

**BEFORE THE IMMIGRATION ADVISERS
COMPLAINTS AND DISCIPLINARY TRIBUNAL**

Decision No: [2016] NZIACDT 31

Reference No: IACDT 041/15

IN THE MATTER	of a referral under s 48 of the Immigration Advisers Licensing Act 2007
BY	The Registrar of Immigration Advisers Registrar
BETWEEN	MBL Complainant
AND	Jacinta Shadforth Adviser

**THE NAME AND ANY INFORMATION IDENTIFYING THE COMPLAINANT IS NOT TO BE
PUBLISHED**

**INTERIM DECISION
(SANCTIONS)**

REPRESENTATION:

Registrar: Ms Sarah Blick, lawyer, Ministry of Business, Innovation and Employment, Auckland

Complainant: In person.

Adviser: In person.

Date Issued: 16 June 2016

INTERIM DECISION

This Complaint

- [1] This interim decision addresses sanctions following a decision upholding a complaint against Ms Shadforth (*MBL v Shadforth* [2016] NZIACDT 26; see www.justice.govt.nz). The anonymised references in this decision are the same as in that decision. The prohibition on identifying parties also applies equally to this decision.
- [2] The Tribunal upheld the following grounds of complaint:
 - [2.1] Two emails respectively breached clauses 1.1(a) and 2.1(g) of the 2010 Code, and clause 1 of the 2014 Code. Ms Shadforth acted with a lack of respect for Mr MBL, and was unprofessional in respect of the first email. The second email was disrespectful, and unprofessional. Ms Shadforth sent that contemptuous and disparaging email with the purpose and likely effect of causing distress, not to communicate with regard to a relevant issue.
 - [2.2] Ms Shadforth breached Clause 1 of the 2014 Code, as she unprofessionally and with a lack of respect published confidential information relating to her former Client B. She also breached clause 4 of the 2014 Code as she failed to preserve the confidentiality of Client B.

Potential sanctions

- [3] As far as the circumstances of the professional offending go, the findings are serious. Intemperate emails and denigration of a colleague can be momentary. However, respectful relationships are the foundation for all professional conduct. The breach of a former client's confidentiality is also serious, and particularly so when it occurs in circumstances where it is deliberate, and public. It was a situation where Ms Shadforth must have been aware of the sensitivity. In the posting, she disparaged another licensed immigration adviser and was likely to cause readers to believe that some licensed immigration advisers are dishonest, and not held to account by the Immigration Advisers Authority. It gave the complainant's practice as an example of dishonesty, and suggested persons engaging licensed immigration advisers should take care so they do not engage dishonest advisers, which is a real risk.
- [4] Accordingly, the breach of confidentiality was in an aggravating context, where Ms Shadforth behaved irresponsibly and unprofessionally.
- [5] Imposing sanctions in a case of this kind largely turns on the attitude of the offending practitioner. A one off lapse which will never happen again requires a restorative approach. The same potentially applies even after a sustained course of poor behaviour, if the practitioner has re-evaluated their conduct and restoration is both realistic, and consistent with protecting the public.
- [6] Unfortunately, Ms Shadforth's response to the decision leaves the Tribunal in a position where unless there is a fundamental change in Ms Shadforth's attitude, rehabilitation is an unrealistic expectation.
- [7] The grounds of complaint concerned Ms Shadforth's unprofessional and disrespectful behaviour. Her response to the Tribunal's decision involves further unprofessional and disrespectful behaviour, which is potentially as egregious as the original grounds for complaint. Ms Shadforth's response to the Tribunal's decision was deliberate, considered, and pursued after she identified and stated the likely consequences.
- [8] As matters stand in the absence of an explanation, and reasonable expectation of a change in attitude the material before me establishes Ms Shadforth lacks the personal qualities to behave as a professional person. If this is the information the Tribunal relies on to impose sanctions, Ms Shadforth should expect the Tribunal will cancel her licence and impose prohibitions that will likely result in her permanent removal from the profession. Financial penalties will also apply.

[9] An important element in establishing that Ms Shadforth is not a person for whom rehabilitation is realistic is her email of 19 May 2016. She sent it to the Tribunal and the parties after the Tribunal issued its substantive decision.

[10] In this email, Ms Shadforth said she recognised that her “email will be treated as further fuel in regard to [her] lack of professionalism”. Notwithstanding that insight, she then made a series of allegations that the Tribunal has conducted itself abusively and illegally, and that its Chair has used his office to conduct a personal agenda, make false accusations, and improperly influence the Registrar of the Immigration Advisers Authority. Examples of language and sentiments Ms Shadforth used in this email include:

The decision of the Chairperson ignores and omits from publication matters of fact, recognised legal principle and the fact that the Tribunal placed significant influence upon the Registrar.

The decision fails to deal in any meaningful way with the information and evidence and moreover is a blatant attempt to undermine truth and justice.

...

I am expected to show respect to a Tribunal responsible for professional disciplinary proceedings which is subject to no such standards of professionalism or conduct.

