

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

Decision No: [2015] NZIACDT 50

Reference No: IACDT 013/12

**IN THE MATTER**

of a referral under s 48 of the Immigration  
Advisers Licensing Act 2007

**BY**

**The Registrar of Immigration Advisers**

Registrar

**BETWEEN**

**Afrez Tasheef Ali**

Complainant

**AND**

**Zhirong (Gordon) Wang**

Adviser

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**DECISION**  
IMPOSITION OF SANCTIONS

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**REPRESENTATION:**

**Registrar:** Mr M Denyer, lawyer, Ministry of Business, Innovation and Employment, Auckland

**Complainant:** In person

**Adviser:** Ms H F McKenzie, Crown Solicitor's Office, Christchurch

Date Issued: 13 May 2015

## DECISION

### This complaint

- [1] This decision imposes sanctions, following a decision upholding a complaint against Mr Wang.
- [2] The complaint related to Mr Wang's professional responsibilities in a practice, in which Mr Richard Martin had a financial interest and where he personally engaged in the conduct of the practice. Mr Martin had previously been struck off the roll of barristers and solicitors and has a history of criminal offending against vulnerable clients. At the material time, Mr Wang was the only licensed immigration adviser in the practice, his licence gave the practice legitimacy to offer immigration services.
- [3] The extent to which the Tribunal upheld the complaint was limited to two elements:
- [3.1] Mr Wang was a party to Mr Martin unlawfully providing immigration services (in breach of clause 1.1 of the Licensed Immigration Advisers Code of Conduct 2010) ; and
- [3.2] He failed to look after the complainant's interests when he left the practice (in breach of clauses 1.3 and 3 of the Code).
- [4] The circumstances are set out in the substantive decision. However, they do require close examination, as the precise findings are important.
- [5] The findings in respect of Mr Wang being a party to Mr Martin unlawfully providing immigration services were<sup>1</sup>:
- [5.1] Mr Wang allowed Mr Martin to provide immigration services; he should have provided the services himself.
- [5.2] Accordingly, Mr Wang unprofessionally allowed Mr Martin, who could not lawfully perform the work, to engage in the instructions.
- [5.3] Mr Wang acted with a lack of care, diligence and, as the instructions were not under his control and Mr Martin dealt with the work.
- [5.4] Allowing Mr Martin access to Mr Wang's client both involved a breach of the Act, and an unprofessional disregard for the risks clients faced in being exposed to him.
- [6] The substantive decision discusses why Mr Martin was a person against whom Mr Wang had a duty to protect his clients.
- [7] However, it is also important to have regard to the findings relating to Mr Wang's intentions. The substantive decision rejected an allegation of dishonesty against Mr Wang. The Tribunal found:<sup>2</sup>
- [7.1] Mr Wang did not join in a dishonest enterprise to allow Mr Martin to continue to operate an immigration practice in breach of the Act.
- [7.2] He believed he was entitled to be the only licensee in the practice and to allow Mr Martin to engage with clients behind closed doors, manage the finances, and generally exercise certain 'rights' of ownership of the practice.
- [7.3] His view was woefully misconceived and he failed in his duties by allowing such conduct; however, he did not do so dishonestly.

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<sup>1</sup> Refer para.[82] and [83] of the substantive decision.

<sup>2</sup> Refer para.[86] of the substantive decision

- [8] The second aspect of the complaint the Tribunal upheld was Mr Wang's failure to protect his client when he left the practice without another licensed immigration adviser present and in the control of Mr Martin. The findings were:
- [8.1] Mr Wang did not return documents or refund the fees in full when he left.
- [8.2] The work his client paid for was not performed either lawfully or satisfactorily, and that inevitably led to a failed application.
- [8.3] He ought to have attended to returning documents and refunding fees, having accepted responsibility for the client relationship.

### **The Parties' Positions on Sanctions**

#### *The Authority*

- [9] The Authority did not make any submissions on sanctions.

#### *The Complainant*

- [10] The complainant did not make any submissions on sanctions.

