IN THE DISTRICT COURT
AT AUCKLAND

CIV-2014-004-000542
[2015] NZDC 4457

IN THE MATTER OF	of an Appeal under Section 81 of the Immigration Advisors Licensing Act 2007
BETWEEN	DALJIT SINGH Appellant
AND	Registrar of Immigration Advisors Respondent

Hearing: 16 March 2015

Appearances: Mr Dillon and Mr Chen for the Appellant
Mr Denyer for the Respondent

Judgment: 25 March 2015

DECISION OF HIS HONOUR JUDGE DAVID J HARVEY

Introduction

[1] The appellant provided Immigration advice and services from 1995. In 2009 the Immigration Advisors Licensing Act 2007 came into force. The purpose of the Act was 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 Immigration Advisors Licensing Act 2007 section 3.

[2] As from the 5th May 2009 Immigration advice could only be provided by a person who was licensed or exempt under the Act. The appellant was a fully licensed immigration advisor since the inception of that scheme in 2009.

[3] In 2010 the appellant was charged with a number of counts of causing other people to use, deal with, or act upon forged documents as if they were genuine when he knew they were forged. The appellant was convicted of two counts and sentenced on 19 February 2014

Offending and Sentence

[4] The offending occurred from July to August of 2010. The appellant was running for election as a board member on the Otara-Papatoetoe Local Board/Papatoetoe subdivision. In August 2010, the electoral enrolment centre received information relating to irregularities in relation to enrolments to vote in the Papatoetoe ward. The electoral enrolment centre's audit of new enrolments and change of address applications revealed that multiple persons were residing at the same addresses. Some voters had more than one enrolment to vote application form with each showing different addresses. At sentencing Woolford J summarised the facts and at paragraph 4 observed as follows:

> To complete an ROE1 form online, an elector registers on the EEC website and must complete personal details including date of birth, residential address, and optional postal address and contact phone details. Once the details are completed the ROE1 form is downloaded and printed out by the elector. Alternatively, the completed ROE1 form can be printed out by the EEC and sent by post to the elector. In either case the elector must then sign and date the form and send it to the EEC. On receipt of the form, the EEC staff checks the details, process the form, date stamp it and enter it into their data base. In addition the ability to complete the form online, blank ROE1 forms are distributed throughout the community to individuals in groups and are available from Post Shops and libraries for completion and return in a similar manner to forms completed online. Upon receipt of completed forms, the EEC then generates a further form (an ROE2) which is sent to the residential or postal address listed for confirmation of details and for return if incorrect. If this form is not returned by post it is deemed to be correct. The elector is then enrolled to vote. Their voting papers are posted to the postal address given and his/her vote is completed by the elector and returned to the returning officer for the ward.

[5] At paragraphs 33 and 34 Woolford J provided details of the particular offending committed by the appellant. He stated as follows:

> [33] Mr Daljit Singh, you were found guilty of counts 3 and 13a. Count 3 related to the forms for Mr Avtar Singh, Ms Fesili Sally Su, Mr Charan Singh, Mr Tej Kaur, Mr Stinder Kaur and Mr Iqbal Singh all of whom lived in Timaru, but who were enrolled to vote in the Papatoetoe ward. On 20 July

> 2010 you contacted Mr Avtar Singh by text message and then answer a phone call from him before you say you passed the phone to an associate. Mr Avtar Singh gave his own details and the details of five family members to the person to whom he spoke. Immediately following the phone call, registration forms were completed and downloaded from your house. After another phone call the next day and sixth form was downloaded from your work address and completed. Someone other than the family members signed the forms and sent them to the electoral enrolment centre.
>
> [34] Count 13a related to Mr Sukhjit Singh, Ms Sarbjit Kaur and Mr Ramandeep Singh, family members of Mr Virender Singh, who had lived with him in Papatoetoe when they first came to New Zealand. At the time of the election however they lived in Katikati. Mr Sukhjit Singh gave evidence that he registered to vote in Katikati and never registered anywhere else. He did not complete the form in his name and did not know anything about it. On 27 July 2010 Mr Virender Singh sent you a text message with the family's details. Registration forms for the three family members were downloaded at your house that night. Someone other than the named electors signed the forms and sent them off to the electoral enrolment centre.

