

**IMMIGRATION ADVISERS COMPLAINTS AND DISCIPLINARY TRIBUNAL**

Decision No: [2019] NZIACDT 66

Reference No: IACDT 016/19

**IN THE MATTER** of a referral under s 45(3) of  
the Immigration Advisers  
Licensing Act 2007

**BY** **THE REGISTRAR OF  
IMMIGRATION ADVISERS**  
Registrar

**BETWEEN** **KBN**  
Complainant

**AND** **PHILIP LESLIE WHAREKURA**  
Adviser

**SUBJECT TO SUPPRESSION ORDER**

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**NOTICE OF SUSPENSION OF LICENCE**  
**Dated 26 September 2019**

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**REPRESENTATION:**

Registrar: M Denyer, counsel  
Complainant: Self-represented  
Adviser: P Moses, counsel

## **BACKGROUND**

[1] Mr Philip Leslie Wharekura is a licensed immigration adviser, based in Rotorua. He is a director of NZ Educational and Training Services Limited.

[2] The Registrar of Immigration Advisers (the Registrar), the head of the Immigrations Advisers Authority (the Authority), referred a complaint against Mr Wharekura, to the Tribunal under s 45(3) of the Immigration Advisers Licensing Act 2007 (the Act). This statement of complaint is dated 13 August 2019.

[3] The complaint accuses Mr Wharekura of dishonest and misleading behaviour, in that he falsely informed a client (the complainant) that he had sought a special direction from the Associate Minister of Immigration when he had not. He then falsely updated the complainant as to the lack of progress on his submission to the Minister and even created fake emails from the Minister's office to himself, which he gave to the complainant. Mr Wharekura's conduct is alleged to be a breach of the Act and of the Licensed Immigration Advisers Code of Conduct 2014 (the Code).

[4] At the time that the complaint was filed in the Tribunal, the Registrar's counsel, Mr Denyer, filed a memorandum, dated 30 August 2019, applying to suspend Mr Wharekura's licence under s 53(1)(b) of the Act.

[5] The Tribunal issued a notice of intention to suspend Mr Wharekura's licence on 9 September 2019. That notice gave him 10 working days to make written representations to the Tribunal as to why his licence should not be suspended. The Tribunal's reasons for the intended suspension were set out in the notice.

[6] Mr Wharekura was advised in the notice that the supporting documents, which at that time he had not been given the opportunity by the Tribunal to respond to, disclosed on their face a good case against him. He was further advised that if the complaint was upheld, it would be in the public interest to ensure that he was not available to the public to provide licensed immigration services and it was therefore likely his licence would be cancelled.

## **JURISDICTION**

[7] The Tribunal has the power to suspend a licence under s 53(1) of the Act. The Tribunal must give written notice of the intention to suspend, which must contain certain information.<sup>1</sup> If written representations are made by the adviser within the statutory

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<sup>1</sup> Immigration Advisers Licensing Act 2007, s 53(2).

period of 10 working days, the Tribunal must take those representations into account in deciding whether or not to suspend the licence and as to the period of suspension.<sup>2</sup>

[8] The Tribunal may suspend an adviser's licence where it "considers that it is necessary or desirable to suspend the licence having regard to the interests of the public".<sup>3</sup> In deciding whether to suspend a licence, the Tribunal will have regard to the purpose of the Act, which is to "promote and protect the interests of consumers receiving immigration advice".<sup>4</sup>

[9] Professional conduct schemes, with their attached compliance regimes, exist to maintain high standards of propriety and professional conduct not just for the public good, but also to protect the good reputation of the profession itself.<sup>5</sup>

[10] The removal of a practitioner from a professional register is an order of last resort, particularly where the allegations are of incompetence rather than outright dishonesty or moral turpitude.<sup>6</sup> A person should not be removed from the register unless no other sanction can adequately protect the public.

[11] This is an application for suspension of a licence and not cancellation, but nonetheless the Tribunal should approach temporary removal from the profession on the basis that it potentially deprives the adviser of his or her livelihood and can be expected to cause significant harm to the adviser's reputation.

[12] If the Tribunal decides to suspend the licence, the notice of suspension must contain certain information, including the right of the adviser to appeal to the District Court.<sup>7</sup>

## **SUBMISSIONS**

[13] In his memorandum, Mr Denyer submits that the public interest issues arising from this case are sufficiently serious to warrant the suspension of Mr Wharekura's licence pending the final determination of the complaint. The complaint discloses dishonest or misleading behaviour which has been admitted by Mr Wharekura. It is a serious breach and could attract the sanction of cancellation or suspension of his licence,

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<sup>2</sup> Section 53(2)(c).