#### *Mr Wang*

- [11] Through his counsel, Mr Wang emphasised the fact that the Tribunal's findings did not extend to a finding Mr Wang was a party to Mr Martin's criminal offending, but did include a finding that Mr Wang unprofessionally allowed Mr Martin unlawfully to engage in instructions.
- [12] Mr Wang's submission reviewed the authorities relating to sanctions in this jurisdiction, and some other professional disciplinary jurisdictions; contending that cancellation of an adviser's licence should involve findings of dishonesty.
- [13] Mr Wang unreservedly apologised for his actions, and provided the following factors in mitigation:
- [13.1] The Tribunal's findings are not at the most serious end of the spectrum, and they were in the nature of omissions rather than positive acts.
- [13.2] Mr Wang is remorseful, and to continue as a fully licensed immigration adviser is important to his rehabilitation.
- [13.3] He has the financial responsibility for supporting his family, including dependent children.
- [13.4] The offending occurred in difficult circumstances in the practice where he worked part-time; he did take active steps to steps to manage the risks.
- [13.5] Mr Wang has been providing immigration services since 2001.
- [13.6] After the Tribunal cancelled his full licence on a previous occasion, Mr Wang resumed practising under a provisional licence, and restored his full licence.
- [14] The submissions also placed significance on the Registrar and the complainant not making submissions on penalty.

## Discussion

### *The principles to apply*

- [15] The purpose of professional disciplinary proceedings was affirmed by the Supreme Court in *Z v Dental Complaints Assessment Committee* [2008] NZSC 55, [2009] 1 NZLR 1 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.”
- [16] When imposing sanctions those statutory purposes require consideration of at least four factors which may materially bear upon maintaining appropriate standards of conduct:
- [16.1] *Protecting the public*: Section 3 of the Act states “The purpose of this Act is to promote and protect the interests of consumers receiving immigration advice ...”
- [16.2] *Demanding minimum standards of conduct*: *Dentice v Valuers Registration Board* [1992] 1 NZLR 720 (HC) and *Taylor v General Medical Council* [1990] 2 All ER 263 (PC), discuss this aspect.
- [16.3] *Punishment*: The authorities, including *Z v Dental Complaints Assessment Committee*, emphasise that punishment is not the purpose of disciplinary sanctions. Regardless, punishment is a deterrent, and a proper element of disciplinary sanctions (*Patel v Complaints Assessment Committee* HC Auckland CIV-2007-404-1818, 13 August 2007).
- [16.4] *Rehabilitation*: It is important, when practicable, to have the practitioner continue as a member of the profession practising well (*B v B* [1993] BCL 1093; HC Auckland HC4/92, 6 April 1993).
- [17] In the present case, two issues are relevant to each of those four factors. First, Mr Wang’s previous offending, including the proximity of the current offending to the earlier offending, and his sustained rejection of the Tribunal’s views as to his professional obligations. Second, the gravity of the professional offending is important. In particular, this complaint concerned Mr Wang’s professional role in relation to Mr Martin’s criminal offending.
- [18] Those matters give dimension and perspective when evaluating what sanctions properly take account of the protection of the public, enforcing standards, punishment and deterrence, and rehabilitation.

### *Previous offending*

- [19] As the submissions for Mr Wang recognised, this is not the first occasion Mr Wang has had a complaint upheld in relation to allowing an unlicensed person to provide immigration services. As the substantive decision noted:
- [87] Mr Wang was fully on notice of his professional responsibility, only days before he commenced the engagement this Tribunal upheld a complaint that Mr Wang was a party to Mr Martin’s unlawful conduct. While that is relevant to whether Mr Wang was honest, I am none-the-less satisfied he allowed Mr Martin to engage with clients and perform work believing he, not the Tribunal, understood the correct boundaries.
- [88] He appealed the Tribunal’s decision unsuccessfully (*Wang v Immigration Advisers Authority* [2012] DCR 180). In his evidence on this matter, he explained the Tribunal’s adverse finding in terms of the inadequacy of his response. His evidence unabashedly rejected the views expressed above regarding the effect of the strict limits the Act places on professional service delivery relating to immigration advice by unlicensed or exempt persons.
- [89] Having listened to Mr Wang’s explanations, I am satisfied he genuinely believes he was fully entitled to allow Mr Martin to perform as he did. The reality that Mr Martin is now in prison because of his activities in the practice, while Mr Wang and other licensed immigration advisers were responsible for conducting the practice, appears not to temper his views. I am satisfied Mr Wang had, and

when he gave evidence still had, a grossly incomplete comprehension of his professional responsibility. However, that is a very different matter to dishonesty through making a false statement to Immigration New Zealand.