As previously stated in my responses to the Tribunal I hereby put the Tribunal on notice as to the following:

Conducting its proceedings in a biased manner, contrary to good faith;

Conducting its proceedings with malice and in an oppressive manner;

Publishing an edited version of the facts and argument which conveniently supports the predetermined view taken by the Tribunal;

Failing to take into account all relevant factors;

Unduly influencing (and potentially pressuring) the Registrar of the Immigration Advisers Authority and the opinions thereof;

Conducting its proceedings in a manner to serve the Chairpersons own personal agenda.

In good conscience I cannot respect a quasi judicial body that itself exists outside the rule of law and refuses to publish information that would aid complainants and advisers alike, in an effort to avoid accountability – even when not in fact able to be held to account.

Let it be said that the true intent of the Tribunal is demonstrated through its actions. In this much the Tribunals disregard for the law itself has spoken volumes.

[11] Angry outbursts of this kind have limited significance in sentencing for criminal offending, beyond the obvious lack of mitigation due to absence of contrition, and denial of the offending. In professional disciplinary cases, such conduct is much more significant, it will likely end membership in a profession.

[12] When practitioners neither respect nor accept the decisions of the statutory regulatory bodies governing their profession or disrespect the institutions they have to work with, their position in the profession is untenable. Professions have privileges, in the case of licensed immigration advisers and the limited categories of exempt persons, the exclusive right to provide immigration services. One of the constraints is that each professional person given that privilege is required to maintain standards of conduct; when they exempt themselves from those constraints, they have no future in the profession.

[13] There are many examples of professionals who have effectively removed themselves from professions through their hubristic belief they stand above the regulation of their profession; that hubris then leads to contemptuous behaviour. While the conduct was far less egregious than Ms Shadforth’s behaviour, Judge D M Wilson QC’s observations in *Prakash v Kumar*

CIV-2013-004-000019, Auckland District Court, 7 May 2013 (<http://www.iaa.govt.nz/adviser/news/decisions/index.asp>) illustrate how lack of contrition and blaming others leaves no room for rehabilitation.

- [14] It is of course entirely appropriate and proper to challenge the Authority, the Tribunal, Immigration New Zealand and other bodies licensed immigration advisers engage with professionally. There are legal means of doing so. Each of the bodies is subject to the law and remedies are available when any of them are in error. If there were gross misconduct and dishonesty of the kind Ms Shadforth attributes to the Tribunal, there are severe sanctions that apply. Scandalous allegations of the kind Ms Shadforth made are contemptuous and far removed from legitimate challenges and processes.
- [15] Adding to my concern that there is no realistic prospect of Ms Shadforth's attitude changing is her conduct throughout this complaint. One of the actions that Ms Shadforth could have taken was to apologise to the complainant and Client B at an early stage. Instead, in a letter dated 17 June 2015 to the Authority, she said she deeply regretted her "public outburst" on a website blog. She then went on to make her own complaint about the complainant and said of the complainant:

... the only way to manage the risk and danger he poses to the public and the integrity of the immigration system is to have him removed from the profession.

- [16] Of her former Client B, Ms Shadforth said her publication on the website was unprofessional, but then engaged in a justification which lacked merit for the reasons discussed in the substantive decision. It is unnecessary to catalogue fully the way in which Ms Shadforth has responded to this complaint. It suffices to say that Ms Shadforth's response to the Authority and the Tribunal in addressing her conduct has been consistently querulous; she blames others for her predicament and expects the Tribunal to find she was immune from accountability, even though she accepts she was unprofessional.

Next Steps

- [17] Ms Shadforth provided a medical certificate under cover of an email dated 9 June 2016, to the effect she was medically unfit for 3 to 7 days. The email said:
- Finally, any evidence of my health issues is likely to be selective and/or edited to ensure the information is not used or disseminated for improper purposes.
- [18] The justification given for selectively providing information or editing it implies the Tribunal will not protect information properly. Putting that to one side for the moment, that Ms Shadforth may alter information before sending it to the Tribunal is a matter of concern. It is not the first time that issue has arisen in Ms Shadforth's dealings with the Tribunal (*Five Complainants v Kumar* [2015] NZIACDT 82). I do not regard the *Five Complainants* matter as relevant in any way to the sanctions to be imposed, however, that decision does make it clear that the Tribunal would be naïve to ignore Ms Shadforth's notification, she may selectively provide information, or edit it.
- [19] Following the 9 June 2016 email, Ms Shadforth sent her own description of her state of health. This did not correspond to the previous medical certificate and she did not provide a new medical certificate. She asked for a "long term extension" to provide submissions regarding sanctions, based on her own description and photographs she provided to illustrate it.
- [20] In the circumstances, the Tribunal requires that Ms Shadforth provide an affidavit from a registered doctor (a doctor on the New Zealand Medical Register - www.mcnz.org.nz) regarding her fitness, if she cannot meet the Tribunal's timetable. I discuss the requirements for the affidavit below.
- [21] For the reasons outlined, Ms Shadforth faces removal from the profession unless the Tribunal receives further information that permits a different approach.
- [22] The Tribunal repeats its observation in its direction of 28 August 2015, that Ms Shadforth is entitled to legal representation, and again invites her to reflect on the observations of the High Court in *ZW v Immigration Advisers Authority* [2012] NZHC 1069 at [41]:

"I consider it would be foolish for any immigration adviser who contests serious aspects of a complaint not to seek some form of legal advice. The consequences of complaints being upheld may well be severe. In passing the Act, Parliament has clearly intended to provide a system of competency, standards, and a Code of Conduct to clean up an industry which hitherto had been subject to much justified criticism. The Registrar and Tribunal have a Parliamentary mandate to enforce standards."

