IMMIGRATION ADVISERS COMPLAINTS AND DISCIPLINARY TRIBUNAL

Decision No: [2019] NZIACDT 58

Reference No: IACDT 031/17

IN THE MATTER	of a referral under s 48 of the Immigration Advisers Licensing Act 2007
BY	**THE REGISTRAR OF IMMIGRATION ADVISERS** Registrar
BETWEEN	**IMMIGRATION NEW ZEALAND (DARREN CALDER)** Complainant
AND	**QING TIAN** Adviser

DECISION
(Sanctions)
Dated 27 August 2019

REPRESENTATION:

Registrar:	M Denyer, counsel
Complainant:	G La Hood, counsel
Adviser:	H Rennie QC, M Wolff, counsel

INTRODUCTION

[1] The Tribunal upheld this complaint against Ms Tian, the adviser, in a decision issued on 19 July 2019 in *Immigration New Zealand (Calder) v Tian*.[1] It found that Ms Tian had not assessed and applied the immigration instructions with due care and professionalism and that she had corresponded with Immigration New Zealand in a way that was neither professional nor respectful. Additionally, she had refused to disclose her full files upon lawful demand by the Immigration Advisers Authority (the Authority), pursuant to the Immigration Advisers Licensing Act 2007 (the Act). Ms Tian's conduct was a breach of the Licensed Immigration Advisers Code of Conduct 2014 (the Code).

[2] It is now for the Tribunal to determine the appropriate sanctions, if any.

BACKGROUND

[3] The narrative leading to the complaint is set out in the decision of the Tribunal upholding the complaint and will only be briefly summarised here.

[4] Ms Qing Tian is a licensed immigration adviser. She is a director of Phoenix International Consultancy Group Limited.

[5] The complaint concerned five of her clients, all from China, who sought residence in New Zealand under the skilled migrant category. They had all lived and worked in this country for some years. The issue for Immigration New Zealand was whether their employment met the criteria for skilled employment and whether their English language ability satisfied the required threshold. Immigration New Zealand had declined their residence applications on the ground that they did not meet either criteria. On the advice of Ms Tian, all five appealed unsuccessfully to the Immigration and Protection Tribunal (IPT).

Decision of the Tribunal

[6] In its decision, the Tribunal found that Ms Tian had misunderstood the immigration instructions. She had been wrong to assert that the IELTS English language test was not justified. In the face of the detailed and compelling concerns regarding the English language ability of each client expressed by Immigration New Zealand, her advocacy against an IELTS test was futile. None of her clients could meet the skilled migrant pathway for establishing English ability and even if they could, that option was overridden by the identified concerns with the English of each of them. There was no

[1] *Immigration New Zealand (Calder) v Tian* [2019] NZIACDT 48.

merit to her contention on behalf of any of them that they could satisfy the threshold by any means other than an IELTS certificate.

[7] It was found that the law on the interpretation of the English criteria had been established many years ago, well before Ms Tian had acted for these clients. Ms Tian had not assessed and applied the immigration instructions correctly and with due care and professionalism. Her failure was not the sort of isolated, marginal error in applying criteria that any adviser could make. In five cases, she had misunderstood the immigration criteria in circumstances where it was so clear the English threshold had not been met.

[8] The Tribunal also found that over a period of about two years, Ms Tian had communicated with Immigration New Zealand on behalf of clients in a way that was neither professional nor respectful. She had accused named officers (managers) of incompetence, racism, dishonesty, exploiting and abusing migrants, corruption, running an immigration scam, malice, of instituting a hate crime against her, criminal harassment and of abusing a complaint process as an act of revenge. There was not a jot of evidence to support her serious allegations. It was found that the alleged conspiracy against her because she was ethnically Chinese or a successful adviser was a figment of her imagination.

[9] The Tribunal found that her correspondence went well beyond what could be described as robust advocacy on behalf of her clients, which was permissible. It amounted to personal attacks on the competence, professionalism, integrity and motivation of named officers.

[10] It was accepted that Ms Tian was a deeply passionate and caring advocate for her clients, who could be vulnerable and marginalised in society, but that she woefully lacked judgement in the acceptable bounds of professional representation. Her combative and offensive language could not, on any conceivable basis, be in the best interests of her clients. Her correspondence reflected an unjustified personal crusade against the named officers, if not the entire branch of Immigration New Zealand with which she was dealing.

[11] It was also found that her correspondence brought the immigration advisers' profession into disrepute. Most advisers would be horrified by her personal animosity, and her lack of judgement and objectivity in her relationship with Immigration New Zealand.

