

IMMIGRATION ADVISERS COMPLAINTS AND DISCIPLINARY TRIBUNAL

Decision No: [2019] NZIACDT 72

Reference No: IACDT 003/18

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

BY **THE REGISTRAR OF
IMMIGRATION ADVISERS**
Registrar

BETWEEN **IMMIGRATION NEW ZEALAND
(JOCK GILRAY)**
Complainant

AND **PETER JOHN CROXSON**
Adviser

SUBJECT TO SUPPRESSION ORDER

DECISION
Dated 18 October 2019

REPRESENTATION:

Registrar: Self-represented
Complainant: Self-represented
Adviser: D James, counsel

PRELIMINARY

[1] Mr Peter John Croxson, the adviser, acted for two Filipino clients, (Mr E) and (Mr B). Mr Croxson had been engaged by an immigration consultancy in Australia, which in turn had been engaged by a recruiting agency in the Philippines. Mr Croxson had no direct communication at all with his clients.

[2] A complaint made by Immigration New Zealand to the Immigration Advisers Authority (the Authority) was referred to the Tribunal. The conduct of Mr Croxson is alleged to be a breach of the Immigration Advisers Licensing Act 2007 (the Act) and the Licensed Immigration Advisers Code of Conduct 2014 (the Code).

[3] Mr Croxson admits his professional misconduct.

BACKGROUND

[4] Mr Croxson is a director of M&C Consulting Limited (M&C Consulting), trading as e-Migration NZ (South Island) Limited. He is based in Christchurch.

[5] Messrs E and B had been offered employment by the same New Zealand branch of an Australian company (the employer), as small engine mechanics.

[6] In March 2016, Absolute Immigration Services (Absolute Immigration), an Australian based immigration consultancy, contacted Mr Croxson and asked him to act for four Filipino clients to be employed by one New Zealand employer. The staff of Absolute Immigration are not licensed for New Zealand immigration work.

[7] On 5 April 2016, Mr Croxson sent a client services agreement to Absolute Immigration. It purported to be an agreement between Mr Croxson and another person from M&C Consulting, on the one part, and Messrs E, B and two other Filipino men, on the other part. Mr Croxson signed on behalf of M&C Consulting, despite being personally identified as one of the contracting parties, not M&C Consulting. The clients did not sign at all. Instead, a person signed on behalf of Absolute Immigration, which was not one of the contracting parties. It is not clear to the Tribunal whether this agreement has any validity. The fee for each visa application was NZD 600.

[8] On 3 May 2016, Mr Croxson filed essential skills work visa applications online with Immigration New Zealand, on behalf of Messrs E and B. There was a covering letter for each from Mr Croxson.

[9] Immigration New Zealand wrote to Mr Croxson on 9 May 2016 raising certain issues concerning the application of Mr B, such as whether New Zealand citizens or residents were available for the position and whether it was genuine and sustainable.

[10] Immigration New Zealand interviewed Mr E on 17 May 2016. He said he had found out about the job on the website of SiteWorkReady (SiteWR), a recruitment agency in the Philippines registered with the government there. Mr E contacted SiteWR and passed onto them all his details. He had email and text communications with the employees of SiteWR and also visited its office. Mr E said he was interviewed by the New Zealand employer at SiteWR's office and was later advised by a SiteWR employee that he had been offered the job. His English language and medical assessments were arranged by SiteWR.

[11] According to Mr E, all the recruiting and immigration documentation was prepared by employees of SiteWR. They provided him with a visa checklist. They informed him what documents would be needed. They filed his application online and advised him of the status of his application. Mr E did not know his immigration adviser and had no contract or contact with him. The only communication from Mr Croxson was an email received the day before the interview with Immigration New Zealand. He did not know what fees were paid to him.

[12] Similar issues to those raised concerning Mr B on 9 May 2016 were raised by Immigration New Zealand in relation to Mr E, in a letter to Mr Croxson on 20 May 2016.

[13] Mr Croxson replied to Immigration New Zealand on 20 and 22 May 2016 answering the letter of 9 May 2016 in relation to Mr B.

[14] Mr B was interviewed by Immigration New Zealand on 26 May 2016. He said that he had found the job vacancy on the internet and that SiteWR was the employer's agent. He went to SiteWR's office and after an English language test, they arranged for him to be interviewed by the New Zealand employer. An employee of SiteWR was the person who was in charge of his visa application. He spoke to its employees by phone or communicated with them by email.

