BEFORE THE IMMIGRATION ADVISERS COMPLAINTS AND DISCIPLINARY TRIBUNAL

Decision No: [2016] NZIACDT 23

Reference No: IACDT 023/14

IN THE MATTER	of a referral under s 48 of the Immigration Advisers Licensing Act 2007
BY	**The Registrar of Immigration Advisers**
	Registrar
BETWEEN	**Dilipkumar Prajapati**
	Complainant
AND	**Apurva Khetarpal**
	Adviser

DECISION
(IMPOSING SANCTIONS)

REPRESENTATION:

Registrar: Mr A Dumbleton, lawyer, MBIE, Auckland.

Complainant: In person.

Adviser: Mr J Turner, Laurent Law, lawyers, Auckland.

Date Issued: 3 May 2016

DECISION

BACKGROUND

[1] This is one of three complaints the Tribunal upheld against Ms Khetarpal, the respective circumstances of these complaints were:

[1.1] In *Khan v Khetarpal* [2015] NZIACDT 45 (IACDT 033/14) the Tribunal upheld the complaint on the basis Ms Khetarpal lodged a defective application through lack of care and professionalism, and failed to properly advise her client in the course of that process.

[1.2] In *OJ v Khetarpal* [2015] NZIACDT 95 (IACDT 005/14), in the course of her professional relationship with the complainant:

[1.2.1] Ms Khetarpal failed to carry out her instructions properly.

[1.2.2] She was dishonest or engaged in misleading behaviour in her dealings with the complainant.

[1.2.3] She failed to deal properly with fees.

[1.3] In this complaint (*Prajapati v Khetarpal* [2016] NZIACDT 5 (IACDT 023/14)), the Tribunal upheld the complaint because Ms Khetarpal failed to handle client funds in accordance with the Licensed Immigration Advisers Code of Conduct 2010. That decision upholding the complaint should be read with this decision.

[2] The circumstances relating to the three complaints are set out fully in the respective decisions (www.justice.govt.nz). The Tribunal issued the decision upholding this complaint at the same time as the sanctions decisions in the other two matters. It did not have regard to this complaint in deciding the sanctions for the other two complaints. That was because the Tribunal did not then have submissions on the appropriate sanctions in this matter. However, it was not appropriate to delay sanctions in the other matters, because, my view was the Tribunal should cancel Ms Khetarpal's licence due to the *OJ* complaint alone. The *OJ* and the *Khan* complaints potentially reduced penalties in this complaint under the totality principle.

[3] These considerations were all set out in the *Khan* and *OJ* complaints. The respective sanctions decisions in those matters are: *Khan v Khetarpal* [2016] NZIACDT 6 (22 January 2016), and *OJ v Khetarpal* [2016] NZIACDT 7 (22 January 2016).

[4] The total sanctions imposed in the *Khan* and *OJ* complaints were:

[4.1] Censure,

[4.2] Penalties of $3,500,

[4.3] Cancellation of licence, and prohibition on holding a licence until compliance with the orders, completing training, and then supervision for two years before applying for a full licence.

[4.4] Compensation and costs of $4,450.

[5] The Tribunal noted in the *Khan* matter; if it stood alone, rather than cancellation or suspension of her licence, training, without cancellation or suspension would have applied.

[6] Ms Khetarpal has appealed to the District Court against both of the existing sanctions decisions, and applied to the High Court for judicial review of the decision upholding the complaint in the *OJ* matter. The respective courts have not made any decisions on the appeals or review application. The Tribunal will accordingly deal with sanctions in this complaint, so the parties can evaluate the overall position relating to the three complaints.

The Registrar and the Complainant's positions in relation to this complaint

[7] The complainant took no active role. At the Tribunal's request, the Registrar considered the position of Mr Malcolm who compensated the complainant, after taking over the practice where Ms Khetarpal worked. The Registrar considered the Tribunal should order that Ms Khetarpal compensate Mr Malcolm, but left the level of other sanctions to the Tribunal.

Ms Khetarpal's response to this complaint

[8] Ms Khetarpal through her counsel provided submissions[1], and supporting materials. The material included an affidavit from Ms Khetarpal. The key contentions were:

[8.1] Ms Khetarpal had no control over funds in her practice, and that is a mitigating factor.

[8.2] She did not personally receive any client funds, so the Tribunal should not require her to provide a full refund.

[8.3] Ms Khetarpal now deals with client funds differently, and this complaint is merely historical.

[8.4] The Registrar accepted and approved Ms Khetarpal's practices relating to fees, and that mitigates her position.

