

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

Decision No: [2016] NZIACDT 37

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**THE NAME AND ANY INFORMATION IDENTIFYING THE COMPLAINANT IS NOT TO BE
PUBLISHED**

FINAL DECISION
(SANCTIONS)

REPRESENTATION:

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

Complainants: In person.

Adviser: In person.

Date Issued: 3 August 2016

DECISION

Interim Decision

- [1] This decision addresses sanctions following a decision upholding a complaint against Ms Shadforth (*MBL v Shadforth* [2016] NZIACDT 26), and an interim decision on sanctions (*MBL v Shadforth* [2016] NZIACDT 31 see www.justice.govt.nz). The anonymised references in this decision are the same as in those decisions. The prohibition on identifying parties also applies equally to this decision.
- [2] The interim decision set out the grounds of complaint, and for the reasons identified made it clear that Ms Shadforth faced removal from the profession unless she reconsidered her position. It suffices to say, the Tribunal upheld a complaint that Ms Shadforth engaged in conduct that was inconsistent with the standards expected of a person providing professional services to the public.
- [3] Her response to the Tribunal's decision was to inform the Tribunal that in her view 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.
- [4] Given that conduct was likely to have serious consequences for any future role Ms Shadforth may contemplate as a professional person providing regulated services to the public, the Tribunal gave Ms Shadforth a final opportunity to reflect and take advice. The Tribunal told Ms Shadforth it was up to her to take advice, and decide on what she would do; however she might consider:
- [4.1] Reflecting on whether the Tribunal did correctly make an adverse finding;
 - [4.2] Whether she wished to apologise to her former client, the complainant, the Registrar, the Authority or the Tribunal;
 - [4.3] What steps she might take to give the Tribunal confidence she was going to practise professionally, such as supervision and training;
 - [4.4] Whether she could give the Tribunal confidence that the sense of priority and proportion that was absent in her dealings with the Tribunal did not reflect how she behaved in relation to client instructions; and
 - [4.5] Whether professional networking through the professional bodies may be a way of assisting Ms Shadforth to move forward in a more positive way.

Ms Shadforth's Response to the Interim Decision

- [5] Despite the very clear warning of the predicament Ms Shadforth was in, she decided to challenge the meaning and effect of the Tribunal's interim decision, and sought to negotiate what it meant. The Tribunal, given that it makes decisions and does not provide advice, made it clear to Ms Shadforth she should take legal advice if the decision was not clear to her.
- [6] Ultimately, Ms Shadforth provided submissions. It is not clear whether Ms Shadforth deliberately misconstrued the interim decision, or was unable to understand her situation. It is sufficient to note:
- [6.1] Ms Shadforth used the submissions as an opportunity to claim the Tribunal was wrong in its decision in *Five Complainants v Kumar* [2015] NZIACDT 82. The Tribunal in its interim decision made it plain it would not take that decision into account in relation to sanctions.
 - [6.2] She also used the opportunity to contend the Tribunal's decision upholding the complaint was wrong for various reasons.
 - [6.3] She said she had not apologised to her former client as she was not a party to the complaint, but did so now. She inexplicably attempted to connect an apology to the complainant, regarding the complaint the Tribunal upheld, with confidentiality of

medical information and refused to apologise to him. She further abused him referring to his “unsavoury conduct”, in contrast with her own honesty and transparency. She did not apologise to the Tribunal for her allegations of abuse and illegality, or to the Registrar for the slur that the Registrar acquiesced in improper influence by the Tribunal. Again, inexplicably, she related this to confidentiality of medical information.