[15] Mr B said he was asked by SiteWR to complete the visa application form at their office. The employees of SiteWR gave him a checklist of documents required for the visa, evaluated the documents he provided and told him what was missing. All his dealings in relation to the visa application documentation were with the employees of SiteWR. If he had any questions about the visa process, he asked them. He did not

know Mr Croxson and had no emails from him. He did not pay him. As far as he knows, his online application was lodged by SiteWR.

[16] Mr Croxson replied to Immigration New Zealand on 27 May 2016 answering the letter of 20 May 2016 in relation to Mr E.

[17] Mr B was granted a work visa on 27 May 2016 and Mr E was granted a work visa on 2 June 2016.

COMPLAINT

[18] Immigration New Zealand (Jock Gilray) made a complaint against Mr Croxson to the Authority on an unknown date. Two of Mr Croxson's clients, Messrs E and B, had advised Immigration New Zealand that they had been assisted by employees of SiteWR in completing their visa applications and they were not aware of Mr Croxson as their immigration adviser. Nor had they signed any contract with him. He might not therefore be meeting his professional obligations under the Code.

[19] The Authority requested Mr Croxson's files concerning Messrs E and B on 15 May 2017.

[20] On 26 May 2017, Mr Croxson wrote to the Authority, sending the files. He advised that representing these clients had been his company's first step into corporate-type work in the Philippines. Absolute Immigration signed a service contract with his company, as they were going to pay all the fees associated with the visa applications. He did not deem it necessary to require the applicants sign a service contract themselves. He had since taken advice about these third-party arrangements and confirmed that he was adopting a different method of contracting. He would ensure that the visa applicants signed a "3rd Party Assistance" form.

[21] Mr Croxson sent to the Authority the documentation he had provided Absolute Immigration. This included a list of documents required for a work application with explanatory notes. This was coupled with detailed notes of how to complete the visa applications. They were in English and in the name of Mr Croxson. There were also notes for the visa applicant and the employer regarding the employment documents, also in the name of Mr Croxson.

[22] The Authority wrote to Mr Croxson on 15 September 2017 formally advising him of the complaint and setting out the details. His explanation was invited.

[23] On 13 October 2017, Ms James, counsel for Mr Croxson, replied to the Authority. Mr Croxson admitted breaching cls 2(e), 3(c), 17(a)–(c) and 18(a)–(c) of the Code. It was his honest but mistaken belief that Absolute Immigration was his client, not Messrs E and B. This led to his failure to directly engage with them.

[24] However, as explained in Mr Croxson's supporting affidavit, it was his view that he had conducted himself at all times professionally, honestly and diligently. The record did not disclose a general lack of probity. The applications filed with Immigration New Zealand for Messrs E and B had been expertly prepared. Mr Croxson had secured work visas for three years for both of them.

[25] According to counsel, this was the first time in a career of 14 years as an immigration adviser that Mr Croxson had faced a formal complaint. He was scrupulous in his practice and the complaint had come as a real shock. He was remorseful and had learned from this lapse in judgement, having taken steps to overhaul the systems to ensure that the situation did not develop again.

Affidavit from Mr Croxson

[26] An affidavit from Mr Croxson, sworn on 12 October 2017, was produced to the Authority. It supported the contentions made by Mr James in his memorandum. In particular, he regarded Absolute Immigration as his client rather than Messrs E and B. Given that Absolute Immigration was paying all the fees, including Immigration New Zealand's fees, he did not deem it necessary for the visa applicants to sign the service contract.

[27] According to Mr Croxson, he had been informed that Absolute Immigration would pass on to Messrs E and B his detailed instructions in the same format he had provided to the consultancy. They said they would do it through their associated Filipino agency, SiteWR. He said he was able to complete the online work visa applications using the forms and documents that were returned to him.

[28] Mr Croxson expressed disappointment at himself because he took pride in his professionalism, honesty, thoroughness and respect for people. He apologised for his contravention of the Code. It was not a calculated endeavour to avoid his responsibilities under the Code. He did not think it through and unwittingly allowed unlicensed people to pass on his immigration advice.