[9] Evidence supported the contentions in the submissions particularly her lack of control over client funds in her practice, including a statement from her former employer.

[10] Ms Khetarpal took issue with the Registrar communicating with Mr Malcolm regarding his expectations.

The Registrar's response

[11] The Registrar replied, the key matters she raised were:

[11.1] Ms Khetarpal had no justification for failing to control client funds in her practice, putting herself in that position does not mitigate her breach of the Code of Conduct.

[11.2] The principles that apply to licensed immigration advisers working in corporate practices do not absolve an adviser from personal responsibility for complying with the Code of Conduct.

[11.3] The Registrar did not approve of the conduct found to breach Ms Khetarpal's professional obligations.

[11.4] Ms Khetarpal is personally responsible for the consequences of breaches of her professional obligations.

[11.5] The Registrar acted appropriately in relation to the position taken in relation to compensation for Mr Malcolm.

Discussion

The nature of this complaint

[12] The submissions for Ms Khetarpal fail to recognise the nature of the professional offending, and the reasons for the Tribunal upholding the complaint. The first consideration is the regulatory background. The Licensed Immigration Advisers Code of Conduct 2010 (the 2010 Code), like its predecessor mandated rules for dealing with client funds. Clause 4 provided:

> A licensed immigration adviser must:

[1] The initial submissions were withdrawn, and substituted.

a) Establish and maintain a separate clients' bank account for holding all clients' funds paid in advance for fees and/or disbursements; and

b) Withdraw funds held on behalf of clients only when payments for fees and/or disbursements fall due; and

c) Use funds held on behalf of clients only for the purpose for which they were paid to the adviser.

[13] The provision is similar to section 110 of the Lawyers and Conveyancers Act 2006, which mandates solicitor's trust accounts, including for fees paid in advance. The Tribunal has always made it clear the regime applying to licensed immigration advisers means advisers hold client funds in trust, and it treats breaches of clause 4 accordingly. In *Rhonda v Standing* [2011] NZIACDT 14 the Tribunal observed:

> [19] It is important to recognise the receipt of funds paid by a client to an Adviser, which the Adviser cannot take as their own, will be held on trust.
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> [20] Broadly, any money an Adviser receives from a client other than for payment for fees already due and owing will be held on trust, to hold for a time, or to immediately pay as fees to Immigration New Zealand or the like.
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> [21] The Code of Conduct requires a separate bank account is maintained for such funds, and that funds are held in that account. The code also stipulates the funds are held on behalf of the client, and only for the purpose for which they were received. It also requires that professional practices are applied to payment of refunds.
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> [22] In my view, the status of such funds is simply they are held on a bare or simple trust, and the Adviser is obliged to deal with them in accordance with the client's instructions. The funds are not the property of the Adviser and dealing with them other than in accordance [with those obligations] amounts to a misappropriation of the funds.
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> [23] It is important advisers appreciate the obligations that apply to trust funds are absolute, and meticulous compliance is essential. Any departure will potentially be regarded as dishonest. It is entirely different from an ordinary debt.

[14] That decision issued on 7 April 2011 was one of the first few decisions issued by the Tribunal. The Immigration Advisers Authority routinely recommends that licensed immigration advisers read the Tribunal's decision, and provides electronic links to them.

[15] The Tribunal has consistently made it very clear immigration advisers are personally licensed, not practices. Accordingly, that they must personally carry the burden of ensuring they practise in a manner that ensures they meet the mandated standards of professional practice. In *Kumar v Lepcha* [2011] NZIACDT 9, another of the very early decisions of this Tribunal, it observed:

> [20] The adviser has pointed to deference to his employer for cultural reasons as a factor in his conduct. However, he repeatedly failed to comply with the Code of Conduct, and professional obligations. To gain his status as a licensed immigration adviser he had to demonstrate he understood those obligations. In effect, the Adviser is putting forward the proposition he allowed his employer's demands to have priority over his legal and professional obligations. The suggestion is untenable, it is a fundamental requirement for all professional people that they withstand pressure from employers, clients, and others. Professional people do come under pressure to put their principles aside and breach the standards of conduct demanded by their profession. It is inevitable they will be personally accountable when they do so.

[16] Accordingly, the Tribunal has recognised that a licensed immigration adviser may have to take strong action to protect clients from their unlicensed employer *CD v QXF* [2011] NZIACDT 31, and *HE and SD v QXF* [2011] NZIACDT 32 are cases where that occurred. The District Court recently reviewed the application of professional conduct obligations in the context of a corporate practice in *Wang v Immigration Advisers Authority* [2016] NZDC 2414.

