

Engaging with your client – Recent Tribunal Findings

Different aspects of providing immigration services to your clients

17 October 2024 | 11 am - 12 pm NZT

In today's webinar

What is Immigration Advice – Different aspects/services including recruitment

Who is your client?

Client engagement

Conflicts of Interest

Working within your skillset and managing your workload

Resources and Links

Q & A



What is Immigration Advice?



Clerical work v immigration advice?

Immigration advice

*s 7(1)(a) of
the Act*

Using **knowledge** or
experience in
immigration to:

- advise, direct, assist,
or represent another
person
- with respect to an
immigration matter

Clerical work *s 5 of the Act*

- Recording, organising
information;
- storing or retrieving
information;
- computing or data entry;
- on behalf and under the
direction of another
person***

Registrar v Chamath Ekanayake - [2015] NZIACDT 67


“The view is at least potentially open that complaints regarding a licensed immigration adviser acting dishonestly or unprofessionally, outside of delivering immigration advice, do concern the provision of immigration advice in relation to their clients generally.”



Scenario Time

You are assisting a migrant who wishes to come to Aotearoa to work. They have asked you to help them find a job and help practice job interviews with them. Once they find a job, they want you to help them apply for a visa. You agree to help them with all of the above and provide a written agreement which they have signed.

Which parts of this service **may** be classed as immigration advice?

- a) The Visa application
 - b) The mock job interviews
 - c) Searching for a job
 - d) All the above
- 
- Decorative geometric shapes in the bottom right corner, including a teal triangle, a light green triangle, and a red triangle.

SM v Kim - [2023] NZIACDT 5

The Act and hence the Code regulate the provision of “immigration advice”, as defined in the Act. It is a wide definition. In summary, it captures the use of knowledge or experience in immigration to advise or assist another person in regard to an immigration matter.



Tribunal Decisions

- *SM v Kim [2023] NZIACDT 11*
- *DM v Yang [2024] NZIACDT 23*
- *Sparks v IACDT [2017] NZHC 376*



Who is your client?



Your client

Clause ... most of them.


“Client” is mentioned 97 times
in the Code of Conduct.



Scenario time

A company approaches you wanting assistance with visa applications for ten migrants at a factory. They intend to pay your service fee for this work. The Employer connects you with the recruitment agent overseas who has identified ten suitably skilled migrants. The agent has already obtained personal documents from the migrants.

Who is your client for the purposes of the Code?

- a) The ten migrants
 - b) The employer
 - c) The Agent
- 

MZ v Sun [2019] NZIACDT 12

“First, there is an issue as to who is Mr Sun’s client. He contends that his client was the company. To the extent that Mr Sun has a commercial relationship with the company, that is correct.

However, in terms of his obligations under the Act and the Code, his client was the complainant. His role in respect of the instructions from the company was to “advise” and “represent another person in regard to an immigration matter”.

Penalty:

- Censured
- Prevented from reapplying for a licence for two years.



Client Engagement



Client Engagement

Clause 1 - ... must be honest, professional, diligent and respectful and conduct themselves with due care and in a timely manner.

Clause 2(e) ... obtain and carry out the informed lawful instructions of the client...



Scenario time

A migrant has approached you to help them obtain a work visa. You send them through a summary of your professional responsibilities, and you have a draft written agreement ready to send. What do you do next:

- a) Ask them to sign the written agreement
- b) Meet with them or call them to explain all significant matters in the written agreement, and your professional responsibilities
- c) Ask them to provide the documentation you need for the visa application
- d) Do nothing

ZR v Kim - [2024] NZIACDT 6

“Clause 17(b) requires an adviser, not just to provide a copy of the summary, but to explain it to the client as well as to explain how to access the full Code.

There are two reasons why sending a written explanation to an agent breached the obligation:

- (1) Mr Kim cannot delegate to an unlicensed agent his professional obligations, beyond “clerical work”... Mr Kim was required to personally explain the summary directly to the complainant.*
- (2) The explanation cannot be in writing. The Code requires a summary and an explanation. A written explanation of the summary is really nothing more than the summary. The purpose of an oral explanation in person is that the client can ask questions.”*



ZR v Kim - [2024] NZIACDT 6 - Continued

Penalty:

- Censured.
- Ordered to complete the LAWS 7015 paper at Toi Ohomai at the next intake.
- Ordered to pay \$1,500 to the Registrar within one month.



DM v Yang - [2024] NZIACDT 23

“Mr Yang has undertaken his services in a way which has contributed to creating an environment for fraud to be perpetrated by the agent and/or the employer on the complainant... The Tribunal agrees with the Registrar that by allowing the agent to have exclusive communication with the agent, he has assisted in establishing an environment where fraud can more readily occur. If Mr Yang had personally communicated with the complainant as he was required to do, it is less likely that his client would have been exploited.”