[6] Woolford J also made the following observations about the offending in general. At paragraph 12 he stated:

> First this was no victimless offending. The victims are the public at large who have faith in the democratic process. Your actions have undermined one of the most important principles of our society.

[7] At paragraph 14 he stated:

> Your offending cannot be divorced from your culture and community. From the pre-sentence reports for each of you, it is clear that it is common within your community to help others with filling out forms and it is even common for members of your community to sign forms for others. Our law does not allow for other persons to sign ROE1 or ROE2 forms for electors, but only in well defined circumstances that are not applicable here. Our society places a very high value on individual autonomy. Decisions on enrolling and voting are for the individual elector, not members of their family or community.

[8] At sentencing, and considering starting points, His Honour made observations at paragraph 32 which I can summarise as follows:

(a) The offending was detected well before the election which was unaffected;

(b) The offending was bound to be detected;

(c) Lack of previous cases of electoral fraud means that arguments relating to prevalence of offending are not open;

(d) The lack of clarity on the wording of the ROE1 forms when it states that reside means where you chose to make your home;

(e) Prosecution of the offending under s 257 of the Crimes Act 1961 rather than the summary offences under s 118 and 119 of the Electoral Act;

(f) That the gain by Mr Daljit Singh if elected would have been minimal and there was no gain to any of the other defendants;

(g) The offending can be characterised as naive.

[9] At sentencing on the 19th February 2014 Woolford J was faced with two decisions that needed to be made. The first was whether or not he would grant the appellant a discharge without conviction. The second, if he decided against the appellant's application for a discharge without conviction what sentence should be imposed.

[10] Woolford J characterised the gravity of the offending as moderately high although at paragraph 49 in considering the discharge without conviction application he said:

> [49] Earlier I referred to the approach to take for deciding whether to exercise the discretion to grant discharge without conviction. *Your offending was serious.*[1] You committed electoral fraud in an election in which you were a candidate. This is an aggravating factor of your offending. Whilst I accept that it was a local body election rather than a national election, I do not consider that this lessens the seriousness of your offending. The same principles are at stack in a local body election as in a national election. The community, or the nation, is entitled to have its say in electing representatives. Yours and your co-offenders actions were undertaken in order to increase the chances that your chosen representative be elected. By artificially increasing the number of voters in the Papatoetoe ward who would support you, you and your co-offenders qualitatively harmed the democratic integrity of the election process. You admit that you did not

[1] My emphasis

> oversee your campaign as you should have done and you conducted your affairs in a reckless and naive manner.
>
> [50] I note that you expressed genuine remorse and have made an offer of amends and taken remedial action in relation to the circumstances of the offending which mitigates the gravity of your offending. You also have previous good character and no relevant previous convictions. Despite these mitigating factors which I take into account following *Z (CA447/12) v R* I cannot view the gravity of your offending as anything other than moderately high.

[11] It is also important to note, as has been remarked upon by counsel for the appellant in his submissions at paragraph 54

> "I do accept however that the consequences of your offending have already been far reaching and I would ask the Immigration Advisors Authority to look carefully whether the nature of your offending is likely to adversely affect your fitness to provide immigration advice, especially in light of the character evidence given on your behalf by Mr Bob McIntyre, a former Immigration New Zealand official in New Delhi and by Mr Mat Robson, a former Minister of the Crown."

Application for Renewal of Immigration Advisers Licence

[12] Prior to sentence in February of 2014 the appellant was required to apply to renew his immigration advisors license and did so by application on the 11th November 2013. The decision was deferred pending sentencing but was communicated to the appellant by letter from the Registrar dated 28 February 2014. It is against this decision that Mr Singh appeals.

[13] In summary it is advanced that the respondent failed to adhere to the principles of fairness and natural justice. He:

(i) Failed to take into consideration relevant factors and/or give them appropriate weight but has taken into consideration irrelevant factors and/or given them undue weight;

(ii) He made erroneous factual findings and/or assumptions which are not supported by evidence;

(iii) He failed to establish a logical link between the nature of the appellants offending and his fitness to provide Immigration advice.