- [20] The position is that the offending for which the Tribunal may now impose sanctions essentially followed immediately after the Tribunal found Mr Wang had offended in a similar way. Instead of accepting the Tribunal's findings, Mr Wang continued to offend on this occasion; and he appealed to the District Court, then the High Court; and defended this complaint on the grounds the Tribunal was wrong in its view of the law relating to unlicensed persons giving immigration advice.
- [21] When a person provides immigration advice (which is defined to effectively include all professional service delivery) whilst neither licensed nor exempt, they commit a serious criminal offence. Accordingly, the behaviour of Mr Martin, which Mr Wang allowed to continue despite the earlier disciplinary finding, did not relate to interpretation over a trivial issue of immigration practice. It concerned criminal offending under section 63 of the Immigration Advisers Licensing Act 2007 (the Act).
- [22] I found he acted in ignorance of the law, but in defiance of the views, the Tribunal had expressed in relation to the earlier complaint.
- [23] Section 63 provides a person commits an offence if they provide immigration advice without being licensed to do so, or exempt, knowing that they are required to be licensed or exempt. There is also an offence where the person does so without knowledge of the Act's terms.
- [24] The range of penalties is imprisonment for up to 7 years, a fine of \$100,000 or both for knowing offending, and a fine of up to \$100,000 if the knowledge element is absent. The Courts have treated the offending as having a gravity that reflects the range of penalties. In *Hakaoro v R* [2014] NZCA 310 the Court of Appeal dealt with an appeal against a sentence of one year and eight months imprisonment on charges under the Act. Mr Hakaoro's appeal was unsuccessful, as was his application for leave to appeal to the Supreme Court.<sup>3</sup> Mr Martin had a cumulative sentence of two and a half months imprisonment in relation to providing immigration advice without a licence; in addition to a three year and seven month sentence of imprisonment he was already serving for 93 immigration related charges.
- [25] The relevance of section 63 of the Act is to signal the gravity of a licensed immigration adviser allowing a person who cannot lawfully deliver professional services to do just that.
- [26] Counsel for Mr Wang has suggested there was no finding that Mr Wang was a party to Mr Martin's offending, indeed that he was not a party to it. The relevant findings the Tribunal reached are set out in the substantive decision and referred to in paragraph [5] above. The finding is that Mr Wang did not deliver immigration services, and allowed Mr Martin to do so unlawfully. That is not a determination Mr Wang aided and abetted Mr Martin to offend, or that Mr Wang was otherwise a party for criminal purposes. However, what Mr Wang allowed to occur was extremely serious, particularly as the Tribunal had recently upheld a complaint against him on similar grounds.
- [27] The Tribunal's finding is, on the balance of probabilities, that:
- [27.1] Mr Martin provided immigration advice as defined in the Act,
- [27.2] Mr Wang was sufficiently aware of what Mr Martin was doing to be responsible for not providing the services himself, and for his role in allowing Mr Martin to do so.
- [28] That Mr Martin was probably committing a serious criminal offence does mark the gravity of Mr Wang's professional offending, but no more, nor less, than that.
- [29] The simple reality is Mr Wang chose to defy the Tribunal's decision on an earlier complaint regarding his conduct. Despite being on clear notice of the Tribunal's position, he continued to act on his own view of the law in relation to a matter of very real gravity.

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<sup>3</sup> [2014] NZSC 169

- [30] Mr Wang was of course fully entitled to challenge the Tribunal's decision in the Courts, as he did. He was also entitled to contend in his evidence the Tribunal was wrong, as he also did. It was also clearly appropriate for him to challenge the grounds of this complaint; the Tribunal has dismissed some of the grounds. However, that did not give him immunity from the consequences of continuing to offend if he was wrong about the Tribunal's view of his professional duties in relation to Mr Martin, which the Tribunal expressed in the previous complaint.
- [31] The circumstances in the present complaint were similar to the previous complaint. The Tribunal held in relation to the first complaint that Mr Wang was a party to a joint enterprise in which he and another licensed immigration adviser allowed Mr Martin to provide immigration advice. However, the Tribunal found Mr Wang might have reasonably believed the other licensed immigration adviser had primary responsibility for the client relationship. Mr Wang received a more lenient penalty than the other licensed immigration adviser did; the Tribunal cancelled the other adviser's licence for the maximum period. Given Mr Wang's lesser role, the Tribunal cancelled his full licence, and gave him the opportunity of continuing to practice under supervision. The Tribunal also imposed a \$3,000 financial penalty.