<sup>3</sup> Section 53(1)(d).

<sup>4</sup> Section 3.

<sup>5</sup> *Dentice v Valuers Registration Board* [1992] 1 NZLR 720 (HC) at 724–725 & 727; *Z v Dental Complaints Assessment Committee* [2009] 1 NZLR 1 (SC) at [151].

<sup>6</sup> *Patel v The Complaints Assessment Committee* HC Auckland CIV-2007-404-1818, 13 August 2007 at [29]–[31].

<sup>7</sup> Section 53(3).

if the complaint is upheld. The evidence of breaches of the Act is very strong in this case.

[14] Mr Denyer points out that Mr Wharekura has filed 227 applications with Immigration New Zealand in the last 12 months which is evidence of a high number of consumers who could potentially be harmed by his conduct. The interim suspension of his licence is therefore warranted in order to protect consumers. The scheme of the Act is to ensure a high standard of propriety and conduct exercised by those who practice in a licensed professional regime and the interim suspension is warranted not only to protect the public but also the reputation of members of the profession.

[15] There are submissions dated 23 September 2019 from Mr Moses, counsel for Mr Wharekura. He notes that Mr Wharekura has already accepted acting in a manner that was misleading and a breach of his obligations under the Code. He anticipates that the interim suspension of his licence is inevitable.

[16] Mr Wharekura, through counsel, repeats to the Tribunal the explanation already given to the Authority. It was a 'one-off' event, a total exception to his usual practice. It does not reflect any general lack of integrity on his part. In due course, he will respond fully to the substantive complaint, in particular in relation to sanctions.

## **DISCUSSION**

[17] The starting point would ordinarily be a presumption of Mr Wharekura's innocence until the complaint is substantively determined, but that presumption is displaced in this case by Mr Wharekura's admission to both the Authority and the Tribunal as to the truth of the complaint. Mr Wharekura admits that he falsified two emails from the Associate Minister's office to him showing that he had filed a special direction request with the Minister, and that he had copied the emails to the complainant. In fact, he had not lodged the special direction request at all.

[18] Mr Wharekura explains that he did not do it for financial advantage, but because he thought a residence application in the way preferred by the complainant would be unsuccessful and would cost him time and money. He acknowledges making a serious error of judgement, as he had assumed he knew what was best for the complainant. He thought that an alternative pathway for residence would have been more successful.

### *Conclusion*

[19] I appreciate that this is not a final assessment of the merits of the complaint, which must await the Tribunal's substantive assessment and determination. However, in this case Mr Wharekura has already admitted his wrong-doing. There is strong evidence of serious misconduct by him. That conduct amounts to dishonest and misleading behaviour.

[20] It is necessary to suspend Mr Wharekura's licence having regard to the interests of the public. I agree with Mr Denyer that it is also desirable to protect the reputation of the profession by temporarily removing Mr Wharekura from it. Furthermore, public confidence in the immigration system and the profession requires removing from him in the interim his ability to represent prospective migrants in dealings with Immigration New Zealand. The inevitability of a temporary suspension is acknowledged by Mr Wharekura.

[21] Mr Moses has rightly requested an acceleration of the Tribunal's assessment of the substantive complaint. It will be accorded priority. The usual procedure involving statements of reply will now be undertaken. Unless the parties seek otherwise, there will be an early decision on the papers. This will be followed by an assessment of sanctions. The latter could be by way of an oral hearing. In due course, submissions will be sought on sanctions, including the process.

### **OUTCOME**

[22] The licence of Philip Leslie Wharekura is suspended from 5pm today. The duration of the suspension will be until the Tribunal has determined the complaint against him, or upon further order of the Tribunal varying the suspension.

### **RIGHT OF APPEAL**

[23] Mr Wharekura may appeal to the District Court against this decision of the Tribunal to suspend his licence. Any such appeal must be made by giving notice of the appeal within 20 working days after the date on which this notice was communicated to Mr Wharekura, or any further time that the District Court may allow. The right of appeal is provided in s 81 of the Act.

**ORDER FOR SUPPRESSION**

[24] The Tribunal has the power to order any part of the evidence or the name of any witness not be published.<sup>8</sup>

[25] There is no public interest in knowing the name of the complainant.

[26] The Tribunal orders that no information identifying the complainant is to be published other than to the parties and Immigration New Zealand.

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D J Plunkett  
Chair

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<sup>8</sup> Immigration Advisers Licensing Act 2007, s 50A.