[17] Of course, there have been some decisions dealing with nuances of how the bank account dealing with trust funds should operate[2]. However, the essential nature of the obligation, namely that licensed immigration advisers are obliged to keep a trust bank account, and deal with client funds as trust funds has never been in doubt. The 2008 and successive Codes of Conduct make that clear, the Tribunal has consistently applied the rule, and the Registrar has publicised there are consequences for non-compliance.

[18] Ms Khetarpal faced a complaint she mishandled trust funds, failed to bank them into a trust bank account, and failed to account for them when required. She is in just the same position as a solicitor who took fees in advance, appropriated them and failed to account. The professional offending is at the high end, and goes to integrity.

Ms Khetarpal's claims of mitigation

[19] Ms Khetarpal, through her counsel submitted her professional offending is mitigated as she did not maintain a trust bank account at all, and "had no control over the handling of funds received from clients."

[20] That does not mitigate Ms Khetarpal's professional offending. Given the clear and obvious requirements in relation to trust funds, it amounts to an admission of delinquent misconduct. Every time Ms Khetarpal entered into a client relationship, she was obliged to provide a copy[3] of the Code of Conduct to her client. She accordingly informed her clients she "must" keep a client funds account, and deal with client funds only for the purpose, which they pay money to her. She did not do so in relation to the money to which this complaint relates. She admits she had "no control" over her clients' funds at all in her practice. She failed to deliver what she promised to her client[4] in this case, and generally.

[21] She knew when she presented the Code to every client, she did not comply with the client funds requirements. In this case, when called to account for misappropriating the funds by giving them to her employer after promising to treat them as trust funds, she failed to make good the fees when called to do so. She left it to the successor in the practice to do so. Even now, she does not see why the Tribunal should hold her to account.

[22] She has presented a submission that:

> As the client funds were paid to and belonging to [her former employer], the matter of whether a refund would be provided is a matter for Global Visas [her former employer].
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> …
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> To require the Adviser to compensate the new management of Global Visas for the full sum of $2,200 as submitted by the Registrar would be inequitable.

[23] That submission does Ms Khetarpal no credit. This money was not her former employer's money. It was her client's money. That Ms Khetarpal does not understand and accept this was her client's money, even after the Tribunal's decision, is concerning.

[24] Ms Khetarpal misappropriated and failed to make good trust funds[5]. If Ms Khetarpal had any lack of appreciation of her responsibilities, that should not have prevailed after having the opportunity of considering the decision upholding this complaint; and the Registrar's reply to her submissions[6] on sanctions.

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2 Sign on fees discussed in the substantive decision in this case, and in *Geldenhuys v Yap* [2013] NZIACDT 27; and the treatment of mixed funds in *Immigration Advisers Authority v UKFE* [2012] NZIACDT 30.

3 Under the 2014 iteration only a summary is required in initial client disclosure.

4 See *Bhanabhi v Auckland District Law Society* [2009] NZHC 415 regarding the significance of a professional undertaking.

5 The obligation to bank trust funds is fundamental and must be obeyed *Heslop v Cousins* [2007] 3 NZLR 679; see also *A v Z* LCRO 40/2009 , also published as *Abbot v Macclesfield* LCRO 40/2009.

6 She has not retracted this submission since receiving the Registrar's reply.

[25] The civil remedy for a breach of trust obliges a trustee to make good the breach. The 2010 Code is not a suggestion for best practice; it is a legal obligation, with the force of a statutory regulation. The sanctions for breach of trust are invariably severe[7]. Failure to account for trust funds properly, even in the absence of dishonesty is grave professional misconduct[8].

[26] It is apparent the disciplinary process has brought Ms Khetarpal no insight; she has no contrition, she expects her client, her employer or Mr Malcolm to bear the consequences of her breach of her professional duties. They were duties she had to understand to gain a licence as a licensed immigration adviser.

[27] Ms Khetarpal claims she has changed her practices, and now ensures she does not receive client funds. I am not in a position to evaluate whether that is correct or not, regardless if she now complies with her professional obligations that is neither a mitigating factor, nor justification for failing to hold her to account for her previous non-compliance.

[28] The decision upholding the complaint rejected Ms Khetarpal's claim the Registrar approved her treatment of client funds. The proposition is inherently implausible, and requires proof, which Ms Khetarpal has not provided.

Principles for suspension or cancellation of licence

[29] 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 [13] – [14].