- [6.4] Ms Shadforth took the opportunity to make further allegations that the Tribunal is selective and refuses to follow the law. She contrasted the Tribunal with her own conduct which is “open, honest and transparent”.
- [6.5] Ms Shadforth gave her own, favourable, view of her professional history; it was not supported by any meaningful independent analysis in the nature of a competence review. She did not provide information from a senior colleague who could speak knowledgeably of how she was managing her practice. There were some anecdotes, but they have little weight as it was not evident the persons providing them were aware they would be presented to the Tribunal, and appear not to have had knowledge of the finding of this Tribunal.
- [6.6] Ms Shadforth said the complaint, and the outcome had caused her significant personal difficulty.
- [6.7] She concluded her submission by contending that the Tribunal has attributed to her the personal characteristics of persons who committed crimes against humanity during the Holocaust, and said it was particularly distressing as her family were victims of the Holocaust.

Ms Shadforth Rejected the opportunity to Attend an Oral Hearing

- [7] The Tribunal’s interim decision, for the reasons explained in it, found Ms Shadforth provided inadequate information to support a request to defer imposing sanctions for an extended period. She said she was unwell, but would be selective or edit information she provided to support deferring the Tribunal’s decision on sanctions.
- [8] Accordingly, the Tribunal required that if, and only if, she requested a further adjournment she should provide an affidavit from a doctor. It was to:
 - [8.1] state that the doctor has read the interim decision, and understood the purpose of her or his affidavit;
 - [8.2] identify Ms Shadforth’s state of health, with sufficient particularity to explain the professional opinions expressed in the affidavit;
 - [8.3] consider, whether Ms Shadforth was 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
 - [8.4] if not fit to do so immediately, then express the doctor’s view of her likely prognosis and the anticipated period of delay required.
- [9] Ms Shadforth treated this as a requirement to disclose her medical history; she said she was only required to provide dates of ill health. Ms Shadforth appeared not to understand the information was required only if she sought an adjournment. Furthermore, the doctor had to only explain a medical condition in general terms to support the reasons for her or his opinion. The Tribunal did not require Ms Shadforth’s medical records. This Tribunal does not disclose confidential medical information and will restrict access by other parties if appropriate.
- [10] Ms Shadforth was required to provide the affidavit by 11 July 2016. Instead on 20 July 2016, late in the day before the oral hearing was scheduled, Ms Shadforth procured her doctor to provide medical notes that went beyond what was required in terms of clinical information. It was however, deficient in addressing what was of concern, namely Ms Shadforth’s ability to participate in the Tribunal’s processes. The doctor expressed a view regarding Ms Shadforth’s health a month earlier and said she was not fit to attend the hearing the following day. Her doctor also wrote requesting that the Tribunal state why it required information. The inability to attend was expressed like an employment medical certificate; not the reasoned professional opinion required by the interim decision.

- [11] Many thousands of dollars had been expended in preparation, travel arrangements, and a courtroom had been set aside for the hearing. Ms Shadforth did not attempt to comply with the requirement to provide an affidavit, and apparently failed to show her doctor the interim decision. The interim decision explained both what information the Tribunal required and why it was required.
- [12] When Ms Shadforth wrote to the Tribunal when providing the doctors notes, she said she would not attend the hearing. She said the Tribunal had demanded information it was not entitled to have and that the Tribunal's actions in doing so had caused her "sufficient distress [so] as to prevent [her] attendance." The doctor's requirement for the Tribunal to state the reasons for it requiring information from him, and saying Ms Shadforth was now distressed were presented to support her position.
- [13] Ms Shadforth's conduct in this regard was manipulative. The Tribunal set out a clear and simple process. She manipulated the doctor by failing to show him the Tribunal's interim decision that would have made it plain to him that the Tribunal was not intrusive; but for good reason would not accept a simple certification without justification. The interim decision showed why the Tribunal required his reasoned assessment.
- [14] Ms Shadforth then went on to say she was closing her practice and would not attempt to renew her licence when it expired on 24 August 2016. Neither Ms Shadforth nor her doctor gave any indication when she would be able to attend a hearing.
- [15] I had regard to the following matters:
- [15.1] Ms Shadforth has provided submissions that indicate her attendance at an oral hearing would be to further her unprofessional conduct; not to distance herself from it. The written submission continued her attack on the complainant, and others;
- [15.2] Ms Shadforth failed to comply with the requirements to seek an adjournment;
- [15.3] The other parties did not seek an oral hearing;
- [15.4] Ms Shadforth has indicated she does not intend to continue practising, and anticipates the Tribunal will cancel her licence.
- [16] I am satisfied that, as indicated in the interim decision, the consequences of non-compliance with either the process to seek an adjournment, or attend a hearing must result in the Tribunal completing the hearing on the papers. A hearing on the papers is the statutory requirement under section 49(3) of the Immigration Advisers Licensing Act 2007 (the Act). The proposed oral hearing to allow Ms Shadforth to present a case for remaining in the profession was a concession, extended under section 49(4). Ms Shadforth's conduct since the Tribunal issued its interim decision has made it clear she has no intention of taking the opportunity provided for her.
- [17] Accordingly, I have completed the hearing on the papers.