The Legal Position

[14] Under the Immigration Advisors Licensing Act 2007 section 19 provides the circumstances in which a license must be granted to an applicant and provides as follows:

> **19 Granting of licence**
> (1) The Registrar must grant a licence to an applicant if satisfied that—
> (a) the applicant is not prohibited from registration under section 12(6) or 15; and
> (b) having regard to the matters specified in sections 16 and 17 the person is fit to be licensed as an immigration adviser; and
> (c) the person meets minimum standards of competence set under section 36; and
> (d) the application complies with section 18 and is properly completed; and
> (e) the applicant has paid the required amount of immigration adviser's levy (if any).

[15] It will be noted that s 19(1)(b) makes reference to the matter specified in s 16 in determining fitness to be licensed as an immigration adviser. Section 16 of the Act provides as follows:

> **16 Persons subject to restriction on being licensed**
> The following persons must not be licensed unless the Registrar is satisfied that the nature of the relevant offence or matter is unlikely to adversely affect the person's fitness to provide immigration advice:
> (a) a person who has been convicted, whether in New Zealand or in another country, of a crime involving dishonesty, an offence resulting in a term of imprisonment, or an offence against the Fair Trading Act 1986 (or any equivalent law of another country):
> (b) a person who, under the law of another country,—
> (i) is an undischarged bankrupt; or
> (ii) has been prohibited or disqualified from managing a company; or
> (iii) has been convicted of an immigration offence; or
> (iv) has been removed or deported from the country; or
> (c) a person to whom section 15(1)(a) or (b) has applied in the past.

[16] Section 16(a) provides that a person who has been convicted of a crime involving dishonesty must not be licensed unless the Registrar is satisfied that the nature of the relevant offence or matter is unlikely to adversely affect the persons fitness to provide Immigration advice.

[17] The case of *Nagra v Registrar of Immigration Advisors*[2] held that s 16 does not impose a presumption against licensing where specified convictions or restrictions have been imposed on an applicant. A prohibition is created unless it is displaced as the result of satisfaction on the part of the Registrar as to the other matter set out in s 16. On the second page of his decision of the 28th February 2014 the Registrar makes reference to the qualified nature of the prohibition as set out by Peters J.

[18] At paragraphs [41] and [42] Her Honour considered that the word "satisfied" required more than a finely balanced judgment and indicated a need for caution and for a degree of conviction or assurance. She went on to consider how the enquiry is activated stating at paragraph 43:

> [43] I consider that enquiry is activated if an applicant who falls within s 16 submits to the Registrar information which that applicant contends is sufficient to displace the prohibition which would otherwise exist. There is no burden or obligation on the Registrar to seek to obtain information. It is for the applicant who seeks a license to provide that information. The Registrar is to give the information the weight which is appropriate in the circumstances which present themselves.

[19] At paragraph 50 Her Honour concluded:

> [50] To summarise, I do not consider s 16 requires the Registrar to concentrate exclusively on the nature of the offence or matter. The Registrar is required to consider the applicants present fitness to provide Immigration advice. The Registrar is to do so by reference to the nature of the offence or matter and by reference to information that the applicant contends is relevant to his or her fitness to provide Immigration advice at the time the application is made.

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[2] *Nagra v Registrar of Immigration Advisors* HC Auckland CIV-2010-404-004045 11 March 2011 Peters J

[20] In terms of the exercise of the statutory authority Priestley J in *ZW v Immigration Advisors Authority*[3] emphasised the importance of the exercise of care when a statutory power is invoked. His Honour stated at paragraph 15:

> [15] Clearly the Tribunal will need to exercise considerable care as it operates within its statutory framework. Its powers and respect of licenses and sanctions will impact on the personal and economic interests of practising in potential immigration advisors.

