant policy.

[79] Mr Stanimirovic is a skilled welder and his services are in high demand worldwide. The result of Mr Stanimirovic not receiving proper immigration advice is that New Zealand lost the opportunity of Mr Stanimirovic providing his technical skills to assist the New Zealand economy. Mr Stanimirovic now has a negative view of the protections afforded by New Zealand's immigration regime. The unlicensed Canadian persons who provided the services were required to meet some of the costs faced by Mr Stanimirovic.

[80] This present case is one of the most egregious examples of rubber-stamping. That is because:

[80.1] there was no attempt whatever to ensure that Mr Stanimirovic received the protections afforded by the Act, and the 2014 Code (even when Mr Levarko was on notice Mr Stanimirovic was a victim of unlicensed persons providing immigration services);

[80.2] the modus operandi involved deceptive certification in the documents (though as it happens they were not submitted to INZ in this case);

[80.3] Mr Levarko, instead of recognising the professional responsibilities he had after creating the situation for Mr Stanimirovic, referred him back to the unlicensed persons who did not have the skills to assist him;

[80.4] Mr Levarko lied about what had happened to Mr Stanimirovic's application, and disparaged INZ;

[80.5] the key skill Mr Levarko provided in the rubber-stamping operation was to review documents to see they appeared in order and were likely to be approved by an immigration officers (using his experience as a former immigration officer); and

[80.6] after the complaint and the Registrar's statement of the complaint which sets out in the clearest terms the obligations that Mr Levarko had failed to meet, Mr Levarko continued to deny his responsibilities and minimise his conduct.

The second ground of complaint dishonest or misleading behaviour, or a breach of cl 1 of the Code of Conduct 2014

[81] Again, it is important to identify the precise allegation Mr Levarko has had to address in relation to this ground. The allegation is:

> It appears [Mr Levarko] may have provided misleading information to [Mr Stanimirovic] in relation to his work visa application.

[82] The particulars make it clear the allegation is that misleading information was allegedly provided dishonestly.

[83] The particulars are that:

[83.1] Mr Levarko confirmed to Mr Stanimirovic that his visa application and "visa papers" were in Washington DC and advised he was hoping to hear from the New Zealand embassy in Washington "today or tomorrow".

[83.2] When asked for a INZ reference number, Mr Levarko deflected the question by stating "well what makes you think that if you check it that you'll have a different answer than what I have?".

[83.3] Mr Levarko advised Mr Stanimirovic that "everything was going very, very smoothly and then all of a sudden something happened at Washington and now we're trying to get back on track".

[83.4] In fact, there was no work visa application submitted to INZ on behalf of Mr Stanimirovic, and Mr Levarko had not reason to think what he said was true.

[84] The evidence establishes Mr Levarko did not know what visa papers had been completed for Mr Stanimirovic, did not know whether they were in the New Zealand embassy in Washington and had no reason to suppose that the New Zealand embassy in Washington would contact him regarding Mr Stanimirovic's

application. There is no doubt regarding what Mr Levarko said in the Skype discussions, and the particulars identify false information provided by Mr Levarko.

[85] I am satisfied Mr Levarko fabricated that information which he provided to Mr Stanimirovic. The fabrication was intended to deceive Mr Stanimirovic and cause him to believe that Mr Levarko had his immigration affairs in hand, whereas in fact he had no knowledge of them. The behaviour was dishonest and misleading. It occurred in the context of an illegal rubber-stamping operation and the gravity of the dishonesty is to be measured against that background. For the reasons discussed, rubber-stamping is a criminal offence under the legislation that gives Mr Levarko the status of being a licensed immigration adviser.

The third ground of complaint, failure to have a written agreement

[86] The third aspect of the complaint referred to the Tribunal is that Mr Levarko breached cl 18 of the 2014 Code, because he did not provide Mr Stanimirovic with a written agreement.

[87] Mr Levarko claims there was no client relationship so he had no obligation to provide a written agreement.

[88] In my view, it is essential to take into account the background circumstances. These events occurred in the context of an illegal rubber-stamping operation, Mr Levarko had anticipated that persons such as Mr Stanimirovic would receive immigration services from unlicensed persons and that they would not undergo a proper client engagement process as contemplated by the Act and the 2014 Code. Given the grounds of complaint particularised, I do however, focus on the point in time when Mr Stanimirovic contacted Mr Levarko for advice after having seen his licence number listed in his work visa application.

[89] At that point in time, Mr Levarko knew his licence number had been used on immigration documents prepared by unlicensed persons for Mr Stanimirovic, and those persons had provided immigration services. Mr Levarko had every reason to suppose the application with his licence and certification had been filed with INZ, without him seeing them or affixing a genuine signature. Certainly, he proceeded in his discussions with Mr Stanimirovic on the basis that the documents had been submitted to INZ at the New Zealand Embassy in Washington; and Mr Stanimirovic could not have contacted him unless his licence had been used. However, it appears that in fact the documents had been prepared but not submitted.