*The gravity of the offending*

- [32] The Tribunal did not find dishonesty; however, despite Mr Wang's submissions to the contrary, it did find Mr Wang's offending was at the most serious end of the spectrum. He knew the Tribunal took the view what he did was serious professional offending; regardless he did not take charge of professional service delivery. He allowed Mr Martin to continue to offend, after the Tribunal's findings on the earlier complaint regarding similar conduct.
- [33] Mr Wang continued to allow Mr Martin to engage with clients who were entitled to the protection afforded by the Act; Parliament enacted the Act to prevent persons such as Mr Martin having contact with clients, and dealing with their affairs. The Act has severe criminal sanctions to enforce that objective.
- [34] Mr Wang's offending undermined the protections of the Act, as a licensed immigration adviser was obliged to deliver those protections to clients, and not allow Mr Martin to offend against them.

*Mr Wang's licence*

*The principles*

- [35] 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 171-173.
- [36] 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 short of removal and explain why lesser options have not been adopted in the circumstances of the case".
- [37] 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.
- [38] As already discussed, the Act has established a regime in which, with limited exceptions, licensed advisers have an exclusive right to provide immigration advice. That exclusive right is enforced by criminal sanctions.

*The circumstances of the offending and Mr Wang's circumstances*

[39] When looking at the options, the first factor to consider is the gravity of the professional offending, it is not appropriate to deprive a person of membership of a profession unless their offending is sufficiently serious. The most serious element of this complaint is the finding Mr Wang was responsible for allowing Mr Martin to provide immigration advice unlawfully.

[40] Following similar offending Mr Wang has already had his full licence cancelled; he had the opportunity of practising under supervision and has since regained his full licence.

*Weighing the options*

[41] It is necessary to consider alternatives short of exclusion from the profession. The full range of possibilities to weigh are:

[41.1] a prohibition on reapplying for a licence for a period of up to two years;

[41.2] prohibition on applying for a full licence and allowing an application for a provisional licence (with supervision conditions);

[41.3] training requirements;

[41.4] a financial penalty on its own or in combination with the preceding directions.

[42] Suspension has a potential role in ensuring that a proportional consequence is imposed: *A v Professional Conduct Committee* HC Auckland CIV-2008-404-2927, 5 September 2008 at [81].

[43] In making this decision, the Tribunal is required to weigh the public interest against Mr Wang's interests (*A v Professional Conduct Committee* at [82]).

[44] 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. Mr Wang has previously had that opportunity.

[45] Dishonesty points to the need to remove a practitioner from a profession. In *Shahadat v Westland District Law Society* [2009] NZAR 661 the High Court commented:

[29] A finding of dishonesty is not necessarily required for a practitioner to be struck off. Of course, dishonesty inevitably, although not always, may lead to striking off. But as said in *Bolton v Law Society* [ [1994] 1 WLR 512 (CA)] at pp 491–492:

If a solicitor is not shown to have acted dishonestly, but is shown to have fallen below the required standards of integrity, probity and trustworthiness, his lapse is less serious but it remains very serious indeed in a member of a profession whose reputation depends upon trust. A striking-off order will not necessarily follow in such a case, but it may well. The decision whether to strike off or to suspend will often involve a fine and difficult exercise of judgment, to be made by the tribunal as an informed and expert body on all the facts of the case.

[30] As a Full Court observed in *McDonald v Canterbury District Law Society* (High Court, Wellington, M 215/87, 10 August 1989, Eichelbaum CJ, Heron and Ellis JJ) at p 12:

Even in the absence of dishonesty, striking-off will be appropriate where there has been a serious breach of a solicitor's fundamental duties to his client.

[31] It is important to bear in mind that "dishonesty" can have different connotations. (It may describe criminal acts. But it may comprise acting deceitfully towards a client or deceiving a client through acts or omissions.)

[46] As observed by the Court in *Shahadat*, dishonest conduct "inevitably, although not always, may lead to striking off".

[47] While the Tribunal rejected an allegation of dishonesty, in the sense of Mr Wang deceptively making a false representation to hide the fact Mr Martin provided immigration advice, the finding is that Mr Wang allowed Mr Martin to offend against his client. He did so after the Tribunal had already brought home to Mr Wang the gravity of such conduct.