Submissions for the Appellant

[21] In a carefully prepared memorandum of submissions on behalf of the appellant Counsel detailed a number of the factual errors that are detailed in the respondent's decision. At page 2 of the decision the respondent stated as follows:

> Your role on the offending involved calling and texting victims to obtain their details and the details of their families. Electoral forms were then downloaded and completed with the altered details from your house and work address. Some of the victims have previously lived with you and the forms with altered details were downloaded for some of these victims at your house. Mr Cheng points out that the appellant was found guilty on two out of 41 counts in the indictment and the involvement was that as detailed at paragraph 33 to which references already been made. It is argued that Mr Singh did not actively participate in the preparation of false information but rather on one occasion answered a phone call from Mr Avtar Singh and then passed the phone on to an associate.

[22] As far as the suggestion that some of the victims had previously lived with Mr Singh Counsel for the Appellant points out that in relation to count 13a Woolford J found that the family members were those of Mr Virander Singh who had lived with him rather than with Mr Daljit Singh in Papateotoe. This particular reference is a factual error together with the implication that Mr Daljit Singh was actively involved in the preparation of false documents. It is argued that had the appellant had a hands on involvement in the preparation of fraudulent documents it would have been mentioned in the sentencing notes but by the same token Appellant's Counsel accepts that the appellant had to have to knowledge that personal information was obtained and utilised to complete the false electoral forms in relation to counts 3 and 13a. Thus it is quite clear that the appellant was aware of an condoned the activities.

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[3] *ZW v Immigration Advisors Authority* HC Auckland CIV-2011-404-005399 17 May 2012

[23] As far as the nature of the offence is concerned the respondent concluded the offending was at the higher end of the scale whilst Woolford J characterised it as moderately high. This overlooks the earlier comment that Woolford J made that it was serious and the appellant's objection in this regard seems to be a matter of semantics. In his assessment of the nature of the offence Woolford J was contemplating the gravity of the offence in the context of an application for a discharge without conviction in which the gravity of the offence must be measured against the consequences of the conviction to determine whether the consequences are disproportionate to the gravity. The consequences included the fact that the appellant was no longer registered as a real estate agent and that his registration as an immigration advisor could be in jeopardy. Those consequences, according to Woolford J, clearly were not disproportionate to the gravity of the offence.

[24] It is also submitted on behalf of the appellant that the respondent did not sufficiently take into account the mitigating circumstances to which Woolford J referred. Those mitigating circumstances, of course, related to the starting point sentence and two points that were made by Woolford J were that the gain that Mr Daljit Singh would have obtained would have been minimal and that he had a genuine but misguided enthusiasm to represent his community for its betterment.

[25] I have had the opportunity of considering the character evidence. There can be no doubt that the appellant has led an exemplary life involving a considerable amount of sacrifice of time and effort on behalf of his wider Sikh community in New Zealand, involving himself not only in community activities and social activities but also in respect of religious activities which play a large part within his community.

[26] Notwithstanding that the offending may be characterised as naïve and well motivated nevertheless it must be a matter of concern that the appellant was prepared to use dishonest means to advance the interests of his community within the political and government process. Although the mitigating circumstances were not directly referred to the Respondent's decision it is clear that the nature of the offending and its significance as a subversion of the democratic process even in the context of local body elections must be viewed as serious.

[27] Counsel for the Appellant also submits that the offending was not commercially driven and was naïve but by the same token it should be observed that notwithstanding the appellants otherwise unblemished record since he arrived in New Zealand some 26 years ago he did use dishonest means to obtain in his quest for a position of power and privilege. Although there is not quantifiable financial gain that may be achieved the nature of the offending suggests that dishonest means were used to obtain a privileged position.

[28] In this regard Counsel also refers to the observation by Woolford J at paragraph 54 of the sentencing notes to which reference has been made. He suggests that His Honour's remarks regarding the appellant's fitness had to be taken into account. The written submissions point to Woolford J's prior experience as a Crown prosecutor who led the Immigration team at Meredith Connell and his experience in the field of immigration law suggesting that in the circumstances His Honours remarks regarding fitness should at least be taken into account. The written submission states:

> Regrettably despite his Honour urge the respondent made no reference to this in his decision whatsoever. It is respectfully submitted that such a glaring omission is indicative of the respondent either did not take the judicial prompt into consideration or gave it no weight.