Discussion

The legal principles relating to exclusion from the profession

- [18] The authorities indicate it is a last resort to deprive a person of the ability to work as a member of their profession. However, regard must be had to the public interest when considering whether a person should be excluded from a profession due to a professional disciplinary offence: *Complaints Committee of Waikato Bay of Plenty District Law Society v Osmond* [2003] NZAR 162 (HC) at paragraphs [13]-[14].
- [19] Rehabilitation of a practitioner is an important factor when appropriate (*B v B* HC Auckland, HC4/92, 6 April 1993). In *Patel v Complaints Assessment Committee* HC Auckland CIV-2007-404-1818, 13 August 2007 at [30]-[31], the Court stressed, when imposing sanctions in the disciplinary process applicable to that case, that it was necessary to "consider the alternatives available to it short of removal and to explain why the lesser options have not been adopted in the circumstances of the case".

[20] The purpose of professional disciplinary proceedings was affirmed by the Supreme Court in *Z v Dental Complaints Assessment Committee* [2008] NZSC 55 at [97]:

the purpose of statutory disciplinary proceedings for various occupations is not to punish the practitioner for misbehaviour, although it may have that effect, but to ensure that appropriate standards of conduct are maintained in the occupation concerned.

[21] The statutory purpose is achieved by considering at least four factors that materially bear upon maintaining appropriate standards of conduct:

[21.1] *Protecting clients*: section 3 of the Act states that “[t]he purpose of this Act is to promote and protect the interests of consumers receiving immigration advice ...”

[21.2] *Demanding minimum standards of conduct*: *Dentice v Valuers Registration Board* [1992] 1 NZLR 720 (HC) at 725-726 and *Taylor v General Medical Council* [1990] 2 All ER 263 (PC), discuss this aspect.

[21.3] *Punishment*: the authorities, including *Z v Dental Complaints Assessment Committee* at [1], [65], [70] & [149]-[153], emphasise that punishment is not the primary purpose of disciplinary sanctions. Regardless, there is an element of punishment that serves as a deterrent to discourage unacceptable conduct (*Patel v Complaints Assessment Committee* HC Auckland CIV-2007-404-1818, 13 August 2007 at [28]).

[21.4] *Rehabilitation*: it is an important object to have the practitioner continue as a member of the profession practising well, when practicable (*B v B* HC Auckland HC4/92, 6 April 1993).

Background to regulating this profession

[22] In *ZW v Immigration Advisers Authority* [2012] NZHC 1069, Priestley J observed at [41]:

In passing the Act, Parliament has clearly intended to provide a system of competency, standards, and a Conduct Code 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] The Act has established a regime in which, with limited exceptions, licensed advisers have an exclusive right to provide immigration advice. Criminal sanctions are used to enforce that exclusive right.

Alternatives short of cancellation of licence

[24] Section 51 provides for various sanctions. The key options short of cancellation or suspension of a licence are punishments intended to effect deterrence. These are caution or censure, and a financial penalty not exceeding \$10,000 (s 51(a) & (f)).