[12] The Tribunal noted that Ms Tian had made a reasonably full apology in a letter addressed to the then Tribunal chair on 22 June 2018. She expressed her shock at the allegations, but acknowledged she should never have responded by lashing out in the way she did. She apologised for suggesting the complaint might have been racially motivated or an exercise of personal revenge and for attacking the professionalism and integrity of Immigration New Zealand staff. She withdrew those remarks without reservation and was particularly sorry for personalising those comments to individual officers.

[13] Ms Tian accepted in the letter that it was foolish to deal with the complaint herself and that she had lost objectivity. She had not taken the complaint seriously enough. However, it was selective and unfair.

[14] The Tribunal recorded in its decision that the apology should have been addressed to the named officers.

[15] The Tribunal further found that Ms Tian had declined to produce to the Authority her full files in the face of lawful statutory demands for the production of documents. She had provided some documents, but not others. When asked to produce additional documents, Ms Tian wrote to the Authority on 3 August 2017 refusing "unequivocally and beyond all doubt" to be part of a "dishonest game" and confirming she would not provide any further files to the Authority. The Authority was told to obtain them from Immigration New Zealand. The Tribunal found that Ms Tian's contemptuous refusal to comply with the demand to make files available for inspection was a breach of the Code.

[16] The Tribunal noted that Ms Tian's combative and accusatory style of communicating with Immigration New Zealand on client matters had extended to her approach to the complaint. She adopted the same style in communicating with the Authority.

[17] When the complaint had first been brought to her attention, Ms Tian wrote a number of letters and emails to the Authority. She said that the complaint amounted to a personal attack designed to "shut her up and shut her down". It was a personal act of revenge, a hate crime and criminal harassment. According to her, the Immigration New Zealand managers were plotting to silence her victory in dealings with them. The complaint was misleading, prejudicial, biased, dishonest, a rogue piece of work and a witch-hunt. It had been written with malicious and malignant intent. The named officers' conduct in making the complaint was cowardly, vile and vindictive. There had been an "OIA Black Op" whereby records were not made or were kept secret. It showed the

hatred of the managers towards her, as they sought to bring about financial harm and the destruction of her career and reputation.

[18] In her letter of 3 August 2017 to the Authority, Ms Tian accused it of backing up Immigration New Zealand in establishing a complaint under any circumstances. She considered she must be "so hated" at both Immigration New Zealand and the Authority. It amounted to a personal act of revenge.

[19] The Authority's investigation was said by Ms Tian to be a desperate act which had raised issues beyond the investigator's comprehension. According to her, the investigator at the Authority was eager to please his colleagues at Immigration New Zealand. He was acting as a censor of her comments, and perverting her freedom of speech and her right to reply to false allegations.

[20] As noted above, in the same letter to the Authority Ms Tian had refused to provide further documents as she had no interest in being part of a dishonest game for the amusement of the investigator's colleagues.

[21] In her statement of reply of 27 October 2017 to the Tribunal, Ms Tian described the Authority's assessment as a continuation of Immigration New Zealand's complaint, like passing the baton. Her arguments had by and large been ignored by the Authority. It had not understood one word or reviewed one comment she had made to discredit the complaint.

[22] In her letter of 6 April 2018 to the Tribunal, Ms Tian accused the Authority's then Registrar of colluding with Immigration New Zealand's complaint. She regarded that as an abuse of process.

[23] Ms Tian was found by the Tribunal to be in breach of the following provisions of the Code:

(1) cl 1 – being professional and respectful;

(2) cl 3(c) – complying with the Act; and

(3) cl 26(e) – providing files.

SUBMISSIONS

[24] Counsel for the Registrar of Immigration Advisers (the Registrar), Mr Denyer, in his submissions of 9 August 2019, draws the Tribunal's attention to its earlier decisions of *De'Ath* and *Horan* concerning unprofessional communications with Immigration New

Zealand, where the financial penalties were $750 and $2,500 respectively.[2] The communications in those cases were not as voluminous and as ongoing as in the case of Ms Tian. It is therefore suggested that a financial penalty in the range of $4,000 would be appropriate. Ms Tian should also be censured.

[25] Counsel for Immigration New Zealand, Mr La Hood, in his submissions of 8 August 2019, notes that Ms Tian had made exaggerated, inflammatory and baseless accusations against Immigration New Zealand using words and phrases such as "corruption", "evil", "nasty", "hate crime" and "torture chamber". Her correspondence would have a particularly negative effect on the reputation of advisers, the industry and Immigration New Zealand's staff.