[29] Although specific reference to paragraph 54 is not made at the penultimate page of the decision the Registrar makes it clear that he has taken into consideration the sentencing remarks made by Woolford J. He does state that he is required to come to an independent decision as to whether or not the appellant is a fit and proper person to hold an immigration advisors license. In making that statement I consider that a clear cross reference is made to Woolford J's remarks at paragraph 54 and with the greatest of respect to Counsel I do not consider that Woolford J's remarks amount to a judicial "prompt". Quite the contrary. The emphasis is upon the requirement of the Registrar to exercise considerable care in assessing whether the nature of the offending was likely to adversely affect fitness to provide immigration advice in the same way as suggested by Priestley J in *ZW v Immigration Advisors Authority*.

[30] The appellant also advanced the issue of the timing of the offending referring to paragraph 2 of the respondents decision which states as follows:

> As such, I consider that the time during which you could have taken stock of your offending began only after you were sentenced. I do not accept that you took stock of your offending prior to that. Your decision to apply for a discharge without conviction points to the fact that you did not believe that your offending was serious. In my view you are not in a position to accept and consider your offending and its seriousness prior to sentencing.

[31] Counsel for the Appellant suggests that the respondent cannot speculate on the appellant's state of mind and in fact in his affidavit it is correct that Mr Daljit Singh states that he has had more than four years to reflect upon what has happened. There is no doubt that he was remorseful which was accepted by both the probation officer and the sentencing Judge. And then Counsel goes on to submit that there is no basis for the respondent to draw an adverse inference that by virtue of seeking a discharge without conviction the appellant did not believe his offending was serious.

[32] The test for a discharge without conviction involves a consideration of the disproportionality between gravity of the offending and consequences of a conviction. An application for discharge without conviction should not be made unless there is a reasonable likelihood of such disproportionality being made out. Clearly an assessment must be made by an applicant on a subjective basis as to whether the offending is grave before giving instructions to Counsel to make such application. Counsel argued that the appellant sought a discharge without conviction because he believed that the consequences would outweigh the seriousness of the offending and not because he believed that his offending was not serious. Nevertheless, as I have stated, an assessment has to be made as to the seriousness or gravity of the offending before such application is made. Certainly the appellant was entitled to make the application but in my view it was open to the respondent to make an assessment of how the appellant viewed the offending in light of such application.

[33] Appellant's counsel also refers in some detail to the character evidence that is being provided by the appellant in his affidavit and that of Mr McIntyre and Mr Robson. I have already made some observations upon the appellant's selflessness in his dedication to his community. Furthermore, apart from this offending, he is

otherwise of good character. Nevertheless Woolford J, in his sentencing remarks, did consider that an imprisonment starting point had to be assessed before determining a sentence of community detention and community work. Community detention should not be seen as a "soft option" and involves a significant interference with the freedom of movement and the liberty of the subject. That must be weighed against issues of integrity and good character in terms of the assessment of the offending. By this offending the Appellant has compromised his otherwise good character which may be considered in an assessment of fitness.

[34] Criticism is also made of the respondent's view of the affidavit evidence that was put before him and seemed to suggest that his view should be substituted with that of the sentencing Judge who heard the evidence and that Woolford J's remarks had to be taken into account and given due weight when considering the offending.

[35] It is important to note however the Woolford J did emphasise the importance of responsibility lying with the appellant, an awareness of legal requirements yet the conducting of the affairs surrounding the election campaign in a reckless and naïve manner.

[36] Finally the issue of rehabilitation is addressed in the submission for the appellant and reference was made to the comment by Woolford J as to the need for the effected community to rehabilitate from the stress, anxiety and emotional harm caused by the offending. That remark was made of course within the context of the concerns that were expressed by the community about the damage that had been done by the offending in terms of an overall assessment of the community. A community based sentence was seen as potentially of restorative value in terms of community concerns.

[37] In terms of the assessment of a fit and proper person (although s 16 refers only to fitness to provide immigration advice and s 19 refers to a person being fit to be licensed as an Immigration Advisor) the respondent made reference to:

(a) The recent nature of the offending;

(b) The repetitive nature of the offending;

(c) The seriousness nature of the offending involving dishonesty and misleading behaviour and

(d) Advantage of the fact that it was common practise within his community to fill in forms for other people for personal gain.