[29] Having taken advice, Mr Croxson now understood his approach to be misguided. He had learned from the mistake. He was now meeting his obligations for those clients where the prospective employer was covering the fees. As Mr Croxson did not ever intend to repeat the mistake, his client engagement process with third-party corporates had been completely overhauled.

[30] While Mr Croxson accepted he had breached a number of provisions of the Code, he did not believe he had acted in breach of cl 1. He had been honest, professional, diligent, respectful and had conducted himself with due care and in a timely manner. The unfortunate mistake in not engaging directly with Messrs E and B did not affect his performance as an immigration adviser. He had worked diligently to ensure that their applications were each carefully prepared and presented in a professional manner to Immigration New Zealand. Because of the quality of the applications, they were granted work visas of three years within one month of lodgement of the applications.

Complaint referred to Tribunal

[31] The complaint was referred to the Tribunal by the Authority on 31 January 2018. The following statutory ground of complaint and breaches of the Code by Mr Croxson are alleged:

- (1) allowing unlicensed employees to manage and process the visa applications and unlawfully delegating his personal obligations to them, in breach of cls 1, 2(e) and 3(c); or
- (2) allowing unlicensed employees to manage and process the visa applications and unlawfully delegating his personal obligations to them, thereby acting negligently; and
- (3) failing to provide to his clients a written agreement and certain other documents or to explain certain matters, in breach of cls 17(a), (b), (c) and 18(a), (b) and (c).

JURISDICTION AND PROCEDURE

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

- (a) negligence;

- (b) incompetence;
- (c) incapacity;
- (d) dishonest or misleading behaviour; and
- (e) a breach of the code of conduct.

[33] The Tribunal hears those complaints which the Registrar decides to refer to the Tribunal.¹

[34] The Tribunal must hear complaints on the papers, but may in its discretion request further information or any person to appear before the Tribunal.² It has been established to deal relatively summarily with complaints referred to it.³

[35] After hearing a complaint, the Tribunal may dismiss it, uphold it but take no further action or uphold it and impose one or more sanctions.⁴

[36] The sanctions that may be imposed by the Tribunal are set out in the Act.⁵ The focus of professional disciplinary proceedings is not punishment but the protection of the public.⁶

[37] It is the civil standard of proof, the balance of probabilities, that is applicable in professional disciplinary proceedings. However, the quality of the evidence required to meet that standard may differ in cogency, depending on the gravity of the charges.⁷

[38] The Tribunal has received from the Registrar of Immigration Advisers, the head of the Authority, the statement of complaint (31 January 2018), together with paginated supporting documents.

[39] There are no submissions from the complainant.

[40] The adviser has filed a memorandum from his counsel and a statement of reply (both dated 19 February 2018).

¹ Immigration Advisers Licensing Act 2007, s 45(2) & (3).

² Section 49(3) & (4).

³ *Sparks v Immigration Advisers Complaints and Disciplinary Tribunal* [2017] NZHC 376 at [93].

⁴ Section 50.

⁵ Section 51(1).

⁶ *Z v Dental Complaints Assessment Committee* [2008] NZSC 55, [2009] 1 NZLR 1 at [97], [128] & [151] (citation omitted).

⁷ *Z v Dental Complaints Assessment Committee*, above n 6, at [97], [101]–[102] & [112].

ASSESSMENT

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

General

1. A licensed immigration adviser must be honest, professional, diligent and respectful and conduct themselves with due care and in a timely manner.

Client Care

2. A licensed immigration adviser must:

...

- e. obtain and carry out the informed lawful instructions of the client, and

...

Legislative requirements

3. A licensed immigration adviser must:

...

- c. whether in New Zealand or offshore, act in accordance with New Zealand immigration legislation, including the Immigration Act 2009, the Immigration Advisers Licensing Act 2007 and any applicable regulations.

Code and complaint documents

17. Before entering into a written agreement with the client, a licensed immigration adviser must:

- a. provide the client with the summary of licensed immigration advisers' professional responsibilities, as published by the Registrar of Immigration Advisers
- b. explain the summary of licensed immigration advisers' professional responsibilities to the client and advise them how to access a full copy of this code of conduct, and
- c. advise the client that they have an internal complaints procedure and provide them with a copy of it.

Written agreements

18. A licensed immigration adviser 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

...