[30] 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".

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

> [T]he 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.

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

[32.1] Protecting the public: section 3 of the Act states "[t]he purpose of this Act is to promote and protect the interests of consumers receiving immigration advice ..."

[32.2] 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.

[32.3] Punishment: the authorities, including *Z v Dental Complaints Assessment Committee* (at [1], [65]. [70] & [149]-[153]), emphasise that punishment is not the 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]).

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7 *R v Haddon* (1990) 6 CRNZ 508

8 *Re Seaton* [1935] GLR 742 (CA), held it was grave professional misconduct though an audit disclosed no dishonesty, *Ellis v Auckland District Law Society* [1998] 1 NZLR 750, and *Waikato/Bay of Plenty District Law Society v Harris* [2006] 3 NZLR 755 (CA) are to similar effect.

[32.4] 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

[33] 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.

[34] 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

[35] Section 51 provides for various sanctions. The key options short of cancellation or suspension of a licence are punishments intended to effect deterrence; namely censure, and financial penalties not exceeding $10,000.

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

[36.1] 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

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

[37] 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)).

[38] 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].

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

[40] When dealing with integrity 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.

[41] Dishonesty points to the need to remove a practitioner from a profession, though it is not a necessary requirement before a disciplinary sanction should include removal 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:
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> > 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.
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> [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.
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> [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.)

[42] As observed by the Court in *Shahadat*, dishonest conduct "inevitably, although not always, may lead to striking off". It is important to look carefully at whether rehabilitation is realistic.

The Tribunal will remove Ms Khetarpal from the profession

[43] In the substantive decision, I made no finding of dishonesty in the sense of misappropriation for direct personal gain. However, as observed, Ms Khetarpal deceived her client by representing she would deal with funds in accordance with the Code, and then she failed to do so. When called on to account for her breach of trust, she failed to make good on her obligations. She now says the Tribunal should not make her do so.

[44] Ms Khetarpal has no justification for failing to understand and apply the clear rules relating to client funds, notwithstanding her assertions to the contrary. She was required to understand her obligations relating to client funds, before the Immigration Advisers Authority issued her licence.

[45] Accordingly, I regard this matter as similar to *Re Seaton* [1935] GLR 742 (CA), *Ellis v Auckland District Law Society* [1998] 1 NZLR 750, and *Waikato/Bay of Plenty District Law Society v Harris* [2006] 3 NZLR 755 (CA). They involved a range of circumstances where lawyers failed to deal properly with trust funds, but without intending to misappropriate the money for direct personal gain. Likely, as with Ms Khetarpal, those practitioners may have sought the collateral benefits of protecting their employment, their professional standing and the like. The decisions make it clear; failing to deal with trust funds properly is grave professional misconduct. The obligations are absolute, and the Code is clear:

[45.1] A licensed immigration adviser must establish and maintain a separate bank account;

[45.2] Withdraw funds only when payments fall due; and

[45.3] Use funds only for the purpose they were paid to the adviser.

[46] Ms Khetarpal breached each of those obligations, and she admits she systematically practised in that way.

[47] The starting point, given the gravity of the professional offending, is cancellation of Ms Khetarpal's licence, in my view none of the options short of that meets the principles in *Z v Dental Complaints Assessment Committee.* Ms Khetarpal's attitude to her offending leaves no room for less than a length period of removal from the profession, and the only opportunity for restoration being through training and substantial mentored supervision.

[48] I make these findings without reference to the two previous complaints.

[49] For completeness, I must also consider whether the Tribunal can allow Ms Khetarpal to continue in practice under supervision. I do not consider that is appropriate for two reasons:

[49.1] The gravity of the offending requires more to effect deterrence; and

[49.2] Practising under supervision requires a sound relationship with a supervisor. Ms Khetarpal's attitude to her offending, and unwillingness to take responsibility give me no confidence she would respect and defer to a mentor. She rejects the reasoning of the Tribunal. She also persists with claims the Registrar approbated her treatment of client funds, despite the Tribunal rejecting that, and the Registrar criticising the claim when responding to her submissions on sanctions.

[50] Accordingly, I do not consider Ms Khetarpal should be entitled to apply for any licence under the Act until she has trained and demonstrated she understands the professional obligations that apply to licensed immigration advisers.

[51] The Tribunal will cancel Ms Khetarpal's licence (if any), and prohibit her from applying for any licence until she completes the diploma course required for entry to the profession. She can only apply for a full licence after completing two years of supervision while holding a provisional licence.