[25] In relation to licences there are two options:

[25.1] cancellation and/or a direction that the person may not apply for a licence for up to two years, or until meeting specified conditions (s 51(d) & (e)); or

[25.2] suspension (s 51(c)).

[26] Other possibilities include training and directions to remedy a deficiency (s 51(b)). There are also powers relating to imposing costs and compensation (s 51(g)-(i)).

[27] Suspension may ensure that a proportional consequence is imposed: *A v Professional Conduct Committee* HC Auckland CIV-2008-404-2927, 5 September 2008 at [81].

[28] In making this decision, the Tribunal is required to weigh the public interest against Ms Shadforth’s interests (*A v Professional Conduct Committee* at [82]).

[29] When dealing with integrity and behavioural issues there is never any certainty that, short of exclusion from a profession, a person will not reoffend. This Tribunal must carefully weigh the

circumstances. It is appropriate to place an element of considered trust in a practitioner who has shown the capacity and willingness to rehabilitate.

The Tribunal will remove Ms Shadforth from the profession

- [30] Ms Shadforth embarked on a course of behaviour that was, to say the least, inconsistent with a person who had any intention of retaining their standing as a licensed immigration adviser. The interim decision was written with a view to giving Ms Shadforth the opportunity to explain if there were circumstances that would give a different perspective on her conduct, and significantly, strongly suggested she take advice; which would potentially give her the opportunity to look at her circumstances more objectively.
- [31] Instead of taking the opportunity provided, Ms Shadforth continued with her unacceptable behaviour; making it clear beyond all doubt she regards herself as an exemplar, and that the statutory bodies responsible for maintaining professional standards are corrupt and dishonest. Even after she was on notice of likely exclusion from the profession, she continued to abuse the complainant and shows no contrition for her allegations and slurs relating to the Authority and the Tribunal. It is difficult to imagine a more comprehensive wilful rejection of the obligations and constraints of membership of a profession.
- [32] Ms Shadforth holds a licence that gave her privileges. They included being one of a narrow class of persons entitled to provide immigration advice; she had a status clients could rely on, knowing the Act and the Code of Conduct enforced professional standards. Immigration New Zealand too would treat her as a trusted professional, relying on her status under the Act.
- [33] To enjoy those privileges, licensed immigration advisers must accept the disciplines of complying with the Act and the Code; which require professional behaviour. Ms Shadforth either is unable to comply, or chooses not to comply with those requirements.
- [34] That Ms Shadforth should hold a statutory licence, with the consequent expectation that she is a professional person who consumers of immigration services can trust to act in accordance with the Act and the Code is no longer tenable.
- [35] While removal from the profession is a last resort, it is the only option in this case. Given Ms Shadforth's attitude, rehabilitation is not realistic. Her view is that it is her example that should be followed. She asserts that others are wrong, and it is her role to inform them of their deficiencies. When invited to look at the routine options for rehabilitation, namely; supervision, training, or stronger professional networking, Ms Shadforth did not consider the possibilities.
- [36] In my view, there is a significant need to protect potential clients, and the integrity of the immigration regime. It has two elements.
- [37] To provide effective immigration advice, it is necessary to understand the relevant legal and policy principles that apply in New Zealand's immigration regime. It is also necessary to understand the rules regulating professional practice. Ms Shadforth's response to this complaint has, at least as far as the subject matter of the complaint goes, shown she wholly lacks an ability to identify what is important, and to address issues accurately or sensibly. She simply fails to engage with what is important, and has fixated on the trivial, misconstrued plain directions, and used legal concepts and phrases with no apparent understanding of their meaning.
- [38] She also lacks an elementary understanding of the relevant law. While irrelevant to this sanctions hearing, she insisted in her submissions that she was entitled in the course of immigration work to describe herself as "counsel", despite the Tribunal expressing a contrary view in an earlier decision. Section 21 of the Lawyers and Conveyancers Act 2006 provides it is a criminal offence to use the description "counsel" when giving advice about legal rights or obligations; without holding a current practising certificate as a barrister or barrister and solicitor. It is not possible to hold a current practising certificate and be a licensed immigration adviser. The information before me indicates that Ms Shadforth lacks the ability to analyse facts, identify relevant legal principles, and provide a reasoned view that reflects the range of possibilities. Furthermore, she has shown no capacity to seek out advice when she has reached the limits of her expertise; she consistently regards her view as correct and concludes others are wrong, and improperly motivated.