- [23] While Ms Shadforth is entitled to represent herself, it is clear that it is most unwise for her to do so. Her communications with the Tribunal have not improved her circumstances and it is evident she has failed to identify what is important and relevant in responding to this complaint; and has not responded to the complaint appropriately.
- [24] The Tribunal now exercises its power under section 49(4)(b) to request that Ms Shadforth appear before the Tribunal. It is a matter for Ms Shadforth and her counsel, if she is represented, as to whether she does appear. If Ms Shadforth does take up the option, the Tribunal suggests (without limitation) that she may consider addressing the following matters:
- [24.1] Whether she accepts the Tribunal's decision upholding the complaint is correct.
- [24.2] Whether she wishes to take the opportunity to apologise to; Client B, the Complainant, the Registrar, the Authority, or the Tribunal.
- [24.3] What, if any, steps does Ms Shadforth propose to take in relation to restoration and rehabilitation; including potential arrangements to practise under supervision and undertake remedial training (with or without a period of suspension).
- [24.4] Ms Shadforth's response to this complaint has left me with a concern. If her response to this complaint reflects her professional conduct generally, she may not have the ability to analyse issues with a sense of priority and proportion, or maintain respectful relationships with clients and Immigration New Zealand. Accordingly, Ms Shadforth will have the opportunity to address her professional practice standards, by calling evidence from appropriate persons. I note client testimonials and the like will be of little value.
- [24.5] Her standing in the professional bodies (NZAMI, and NZAIP); and whether as part of rehabilitation, she would consider developing new supportive professional networks.
- [25] For the reasons discussed, Ms Shadforth should regard this as a final chance to remain as a member of the profession. However, the opportunity does not imply the Tribunal will decide she should remain as a member of the profession.

Affidavit from a registered doctor and timing

- [26] If Ms Shadforth is not fit to deal with this complaint, she should not be practising. Deferring sanctions for a long term while Ms Shadforth continues to hold a licence is not appropriate.
- [27] The Tribunal does not propose to compel Ms Shadforth to attend in person. If she elects not to do so, the Tribunal will make its decision on the information then before it. The Tribunal's view is that this decision provides Ms Shadforth with an opportunity; her response is up to her.
- [28] The Tribunal will convene a hearing on 19 July 2016. If Ms Shadforth is unfit to attend by that date, the Tribunal will make an interim order suspending her licence pending the hearing and final decision on sanctions. The order for suspension will take effect from the time of any adjournment and Ms Shadforth should put arrangements in place for her clients if she does apply for an adjournment.
- [29] The affidavit of a registered doctor in support of an adjournment application is required to:
- [29.1] State the doctor has read this interim decision, and understands the purpose of her or his affidavit;
- [29.2] Identify Ms Shadforth's state of health, with sufficient particularity to explain the professional opinions expressed in the affidavit;

[29.3] Consider, whether Ms Shadforth is in a fit state to instruct a lawyer to act for her, and attend a hearing likely to take in the order of two hours; and

[29.4] If not fit to do so immediately; then express the doctor's view of her likely prognosis and the anticipated period of delay required.

[30] If Ms Shadforth is likely to be unfit for an extended period, she may elect to appear through counsel without a personal appearance or wait a reasonable time to recover, during which time her licence will be suspended.

Timetable

[31] The Tribunal will commence hearing any evidence and submissions regarding sanctions at 10:00 am on 19 July 2016 in Christchurch at a place the Case Manager will identify in a notice of hearing.

[32] Ms Shadforth is required to file and serve any material she wishes to present at the hearing by 5:00 pm on 11 July 2016; alternatively, she may file an application to defer the hearing, supported by an affidavit from a registered doctor no later than that time.

[33] Other parties may file and serve replies by 5:00 pm on Thursday 14 July 2016.

[34] If Ms Shadforth does not file material to present at the hearing, indicate she will appear regardless, or file an application to defer the hearing together with the appropriate affidavit; then the Tribunal will issue a final decision on the papers, without further notice.

[35] The parties may apply for any further orders regarding the timetable.

Caution

[36] The Tribunal cautions Ms Shadforth that if she uses the time allowed to engage in further unprofessional conduct in relation to this complaint, the Tribunal will suspend her licence without further notice pending the final decision.

DATED at WELLINGTON this 16th day of June 2016.

G D Pearson
Chair