

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

Decision No: [2016] NZIACDT 4

Reference No: IACDT 044/14

**IN THE MATTER**

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

**BY**

**The Registrar of Immigration Advisers**

Registrar

**BETWEEN**

**Desmond Chand**

Complainant

**AND**

**Artika Devi**

Adviser

---

**DECISION**  
(IMPOSING SANCTIONS)

---

**REPRESENTATION:**

**Registrar:** Ms C J Pendleton, lawyer, MBIE, Auckland.

**Complainant:** In person.

**Adviser:** Mr S Singh, lawyer, Auckland.

Date Issued: 14 January 2016

## DECISION

### Background

- [1] This is the most recent of 15 complaints the Tribunal has upheld against Ms Devi. The substantive decision on this complaint *Chand v Devi* [2015] NZIACDT 74 ([www.justice.govt.nz](http://www.justice.govt.nz)) sets out the circumstances. For present purposes it is sufficient to note the essential grounds of the complaint the Tribunal upheld were:
- [1.1] Ms Devi's client went to her practice to obtain immigration services.
- [1.2] Ms Devi failed to complete the steps required to commence the professional engagement.
- [1.3] An unlicensed person provided immigration services.
- [1.4] Ms Devi failed to ensure her client's interests were represented when her licence was cancelled.

### The parties approach to sanctions

- [2] The Registrar provided details of Ms Devi's history of compliance with sanctions imposed by the Tribunal. The key features are:
- [2.1] The Tribunal cancelled Ms Devi's registration and prevented her from applying for a licence. Currently, until 15 September 2016. However, she would then have to satisfy the Registrar she is fit to hold a licence, notwithstanding her disciplinary history.
- [2.2] Currently Ms Devi has unpaid penalties imposed by the Tribunal of \$40,500 outstanding, and is paying them under a scheme which will take 17 years to complete.
- [3] In these circumstances, the Registrar suggested that the Tribunal give preference to an order on this complaint for Ms Devi to repay fees rather than a further penalty. Ms Devi indicated she agreed with that approach.
- [4] The Registrar did not provide information regarding compliance with orders for the payment of compensation and the refund of fees (these sums are due to complainants, rather than the Registrar).
- [5] The complainant did not provide a submission.

### Discussion

The principles to apply

- [6] 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.”
- [7] When imposing sanctions those statutory purposes require consideration of at least four factors which may materially bear upon maintaining appropriate standards of conduct:
- [7.1] *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 ...”
- [7.2] *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.
- [7.3] *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).

[7.4] *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).

[8] Those matters give dimension and perspective when evaluating what sanctions property take account of the protection of the public, enforcing standards, punishment and deterrence, and rehabilitation.

*Allowing unlicensed persons to provide immigration advice*

[9] 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 essence of the complaint concerns criminal offending under section 63 of the Immigration Advisers Licensing Act 2007 (the Act).

[10] 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.

[11] 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>1</sup>

[12] Section 63 of the Act accordingly signals the gravity of a licensed immigration adviser allowing a person who cannot lawfully deliver professional services to do just that.

*The key factors*

[13] Given that Ms Devi is attempting to make payments relating to past orders, and the Registrar has satisfied herself the payments represent a maximum recovery; a pragmatic approach is necessary. Further orders for penalties are pointless.

[14] Exclusion from the profession and an order for the repayment of fees will be the focus of the orders. I will set out my reasoning in reaching that conclusion.

*The starting point*

[15] Ms Devi systematically allowed her practice to operate through unlicensed persons conducting the practice. Not only were the persons unlicensed, clients did not receive the standards of service the Act requires. There are no significant mitigating factors, notwithstanding the lengthy history of complaints, Ms Devi denied the grounds of this complaint; and she sustained her professional delinquency over a long period.

[16] The starting point would be:

[16.1] A financial penalty of \$7,500,

[16.2] Exclusion from the profession,

[16.3] Costs, compensation, and an order for the refund of fees.

---

<sup>1</sup> [2014] NZSC 169

*Ms Devi's licence*

*The principles*

- [17] 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.
- [18] 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".
- [19] 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.
- [20] As already discussed, the Act has established a regime in which, with limited exceptions, licensed advisers have an exclusive right to provide immigration advice.