[52] Ms Khetarpal can have no confidence she will ever be entitled to a licence under the Act, the Registrar would have to be satisfied of various matters after considering Ms Khetarpal's disciplinary history. They are issues for the Registrar, not the Tribunal so I express no view on her position.

Ms Khetarpal's financial position

[53] The Tribunal has set out the principles relating to how a person's financial circumstances affect orders made under section 51 of the Act in a number of cases, such as *BN and MN v Hakaoro* [2013] NZIACDT 64 (www.justice.govt.nz). The first point is that the principles that apply to a person's means when considering criminal sentencing are different from orders the Tribunal makes. A fine, penalty, sentence of reparation, or other order for the payment of money that has been made following any conviction or order made under section 106 of the Sentencing Act 2002:

[53.1] Is not a provable debt in bankruptcy; and

[53.2] Is not discharged when a bankrupt is discharged from bankruptcy.

[54] In contrast, an order made under section 51(f) of the Act is recoverable as a debt due to the Crown under section 51(5) of the Act. It does not survive bankruptcy. An order in favour of a complainant or other person is simply a civil judgment debt, and the party can file it in the District Court for enforcement. A civil judgment debt is provable in a bankruptcy, and discharged with the bankruptcy.

[55] It follows that of the financial orders the Tribunal could make in the present case:

[55.1] Ms Khetarpal's financial circumstances will, as a matter of discretion, potentially be relevant to any financial penalty, but

[55.2] Potential orders in favour of Mr Malcolm to compensate him are on the merits, without regard to Ms Khetarpal's means.

[55.3] Orders for costs are discretionary; however, a party's means in a civil process are not usually a relevant factor.

[56] As no party has sought costs, there will be no order for costs.

The orders

[57] I will make the orders identified relating to Ms Khetarpal's licence.

[58] Ms Khetarpal's financial circumstances, the inevitable consequences of the loss of her licence, and that it is proper to give priority to the victims of Ms Khetarpal's professional offending, and the previous penalties are all factors that I will take into account.

[59] I will reduce the financial penalty, the penalty will be $5,000, it is a mid-range penalty, it would have been $7,500 if not discounted. I do not consider it should be further discounted, Ms Khetarpal's intransigent refusal to compensate her client for misappropriating trust funds requires condemnation and punishment[9]; a penalty of $5,000 is proportionate to the $2,200 in issue. The cost/benefit equation for professional offending and failing to accept responsibility for the offending ought to be unambiguously unattractive.

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[9] *Patel v Complaints Assessment Committee* HC Auckland CIV 2007-404-1818, 13 August 2007 at [28]).

[60] There will also be an order for compensation:

[60.1] The Tribunal has discretion in relation to awarding compensation, but generally applies standard civil recovery principles to determine whether to make an order.

[60.2] In the present complaint, Mr Anthony Malcolm repaid the fees of $2,200 when Ms Khetarpal failed to do so. There will be an order that Ms Khetarpal compensate Mr Malcolm (section 51(1)(i) of the Act); he met Ms Khetarpal's obligation.

[61] Ms Khetarpal put the fees at her employer's disposal, so did not personally have the benefit of the fees, other than the indirect benefit of her remuneration from the practice. However, she was the licensee responsible for the complainant's funds, and personally liable for all issues relating to fees.

[62] Censure is an inevitable part of the sanctions.

Determination and Orders

[63] Ms Khetarpal is:

[63.1] Censured,

[63.2] Ordered to pay a penalty of $5,000,

[63.3] Ordered to pay the sum of $2,200 as compensation to pay Anthony Malcolm, of Tutakaka, business owner.

[63.4] If Ms Khetarpal presently holds any licence under the Act, it is cancelled forthwith.

[63.5] Pursuant to section 51(1)(e) of the Act, Ms Khetarpal is prevented from applying for any category of licence until she has complied with all orders made by this Tribunal; and also

[63.5.1] Prevented from applying for any licence until she has enrolled in and completed the requirements for the issue of the Graduate Diploma in New Zealand Immigration Advice (Level 7), and has a supervision regime approved by the Registrar; and further

[63.5.2] Prevented from applying for a full licence until she has over a two-year period (after this decision), practised under a provisional licence in full compliance with a supervision regime approved by the Registrar.

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

[65] The Tribunal reserves leave for the Registrar or Ms Khetarpal 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; and to provide directions regarding supervision if the Registrar and Ms Khetarpal disagree regarding any aspect of supervision.

DATED at Wellington this 3rd day of May 2016.

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G D Pearson
Chair