[38] The offending occurred in 2010 and is characterised by Counsel for the Appellant as somewhat historical although in terms of resolution of the matter it did not come to a close until February of 2014. With the greatest of respect to Counsel's argument I consider that a distant of five years is closer to recent than historical.

[39] Appellant's Counsel does not accept that the offending was repetitive and took place during the same election campaign of this part of singular narrative and although that might have been the case in the sense that it was within the context of a particular electoral campaign, there were nevertheless two counts upon which the appellant was convicted which means that it could not be characterised as a "one off" yet does not demonstrate a propensity on the part of the appellant within the context of this offending.

[40] Counsel accepts that the offending when viewed in isolation is serious although motivated by desire to represent the community for its benefit but by the same token it must be observed that a laudable motive cannot excuse criminal behaviour.

[41] Counsel also argues once again that the appellant did not commit the offences for personal gain although it is difficult to conclude, given that he was standing for a representative position, that he did not expect to gain in some way, if only to the extent of obtaining a position on the board. The gain may not have been financial but certainly it would have provided him with advantage and a position from which he expected to provide benefit to his community.

[42] At the hearing Mr Dillon appeared with Mr Cheng in support of the appeal. Mr Dillon helpfully provided a copy of the respondent's decision together with cross-references to the relevant paragraphs in Woolford J sentencing remarks.

[43] The essence of Mr Dillon's argument was that there were errors of fact within the respondent's decision and that the respondent attributed undue weight to the adverse circumstances that applied to the appellant but did not give sufficient weight to the favourable or mitigating circumstances that applied. Mr Dillon argued that had he done so a far more nuanced consideration would have taken place which, when all factors were properly weighed would have resulted in the Registrar being satisfied that the offence was unlikely to adversely affect the appellant's fitness to provide immigration advice.

[44] In the course of argument I took Mr Dillon through the written submissions that had been provided together with references to the decision of Woolford J and to which I have referred above.

[45] As I have stated I accept that there are some errors of fact in the Registrar's decision. The issue is whether or not those errors of fact materially affected the outcome. Mr Denyer argued that they did not and that the decision should be read as a whole. Mr Dillon argues that as a whole the decision lacks some of the context that was made available in the sentencing notes of Woolford J.

[46] In particular Mr Dillon made reference to the character references that had been made available by way of affidavit and from referees attesting to the appellant's good character. He suggested that the referees' decision suggests that a distinction can be drawn between those references that refer to the fact of the appellant's conviction and those that do not. Indeed under the heading of character references the referee registrar did make the distinction between the references that mentioned and it did not mention the offending. The fact of the matter is that all of the references absent any distinction were taken into account by Woolford J in sentencing.

[47] Another of the arguments that was advanced by Mr Dillon related not only to the appellant's conduct, his former reputation for integrity and his selfless service to the Sikh community but also to the fact that since 2009 he had been an Immigration Advisor and that during the currency of his license had no complaints made nor any aspersions cast upon his ability to perform his obligations properly. Although Mr Dillon characterised this as an issue of fitness and to a limited sense it is relevant to that inquiry it seems to me that his ability to carry out his duties properly reflects more upon the appellant's competence which is a different level of inquiry from that of fitness. Lack of complaint or lack of evidence of rejection of applications on the basis of incompleteness reflects more on issues of competence than of fitness

Submissions by the Respondent

[48] Mr Denyer filed written submissions on behalf of the respondent. In his submissions he provided the background to the matter and discussed the purposes and scheme of the Immigration Advisors Licensing Act 2007 together with what constitutes immigration advice and then discussed the licensing process.

[49] He argued that s 19, which addresses the granting of a license, provides a process for the respondent to work through in order to ascertain whether an applicant can be granted a license. The first step is to assess whether the applicant is prohibited from registration. Once that has been considered the issue of fitness to be licensed as an Immigration Advisor is the subject of inquiry. When that line of inquiry has been completed the issue of minimum standards of competence are addressed followed by completeness of application and finally the payment of the levy.