- [48] I cannot find Mr Wang's refusal to accept the Tribunal's view of the law a mitigating factor. Mr Wang was clearly on notice of the gravity of what he chose to do. Mr Wang chose to take the course he did, and he should have been under no illusion as to the likely outcome if his view of the law was wrong; as he now accepts it was.
- [49] Given the course Mr Wang chose to take after the first complaint, it is unrealistic to expect the Tribunal to impose a lesser consequence in relation to his licence for his repeated and defiant offending. In relation to the previous complaint, the other license holder involved in the matter had his full licence cancelled. Mr Wang received a more lenient treatment and continued to practice under supervision.
- [50] Mr Wang's defiance and the gravity of his offending are such that I am satisfied that the necessary, appropriate and proportionate outcome is to cancel Mr Wang's licence and prohibit him from applying for another licence for the statutory maximum of two years. That was the penalty imposed on his colleague in virtually identical circumstances in relation to the previous complaint.
- [51] I have considered the fact Mr Wang has already had a period of supervision, and regained his full licence. However, a difficulty in regarding that as justifying not cancelling Mr Wang's licence is the fact that when he gave evidence Mr Wang made it clear, he thought the previous complaint being upheld reflected the inadequacy of his response to it; not his own unacceptable conduct. Further, he continued to challenge the Tribunal's view of the law regarding unlicensed persons in an immigration practice when he gave oral evidence in relation to the present complaint. Mr Wang has now expressed contrition, and accepted the findings of the Tribunal in this matter. However, he reached this point for the first time when he faced sanctions. This is not a case where Mr Wang accepted he could be wrong, and accepted responsibility for any of his conduct until the Tribunal made the adverse findings for which he now faces sanctions.
- [52] I have also had regard to the effect on Mr Wang of excluding him from the profession, at least for two years. It will inevitably be harsh; however, Mr Wang was required to understand his professional obligations before commencing practising as a licensed immigration adviser. That included understanding the gravity of offending under the Act; at the time of this offending he was on notice of the Tribunal's views as to how the Act affected his dealings with Mr Martin. The public interest in delivering the protection the Act provides to clients must override Mr Wang's personal interests in these circumstances. The public are entitled to expect this Tribunal will enforce standards<sup>4</sup>. It would be wrong to treat this offending as naive.
- [53] The order will prevent Mr Wang applying for any licence for a period of two years. After that point, he will have to qualify for the profession and satisfy the Registrar that he otherwise meets the statutory requirements. I note that while it is entirely a matter for the Registrar, not the Tribunal, the fact the order operates for only two years does not indicate Mr Wang can expect to get a licence after that time. Aside from other standards, section 17(b) of the Act allows the Registrar to take account of Mr Wang's history of professional offending when deciding if he is fit to hold a licence.
- [54] The order will not take effect for 20 working days after this decision, to give Mr Wang the opportunity to comply with his duties to clients under the Licensed Immigration Advisers Code of Conduct 2014, including clauses 24 and 28.

*The financial penalty on this complaint*

- [55] Given it is in addition to excluding Mr Wang from the profession, I impose a financial penalty of \$5,000.

*Compensation*

- [56] The complainant has not sought compensation, so no order will be made.

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<sup>4</sup> Refer para.[37] above.



*Refund of fees*

[57] The complainant is entitled to a full refund of \$2,460 in fees that he paid to Mr Martin for immigration services. He set out the amount in his complaint, and Mr Wang has not challenged it.

*Costs and Expenses*

[58] Neither the Registrar nor the complainant sought costs, so there is no order.

*Censure*

[59] In accordance with the usual practice of disciplinary tribunals, censure will be an express sanction.

*Note*

[60] The submissions for Mr Wang attached significance to the complainant and the Registrar not providing submissions. I have not given weight to that, as the Registrar has usually only made submissions in "own motion" complaints, and English is a second language for the complainant. He had some difficulty participating in the hearing.

**Orders**

[61] The Tribunal orders that any licence Mr Wang holds under the Act is cancelled with effect 20 working days after the date of this decision, and this order prevents him from reapplying for a licence for a period of two years from the date his licence is cancelled.

[62] Mr Wang is also:

[62.1] Censured, and ordered

[62.1.1] To pay a penalty of \$5,000.

[62.1.2] To refund fees of \$2,460 to the complainant.

**DATED** at WELLINGTON this 13<sup>th</sup> day of May 2015

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**G D Pearson**  
Chair