- [39] It is of course not possible to have a full understanding of the extent to which Ms Shadforth's handling of this complaint reflects the skill and judgement she brings to providing immigration services for clients. However, it is a concern that needs to be addressed to provide protection to the public.
- [40] In terms of demanding minimum standards of conduct; Ms Shadforth's wilful defiance of reasoned criticism of her leaves only the option of removing her from the profession. At this time, given her attitude, it is the only way of assuring standards of conduct.
- [41] Rehabilitation is not a realistic possibility now or in the foreseeable future. Ms Shadforth has not engaged with the Tribunal when it asked for her to reconsider her position. She appears to have elected to leave the profession. The Tribunal and the Registrar have separate roles. The Tribunal can, after revoking a licence, impose conditions that a practitioner must fulfil before applying again for a licence. However, the Registrar deals with fitness requirements if a former licence holder ever applies for a licence in the future; disciplinary history is potentially a relevant factor. These are issues for the Registrar; the Tribunal has no interest in them beyond their relevance to the orders it should make regarding applying for a licence.
- [42] Accordingly, the Tribunal will revoke Ms Shadforth's licence immediately. I have taken into account Ms Shadforth's request to defer the revocation. However, her conduct has been egregious, it would be wrong to allow her to continue to engage with clients.
- [43] Ms Shadforth did not complete the current requirements for entry to the profession; she gained entry on the basis of experience when the current licensing regime commenced. I will impose a condition that she cannot apply for a licence for two years, and then only after completing the course required to gain entry to the profession, and complying with the orders in this decision. However, Ms Shadforth should appreciate that fulfilling those requirements will not give her any assurance the Registrar would regard her as fit to hold a licence.

Penalty

- [44] Exclusion from the profession will be an imposition on Ms Shadforth. However, it would appear that she has decided to discontinue her membership of the profession. Despite this, she has taken the opportunity to make the disciplinary process as time consuming as possible, and abused her right to be heard, using it as an opportunity to make grave allegations against the complainant, the Authority, and the Tribunal.
- [45] Ms Shadforth's original conduct was strongly deserving of condemnation; being a public disclosure of confidential information, and private and public criticism of a professional colleague. She has only aggravated the position since.
- [46] In these circumstances, Ms Shadforth will face a penalty of some substance. The maximum monetary penalty is \$10,000. Given the serious level of the original offending and Ms Shadforth's complete lack of contrition the penalty will be \$7,500.

Costs

- [47] Ms Shadforth has abused the Tribunal's processes by using them as an opportunity to engage in further unprofessional conduct.
- [48] Neither the complainant nor the Registrar sought costs. However, costs are a usual part of the professional disciplinary process, and provided for in section 51(1)(g) of the Act; that includes the costs of the Tribunal hearing the complaint. The section is a somewhat extended version of the power that commonly applies in professional disciplinary jurisdictions.
- [49] The profession is levied to fund the disciplinary regime. A disciplinary tribunal will consider the financial burden of a complaint on the profession as a whole. It is appropriate to require some, or all, of the burden to be borne by the person who has been found to be responsible for professional misconduct.
- [50] The principles are discussed in *Daniels v Complaints Committee 2 of the Wellington District Law Society* [2011] 3 NZLR 850; [2011] NZAR 639. In that case actual costs of investigation of \$76,000 had resulted in an award of \$40,000. At [43] the Court commented:

An award of costs under s 129 of the 1982 Act (and the 2006 Act) is entirely discretionary. ... It is clear that expenses include salaries and staff and overhead expenses incurred by the societies that investigate and bring proceedings before the Tribunal.