[50] Mr Denyer submitted that having regard to that process driven approach which is perfectly correct on the basis of s 19, once the respondent was not satisfied that, having regard to the matter specified in s 16 of the Act, the appellant was fit to be licensed as an Immigration Advisor the inquiry came to an end. If on the other hand the application for a license had not been restricted by s 16 the respondent would then have gone on to assess the appellant against minimum standards of competence set out in s 36.

[51] In considering the application of the law to the current appeal Mr Denyer pointed out that the appellant had email correspondence with the Immigration Advisors Authority and provided documentation in support of a request that the authorities' assessment of his application be postponed until after his sentencing on the 19th February 2014. It was at that time that the appellant's application for a discharge of our conviction would be considered and if rejected he would be sentenced.

[52] On the 21st February 2014 after his sentencing Mr Denyer point out that the Authority wrote to the appellant giving him another opportunity to provide any further comments or information and there was a response with a letter dated the 25th February, an affidavit and other supporting documents. After considering that information the respondent was not satisfied that the nature of the offences were unlikely to adversely affect his fitness to provide immigration advice.

[53] In submissions Mr Denyer pointed that it is not a matter of the respondent being satisfied that the nature of the offence is likely to adversely affect the appellant's fitness before a refusal of an application but rather that the respondent must be satisfied the nature of the offence is ***unlikely*** to do so before the application can be approved. Mr Denyer argued that s 16 by way in which that test is expressed sets a high bar on licensing.

[54] Mr Denyer argued that the appellant used his high status in standing in his community in the course of his offending in respect of that community and pointed out that there is a link between the community in respect of whom the offending took place and the community from which clients for his immigration practice would derive and whom he would be advising. He further pointed out that the offending although within the context of a particular electoral campaign spanned a period of 4 months and involved 9 individuals in respect of whom incorrect registrations were made. Given that these individuals came from the appellant's community and that the offending involved forgery of forms Mr Denyer argued that it is a core role of an immigration advisor to assist applicants in completing forms and noted that it was common within the appellants community as observed by Woolford J for members of the community to rely on his assistance in filling out those forms. Mr Denyer

argued that within the context of the offending this constituted an abuse of trust and is of direct relevance to his work as an immigration advisor.

Findings

[55] There can be no doubt that the decision of Justice Woolford as to findings of fact and his assessment of levels of responsibility and the like play an important part in a consideration of the level of culpability and nature of the offending and its seriousness. But Woolford J's sentencing remarks were just those – sentencing remarks. They cannot be read as an alternative decision for the purposes of determining whether or not a person fulfils the criteria provided for licensing as an Immigration Advisor. Although Woolford J emphasises at paragraph 59 the need for care in a consideration of an application that the appellant might make and which he did make that comment in my view echoes the importance of the exercise of care when a statutory power is invoked and referred to in the judgment of *ZW v Immigration Advisors Authority* of Priestley J.

[56] The provisions of the Sentencing Act and the identification of aggravating and mitigating circumstances are performed against the background of the principles and purposes of sentencing coupled with the various admonitions that occur in that legislation and the alternative outcomes that may be available along with a consideration of the least restrictive outcome principle in s 16 of the Act. Such consideration involves an entirely different evaluative process from that which would be undertaken by the Registrar in this case. What the Registrar is called upon to consider is a somewhat narrower inquiry. The Registrar must be satisfied that the nature of the relevant offence or matter is *unlikely* to adversely affect the persons fitness to provide immigration advice and undertake that inquiry in light of the specific piece of legislation and the principles and purposes identified in that legislation.

[57] The purpose of the Act is clearly and unambiguously stated at Section 3:

> 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.

[58] It is clear that the Act is designed for the protection of consumers and further to provide a greater overall purpose in ensuring that there is confidence in immigration processes to enhance New Zealand as a migration destination. It must also be remembered that the legislation was considered necessary in light of perceived problems and abuses that were identified in the previous unregulated environment.