- (1) *Allowing unlicensed employees to manage and process the visa applications and unlawfully delegating his personal obligations to them, in breach of cls 1, 2(e) and 3(c)*
- (2) *Allowing unlicensed employees to manage and process the visa applications and unlawfully delegating his personal obligations to them, thereby acting negligently*

[42] The Registrar alleges that Mr Croxson has breached his professional obligations by allowing the unlicensed employees of SiteWR to assist his clients, Messrs E and B, with their visa applications. It is alleged that he had no contact whatsoever with them. Mr Croxson accepts that he allowed, inadvertently he says, unlicensed employees to assist and advise the clients. He further accepts that he has breached his professional obligations in cls 2, 3, 17 and 18, but denies he is in breach of cl 1 or that he has acted negligently.

General principles

[43] The Tribunal has adversely commented in previous decisions on the practice which developed in the immigration advisory industry of what is known as “rubber stamping”.⁸

[44] Typically, this occurs where a licensed immigration adviser uses agents or employees sometimes in another country to recruit the clients, prepare the immigration applications and send them to the licensed adviser to sign off and file with Immigration New Zealand. There is little, if any, direct contact between the licensed adviser and the client.

[45] The practice is illegal. A person commits an offence under the Act if he or she provides “immigration advice” without being licensed or exempt from licensing.⁹ A person employing as an immigration adviser another person who is neither licensed nor exempt also commits an offence.¹⁰ A person may be charged with such an offence even where part or all of the actions occurred outside New Zealand.¹¹

⁸ *Stanimirovic v Levarko* [2018] NZIACDT 3 at [4], [36]–[38]; *Immigration New Zealand (Calder) v Soni* [2018] NZIACDT 6 at [4], [50]–[61].

⁹ Immigration Advisers Licensing Act 2007, s 63.

¹⁰ Section 68(1).

¹¹ Sections 8 & 73.

[46] The statutory scope of “immigration advice” is very broad:¹²

7 What constitutes immigration advice

- (1) In this Act, **immigration advice**—
- (a) means using, or purporting to use, knowledge of or experience in immigration to advise, direct, assist, or represent another person in regard to an immigration matter relating to New Zealand, whether directly or indirectly and whether or not for gain or reward; but
 - (b) does not include—
 - (i) providing information that is publicly available, or that is prepared or made available by the Department; or
 - (ii) directing a person to the Minister or the Department, or to an immigration officer or a refugee and protection officer (within the meaning of the Immigration Act 2009), or to a list of licensed immigration advisers; or
 - (iii) carrying out clerical work, translation or interpreting services, or settlement services.
- (2) To avoid doubt, a person is not considered to be providing immigration advice within the meaning of this Act if the person provides the advice in the course of acting under or pursuant to—
- (a) the Ombudsmen Act 1975; or
 - (b) any other enactment by which functions are conferred on Ombudsmen holding office under that Act.

[47] The words “advise”, “advice” and “assist” are not to be given restrictive meanings.¹³

[48] The exclusion from the scope of “immigration advice” potentially relevant here is subs (1)(b)(iii) concerning clerical work, translation or interpretation services.

[49] “Clerical work” is narrowly defined in the Act:¹⁴

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:

¹² Section 7.

¹³ *Yang v Ministry of Business, Innovation and Employment* [2015] NZHC 1307 at [22]–[23].

While the Court was considering s 63(1)(a) of the Act, it is plain it also had in mind the use of the words in s 7(1).

¹⁴ Section 5, definition of “clerical work”.

- (c) recording information on any form, application, request, or claim on behalf and under the direction of another person

[50] In *Immigration New Zealand (Calder) v Ahmed*, the Tribunal set out the principles applicable to distinguishing clerical work from immigration advice.¹⁵

[51] Persons who are not licensed (or exempt) are permitted to undertake clerical work only. In essence, such a person can do no more than retrieve and then record or organise information, enter data on a computer database or hard copy schedule, or record information on a form or other like document under the direction of another person, who must be a licensed adviser or a person exempt from licensing, or the client.

[52] Activities which do not meet the narrow definition of clerical work but which involve the use of immigration knowledge or experience to advise or assist another person on an immigration matter, “whether directly or indirectly”, amount to providing immigration advice. That is the exclusive domain of the licensed adviser.