[51] Those principles appear to apply, with necessary modifications, to the Act and the present proceedings.

[52] In *O'Connor v Preliminary Proceedings Committee HC Wellington AP280/89*, 23 August 1990, where an order for costs of \$50,000 out of a total of \$70,500 was awarded, Jeffries J said:

It is a notorious fact that prosecutions in the hands of professional bodies, usually pursuant to statutory powers, are very costly and time consuming to those bodies and such knowledge is widespread within the professions so controlled. So as to alleviate the burden of the costs on the professional members as a whole the legislature had empowered the different bodies to impose orders for costs. They are nearly always substantial when the charges brought are successful and misconduct admitted, or found.

[53] Under the Act, the mechanism is less direct as the Authority and the Tribunal are statutory bodies. Nonetheless, members are levied through an obligation to pay licensing fees and there can be little doubt that the purpose of section 51(1)(g) is the same in effect as that applied in the authorities discussed. The costs of investigation, prosecution, and the costs of the Tribunal are all part of costs awards.

[54] The complainant and the Registrar have elected not to apply for costs of investigation or representation.

[55] Ms Shadforth has, without merit, denied responsibility for her conduct, and abused the Tribunal's process. She also failed to comply with directions to seek an adjournment, and caused the hearing on sanctions to be abandoned at the last moment. These abuses of the disciplinary procedure have significantly extended the amount of time and resources expended on this proceeding. Accordingly, Ms Shadforth will be required to contribute to the Tribunal's costs.

[56] The processes involved in the Tribunal's hearing on the papers are directions of 28 August 2015, a minute of 8 October 2015, a minute of 18 November 2015, the substantive decision of 18 May 2016, the interim decision on sanctions of 16 June 2016, and the present decision. The Crown, which funds the Tribunal, has borne these costs. The process has been protracted due to Ms Shadforth insisting the Registrar lodge a large volume of material that was, with some minor exceptions¹ irrelevant. Ms Shadforth's failure to focus on what is relevant, and her querulous approach to the Tribunal's processes further protracted the proceeding; and she incurred costs by failing to comply with the process for seeking an adjournment. Ms Shadforth should share some of the cost flowing from her behaviour.

[57] Ms Shadforth will be required to pay costs of \$5,000 toward the Tribunal's expenses.

Determination and Orders

[58] Ms Shadforth is:

[58.1] Censured;

[58.2] Ordered to pay a penalty of \$7,500;

[58.3] Ordered to pay a contribution of \$5,000 for the Tribunal's costs of hearing the matter;

[58.4] Any licence Ms Shadforth holds under the Act is cancelled forthwith;

¹ Ms Shadforth required that the Registrar provide the documentation that showed Client B could be identified readily using an internet search; though Ms Shadforth challenged the extent to which Client B was identifiable.

[58.5] Pursuant to section 51(1)(e) of the Act, Ms Shadforth is prevented from applying for any category of licence under the Licensed Immigration Advisers Act 2007 (or any Act replacing it) until she has complied with all orders made by this Tribunal; and also:

[58.5.1] Prevented from applying for any such licence until she has enrolled in and been issued with a Graduate Diploma in New Zealand Immigration Advice (Level 7); and further

[58.5.2] Prevented from applying for any such licence until two years have elapsed from the date of this decision.

[59] The orders to make payments all take immediate effect.

[60] The Tribunal reserves leave for the Registrar or Ms Shadforth to apply to vary the orders relating to the Graduate Diploma in New Zealand Immigration Advice (Level 7), in the event the qualification changes, or there are alternative qualifications available. For the reasons discussed, this decision does not imply Ms Shadforth would meet the fitness requirements after two years, or at any time in the future. That is not a decision for the Tribunal.

DATED at Wellington this 3rd day of August 2016.

G D Pearson
Chair