[59] It is important to note that the concept of "likelihood" in section 16 is in fact expressed as a negative – unlikely - and I accept the argument by Mr Denyer that it sets a reasonably high bar. Mr Denyer pointed out that the offending took place within the context of the appellant's relationship with his community and was directly related to his very high standing and status within that community. Although the appellant's status and standing and the considerable good works that he has done for the benefit of and in the service of his community over a number of years has, within the context of the offending, turned against him.

[60] The matter of concern for the Registrar was the fact that in the course of his practice as an Immigration Advisor it is from that community that his clientele would derive. In that respect the nature of the offence could have an adverse effect upon his fitness to provide immigration advice.

[61] Mr Denyer also argued that the offending involved the forgery of forms being a core aspect of the role of an Immigration Advisor and pointed out that the offending – although not specifically by the appellant – involved similar activities on the part of those for whom the appellant freely accepted responsibility and in respect of whom his conduct was reckless.

[62] In that respect the nature of the offending and the role of the Immigration Advisor are linked and this too speaks to the issue of fitness.

[63] There are additional matters as well. In his role as an Immigration Advisor the appellant would act as an intermediary between individuals seeking immigration

assistance and an arm of government tasked with the approval of immigration applications. In that respect the appellant is an intermediary with a public authority. A public authority should have utmost confidence and trust in such an intermediary and the offending – involving as it did the quest for public office – must challenge that high level of integrity and probity required of an intermediary with an arm of government. That must impact upon fitness as well.

[64] There can be no doubt that the registrar took into account the appellant's previous good conduct and past accomplishments. Indeed he refers to them in the second and third full paragraphs of the penultimate page of his decision where he states:

> I have also taken into consideration the character submission you provided on the 25th February 2014. I acknowledge in the past you have committed yourself fully to your community. This includes the extensive charitable work you have carried out for various religious and community groups. I also acknowledge that the offending behaviour does not appear to be part of historical pattern of dishonest behaviours.
>
> However given the offending occurred recently, the nature of the offending and the fact that it appears you have not acknowledged it or its impact on your community; your past accomplishments have not displaced my concerns regarding your fitness to hold an immigration advisors license.

[65] One of the criticisms advanced by Mr Dillon was the time lapse between the offending and the willingness of the appellant to recognise the nature of his conduct. Even if I were to adopt Mr Dillon's argument that the concerns of the appellant started when the offending was detected in 2010, nevertheless a five year period is somewhat short especially having regard to the fact that the full consequences of the offending did not become apparent until sentencing. I am not convinced that the Registrar was wrong in concluding that the issue of timing between the taking of responsibility and an understanding of the consequences of the offending was later than sooner.

[66] I am not satisfied that the offending demonstrated a particular propensity to engage in dishonest activity but the nature of the offending, particularly as it involved a quest for public office, and the attempt to pervert the democratic process by what may be considered "vote packing" can only be deplored and raises a concern about attitudes towards public office. Indeed, in my view it has underlying elements

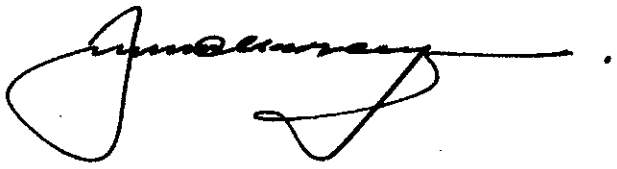
of corrupt practice that cannot be tolerated in those who are associated with providing a service to the public involving the obtaining of privileges and an interface with Government agencies.

[67] Woolford J characterised the offending as seriousness and moderately high – characterisations with which I entirely agree. These matters are addressed in the Registrars assessment of fitness and it is with respect that I must conclude that the approach that has been adopted by Mr Dillon in this matter does not bare scrutiny nor does it appear to me that the Registrar has placed undue weight on some matters and in sufficient weight on others. Indeed my view of the Registrar's approach is that it is a balanced one albeit there are occasional minor errors of fact in decision but which really do not have major significance in terms of an overall consideration of the outcome

Conclusion

[68] I find that the decision of the Registrar was in accordance with the requirements of the Act and that there was no error that undermined the reasoning process of the collusion reached by the Registrar.

[69] The appeal is dismissed.



David J Harvey
District Court Judge