[53] The obligations set out in the Code are personal to the licensed immigration adviser and cannot be delegated.¹⁶

Application of general principles to Mr Croxson

[54] Mr Croxson has admitted having no direct communication with his clients, Messrs E and B. He did not even realise they were his clients, mistakenly believing his client was Absolute Immigration. This company was not his client in terms of his professional obligations, though it may have been a client in the commercial sense. In terms of the statutory definition of “immigration advice”, Mr Croxson was representing Messrs E and B on an immigration matter, not Absolute Immigration. The payor of his fee is not material to understanding who his clients were for the purposes of the Act and the Code.

[55] The unlicensed employees of SiteWR were clearly providing immigration advice, as defined. They were the only people informing the clients what supporting documents and information was required by Immigration New Zealand, beyond a standard checklist which had originally come from Mr Croxson. They were evaluating the documents and information provided by the clients against Immigration New Zealand’s criteria.

¹⁵ *Immigration New Zealand (Calder) v Ahmed* [2019] NZIACDT 18 at [55]–[59], [65]–[70].

¹⁶ *Sparks*, above n 3, at [29], [34] & [47].

[56] It is a serious breach of any adviser's obligations to delegate immigration advice work, but particularly so here. Not only because Mr Croxson had no contact whatsoever, but he left the clients to deal with unlicensed people in the Philippines whom he did not know and with whom he had no working or legal relationship. They were not even employees of his company.

[57] Often, a failure to engage with the client is coupled with a failure to engage with the file. However, that was not the case here. I accept that Mr Croxson personally completed and filed the applications online, using what I assume were draft hard copies filled out by the clients and the supporting documents provided by them.

[58] Mr Croxson has admitted breaching cls 2(e) and 3(c) of the Code. He does not admit a breach of cl 1, but plainly he has not been professional or diligent in offloading his personal obligation to engage with the clients to unlicensed people in another country he did not know. That speaks for itself. In saying that, I acknowledge that there was no lack of probity nor was the quality of his work for these clients substandard or lacking in care. That is established by the prompt, favourable decisions made by Immigration New Zealand for both of them. While I find a breach of cl 1, that adds little to the breaches of cls 2(e) and 3(c).

[59] I find Mr Croxson to be in breach of cls 1, 2(e) and 3(c) of the Code. As the first and second heads of complaint are effectively alternatives, there is no need to assess the statutory ground of negligence alleged in the second head.

(3) *Failing to provide to his clients a written agreement and certain other documents or to explain certain matters, in breach of cls 17(a), (b), (c) and 18(a), (b) and (c)*

[60] The Registrar alleges that Mr Croxson failed to enter into a written agreement with each of Messrs E and B and failed to personally provide and explain to them a summary of his responsibilities, the Code, his complaints procedure and all significant matters in the client agreements (which did not actually exist).

[61] These are also serious breaches of the Code. It is an important safeguard not just for clients but also for advisers, that there exists a client agreement and that the required documents and information regarding the agreement and complaints process is provided to clients.

[62] The breaches of cls 17(a) to (c) and 18(a) to (c) of the Code are admitted by Mr Croxson.

OUTCOME

[63] The first and third heads of complaint are upheld. Mr Croxson has breached cls 1, 2(e), 3(c), 17(a), 17(b), 17(c), 18(a), 18(b) and 18(c) of the Code.

SUBMISSIONS ON SANCTIONS

[64] As the complaint has been upheld, the Tribunal may impose sanctions pursuant to s 51 of the Act.

[65] A timetable is set out below. Any requests for repayment of fees or the payment of costs or expenses or for compensation must be accompanied by a schedule particularising the amounts and basis of the claim. Any request for retraining must specify the course recommended.

Timetable

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

- (1) The Authority, the complainant and Mr Croxson are to make submissions by **11 November 2019**.
- (2) The Authority, the complainant and Mr Croxson may reply to the submissions of any other party by **25 November 2019**.

ORDER FOR SUPPRESSION

[67] The Tribunal has the power to order that any part of the evidence or the name of any witness not be published.¹⁷

[68] There is no public interest in knowing the name of Mr Croxson's clients.

[69] The Tribunal orders that no information identifying Messrs E and B is to be published.

D J Plunkett
Chair

¹⁷ Immigration Advisers Licensing Act 2007, s 50A.