*The offending*

- [21] 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 Ms Devi was responsible for allowing an unlicensed person to provide immigration advice. For the reasons discussed, that is a matter at the highest end of the professional offending, particularly in a case like this where Ms Devi systematically offended, and sought to justify her conduct.

*The circumstances of the offending and Ms Devi's situation*

- [22] Imposing sanctions on this complaint follows the Tribunal having already made two previous orders prohibiting Ms Devi applying for a licence. If Ms Devi were fit to hold a licence, the Tribunal would expect her to demonstrate she had complied with the orders against her, has the skills required for practising, and is committed to providing professional services to the standards required. The Tribunal should have confidence consumers will not be at undue risk of a practitioner failing to deliver the protections offered by the Act. Nothing in Ms Devi's response to this complaint indicated she is committed to professionalism, has insight regarding her deficient service delivery, or has a strategy to attain an acceptable standard of professionalism. The optimistic element of her response is accepting she should repay fees, though this concession is in the context of a repayment programme extending over some 17 years.
- [23] When looking at the options, the first factor to consider is the gravity of the professional offending, for the reasons discussed, her offending in relation to this complaint, in context, more than justifies exclusion from the profession. I am satisfied Ms Devi should not be entitled to apply for a licence, until meeting specified conditions.
- [24] I make no judgement regarding Ms Devi's prospects of successfully applying for a licence as that is a matter for the Registrar, and confine my decision to the issue of this Tribunal's power to prohibit an application. In my view, given Ms Devi's failure to comply with the existing orders of this Tribunal, the proper order is to require that Ms Devi take adequate steps to demonstrate professionalism before she can apply for a licence. Accordingly, I will require pursuant to section 51(e), that she complete the training required of all entrants to the profession, and that she comply with all orders the Tribunal has made against her, before she applies for any licence under the Act. The order will not affect the current two-year fixed term prohibition on applying for a licence.

- [25] While I have indicated my conclusion, it is necessary to explain why other alternatives are less appropriate. The full range of possibilities I have considered are:
- [25.1] a prohibition on reapplying for a licence for a period of up to two years (concurrent or in addition to the present ban);
- [25.2] prohibition on applying for a full licence and allowing an application for a provisional licence (with supervision conditions after the current ban expires);
- [25.3] a financial penalty without additional licence restrictions.
- [26] In making this decision, the Tribunal is required to weigh the public interest against Ms Devi's interests (*A v Professional Conduct Committee* HC Auckland CIV-2008-404-2927, 5 September 2008 at [81]).
- [27] When dealing with integrity and attitudinal 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. I am satisfied that before Ms Devi applies for any licence, a fair and balanced approach is that she undertakes the training required to qualify for entry to the profession to address her lack of competence and insight. The training includes ethical training, which is one of the areas where Ms Devi appears to have a deficit in her skill set. Further, she will be required to discharge her obligations arising from existing complaints.
- [28] Given Ms Devi's financial position, a financial penalty is not appropriate.

*Compensation and refund of fees*

- [29] There are no claims for compensation so there will be no order.
- [30] I accept the Registrar's approach that given Ms Devi's financial position the only financial order will be for the refund of fees of \$3,000.

*Costs and Expenses*

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

*Censure*

- [32] In accordance with the usual practice of disciplinary tribunals, censure will be an express sanction. It is appropriate to make that order where conduct is not a mere lapse from minimum standards.

**Decision**

- [33] Ms Devi is:
- [33.1] Censured,
- [33.2] Ordered to pay the complainant \$3,000 as a refund of fees.
- [34] The Tribunal further orders that Ms Devi is prevented from reapplying for any category of licence as a licensed immigration adviser until she has:
- [34.1] Enrolled in and completed the requirements for the issue of the Graduate Diploma in New Zealand Immigration Advice (Level 7); and
- [34.2] Paid all financial obligations arising under orders made by this Tribunal against Ms Devi.

**Reserving leave**

[35] The Tribunal reserves leave for the Registrar or Ms Devi 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.

**DATED** at WELLINGTON this 14<sup>th</sup> day of January 2016.

---

**G D Pearson**  
Chair