[90] At this point when Mr Stanimirovic contacted him, Mr Levarko immersed himself in the instructions. He gave fabricated explanations about the work that had been performed, identified difficulties with the work, and provided assurances to

Mr Stanimirovic. Those assurances were important to Mr Stanimirovic, who was a skilled technician with work opportunities internationally. Instead of going through the process of giving Mr Stanimirovic the information he required to enter into a written agreement to try and correct the unlawful situation that confronted him, Mr Levarko simply deceived Mr Stanimirovic.

[91] When Mr Stanimirovic contacted him, and he found out what had happened in pursuance of the arrangements he had in place with Gateway and its personnel, Mr Levarko's obligation was to engage with Mr Stanimirovic, explain what his role in the matter was, find out what had been done already and inform Mr Stanimirovic of that. Mr Stanimirovic needed to understand fully what immigration opportunities he had.

[92] Mr Levarko's obligations were wide ranging. One of the issues was that, on the information that Mr Stanimirovic provided, it was likely his name had been submitted to INZ on a form when he had not signed it. Providing false information to INZ can have the gravest consequences for a client. The 2014 Code requires:

> [18] A licenced immigration must ensure that:
>
> a. when they and the client decide to proceed, they provide the client with a written agreement
>
> b. before any written agreement is accepted, they explain all significant matters in the written agreement to the client
>
> c. all parties to a written agreement sign it, or confirm in writing that they accept it, and
>
> d. any changes to a written agreement are recorded and accepted in writing by all parties.

[93] Mr Levarko had an ongoing duty to ensure that there was a written agreement. There was no agreement when Mr Stanimirovic first began receiving immigration services from unlicensed persons under the auspices of Mr Levarko's rubber-stamping arrangements. He had a duty to rectify that. He was also giving immigration advice during the Skype exchanges, important advice which was implemented by unlicensed persons. The fact that Mr Levarko failed to implement the advice he gave, and unlicensed persons did so, does not absolve him from compliance with the 2014 Code.

[94] Clause 19 of the 2014 Code is not without significance either. That provision sets out what a written agreement must contain. The first piece of information that is to be provided is "the name and licence number of any adviser who may provide immigration advice to the client". Plainly entering into a complying written agreement would have immediately disclosed to Mr Stanimirovic the illicit nature of what had occurred. Clause 19 goes on to require the adviser to obtain written authority from the client, a full description of the services to be

provided by the adviser and a record of any potential or actual conflict of interest relating to the client. Each of those pieces of information was highly problematic for Mr Levarko given that he had been non-compliant. Clause 19 required that Mr Levarko record that he had submitted a copy of the summary of licenced immigration advisers' professional responsibilities. That document would have made it apparent that Mr Levarko had been operating outside the Act and the 2014 Code.

[95] Accordingly, I find that Mr Levarko breached cl 18 of the 2014 Code. This was not a mere technical oversight. This was part of Mr Levarko's rubber-stamping *modus operandi*. Mr Levarko knew Mr Stanimirovic had not received the most elementary and obvious protections afforded by the Act and the 2014 Code. His failure to provide a written agreement at the point when he was confronted with Mr Stanimirovic personally identifying himself as a victim of the rubber-stamping operation, was an integral part of the illicit operation.

Decision

[96] The Tribunal upholds the complaint pursuant to s 50 of the Act.

[97] Mr Levarko engaged in dishonest and misleading behaviour. He also breached the 2014 Code in the respects identified. These are grounds for complaint pursuant to s 44(2) of the Act.

Submissions on Sanctions

[98] The Tribunal has upheld the complaint. Therefore, pursuant to s 51 of the Act, it may impose sanctions.

[99] The Authority and the complainant have the opportunity to provide submissions on the appropriate sanctions, including potential orders for costs and compensation. Whether they do so or not, the adviser is entitled to make submissions and respond to any submissions from the other parties.

[100] Given the findings regarding Mr Levarko's failure to obtain and carryout lawful and informed instructions, Mr Stanimirovic may potentially have a claim for travel costs, loss of work and professional assistance relating to his failed attempt to enter New Zealand. If so, he should provide particulars and documentary evidence to support any claim for compensation.

[101] Any application for an order for the payment of costs or expenses under s 51(1)(g) should be accompanied by a schedule particularising the amounts and basis for the claim.

Timetable

[102] The timetable for submissions will be as follows:

[102.1] the Authority and Mr Stanimirovic are to make any submissions within 15 working days of the issue of this decision;

[102.2] Mr Levarko is to make any further submissions (whether or not the Authority or the complainant makes submissions) within 25 working days of the issue of this decision; and

[102.3] the Authority and Mr Stanimirovic may reply to any submissions made by the adviser within five working days of Mr Levarko filing and serving those submissions.

DATED at WELLINGTON this 7th day of February 2018

_____
G D Pearson
Chair

SCHEDULE
TRANSCRIPT OF SKYPE CONVERSATIONS