Sanction decision: Pending



Conflicts of Interest



Declaring/Identifying/Managing Conflicts of Interest

Clause 5 - must disclose the potential or actual conflict to the client in writing.

Clause 6 - may only represent or continue to represent the client where the client gives written consent.

Clause 7 - must not represent if aware that there is an actual conflict of interest and the adviser's objectivity or the relationship of confidence and trust would be compromised, or if they would breach the confidentiality of a client



Scenario time

You are an LIA, who also runs a restaurant. You have a good friend overseas who wants to move to NZ, and you think that they would be a good fit as restaurant manager. They want you to assist them with their visa application to work at your restaurant.

Is there a conflict of interest in this situation?

- a) Yes
- b) No
- c) Maybe

MM v Ma - [2024] NZIACDT 07

“It is self-evident she was compromised in her duty to give independent advice to the complainant, while at the same time having familial and indirect financial interests in the employer she was promoting to him. Ms Ma’s failure to disclose the relationship and the consequential conflict at all, let alone in writing, and obtain the complainant’s consent to nonetheless represent him, is a breach of cls 5 and 6.”

Penalty:

- Censured.
- Directed to undertake LAWS 7015 paper at Toi-Ohomai
- \$5,000 fine.
- \$19,061 refund to the Complainant.



QN v Nandan - [2024] NZIACDT 22

“Looking at the totality of the relationship between them from the perspective of Ms Nandan, she was conflicted from the moment she became the complainant’s immigration adviser. Ms Nandan could not give detached objective immigration advice as an employer with a personal (commercial) interest in the complainant’s immigration status...

The Tribunal accepts her evidence she did not charge a fee as an immigration adviser, though this does not mean there was no benefit (even financial) from the role.”

Sanction decision: Pending



Working within your skillset and managing your workload



Working within limits of knowledge and skills

Clause 8(a) - must work within the scope of their individual knowledge and skills.


Clause 2(c) – must facilitate the provision of interpreters and translators as appropriate



Scenario time

You are an LIA with a busy practice. In the last few weeks, you have onboarded a larger than average number of clients. You find that you are struggling to meet INZ deadlines. You feel that you are at real risk of missing key deadlines.

What do you do?

- a) Decline to take on new clients and suggest they contact other LIAs
 - b) Obtain permission from clients for other LIAs to work on their matters
 - c) Either/both
- 

IMH v Marica - [2021] NZIACDT 2

“The complainant would have known nothing of her workload or personal circumstances. They are matters for her to manage while discharging her professional responsibilities. They do not reduce her responsibilities to the complainant.”

Penalty:

- Censured
- Directed to undertake LAWS 7015 paper at Toi-Ohomai
- \$1,500 fine



TI(G)M v Hanning - [2020] NZIACDT 11

“A professional person is expected to regulate his or her own workload in order to render a professional service to all clients. It is not easy to turn work away but this must be done rather than to perform inadequately.”

Penalty:

- Cautioned
- \$1,000 fine
- \$7,555 in reparation



OT v Ramos - [2023] NZIACDT 13

“Irrespective of her workload, Ms Ramos should always be aware of a deadline for a residence application and have systems in place which draw such deadlines to her attention. Her failure, while an oversight, cannot therefore be dismissed as an excusable human error.”

Penalty:

- Censured
- \$2,500 fine
- \$8,000 in reparation



Resources and Links



Resources

- [Immigration Advisers Licensing Act 2007](#)
- [Code of conduct | IAA](#)
- [Code of conduct toolkit | IAA](#)
- [Immigration Advisers Complaints & Disciplinary Tribunal | New Zealand Ministry of Justice](#)

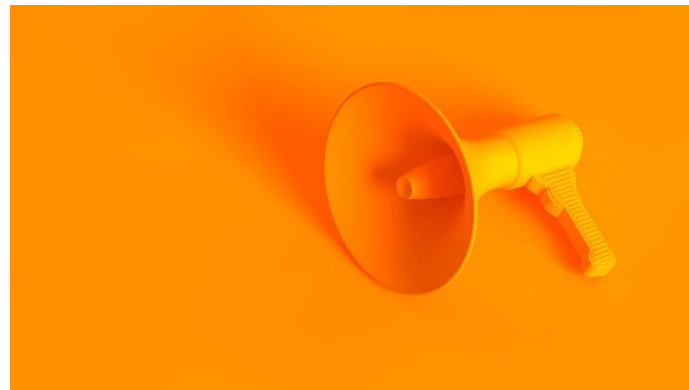


Questions?



Feedback? Further questions?

- How can we do better?
- Have we done a good job?
- Whatever the feedback, compliments, or complaints, we want to hear from you.



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Thank you for your time today!