[26] Mr La Hood submits that Ms Tian's decision to continue to make serious and unfounded accusations in a broad and sustained way required a deterrent sanction for her, as well as a general deterrent to other practitioners, reflecting behaviour that was wholly unacceptable, unprofessional and detrimental to all those involved. The sanctions should be punitive and reflect the need for denunciation, deterrence and accountability.

[27] Counsel for Ms Tian, Mr Rennie QC, in his submissions of 9 August 2019, contends that Ms Tian had held in good faith the genuine belief that there were different ways of establishing the English language skills and that she believed that her clients were being discriminated against and denied what they were entitled to. Nonetheless, she accepts that her growing anger at what she saw as injustice was wrong conduct on her part.

[28] Counsel refers to Ms Tian's 18 years of experience as an immigration adviser and notes that apart from this complaint, she has an unblemished record. Furthermore, no complaint has ever been made against her by a client.

[29] As for Ms Tian's correspondence with Immigration New Zealand, counsel submits that the primary focus of the Code is the relationship between the adviser and the client, not the adviser and Immigration New Zealand. A client who wishes to engage an adviser to adopt a tough or confrontational approach is entitled to require that. Ms Tian was angered and overstepped the mark on courtesy. Her conduct did not affect her integrity or the genuine belief that she held as to her duty to advocate to the best of her power.

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[2] *Immigration New Zealand (Foley) v De'Ath* [2018] NZIACDT 51 and *Immigration New Zealand (Calder) v Horan* [2019] NZIACDT 23.

[30] Mr Rennie QC submits that any sanction must be fair, reasonable and proportionate to the circumstances of the conduct. He relies on the Tribunal's decisions in *De'Ath*, *Parekh*, *Niland* and *Cleland*.[3]

[31] As for the provision of the client files, counsel contends the issues are complex, relating to relevance, confidentiality, privilege and personal privacy, which all had to be considered. By the time of the request, Ms Tian had already become overwhelmed by the situation. She believed that the electronic information she provided contained all the relevant disclosable material and that there was little in the paper files that was relevant or disclosable.

[32] The compliance task was in Ms Tian's view major and beyond her immediate resources. She did not take advice at the time, nor did she then express her concerns. The impact on her of this aspect of the events had been traumatic. She came from a country with an authoritarian regime and the demands were seen by her as threatening to her and her clients. Nonetheless, she had learned and now understood.

[33] Counsel submits that Ms Tian does not require denunciation, penalties or education to gain an understanding. The withholding of the files caused inconvenience to the Authority but no adverse or wrong outcome and no injustice.

[34] It is submitted that as the complaint was not made by Ms Tian's clients, censure would be a disproportionate measure. A formal caution would be appropriate, having regard to her previous unblemished record, acknowledgement of her error and the isolated incident of unprofessional communication.

[35] Nor are there grounds on which the Tribunal could consider the suspension or cancellation of her licence. Ms Tian had issued a formal apology on 22 June 2018, though she agrees that it should have been provided directly to Immigration New Zealand. It did demonstrate her awareness of the negative impact of her conduct and represented a significant step forward in restoring her relationship with Immigration New Zealand.

[36] Ms Tian had always acted in the best interests of her client when raising concerns about Immigration New Zealand's interpretation of immigration instructions. She had been instrumental in bringing to the attention of senior officials deficiencies in the instructions. She had made a positive contribution to the clarification of instructions, the

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[3] *Immigration New Zealand (Foley) v De'Ath*, above n 2; *HES v Parekh* [2019] NZIACDT 47, *Immigration New Zealand (Foley) v Niland* [2019] NZIACDT 16 and *Immigration New Zealand (Calder) v Cleland* [2019] NZIACDT 38.

establishment of objective standards and the more effective operation of Immigration New Zealand's policies.

[37] Since 2016, Ms Tian had suffered a heavy financial burden through the closure of her office for prolonged periods as she reduced the scope of her work, downsized her business and ceased to promote her services. Her staff had left and had not been replaced. The cost of legal representation had also had an impact on her financial circumstances. These events, together with uncertainty over many months as to what could happen to her, had been a major and unforgettable penalty.

[38] According to counsel, Ms Tian had been a successful immigration adviser with a high success rate. She had always acted to the best of her ability, in accordance with the Code and Immigration New Zealand's operating requirements. She took the utmost pride in her career which involved advocating for individuals who were in a vulnerable position in their lives due to the high stakes of securing the right to build a life in New Zealand. She deeply regretted the manner in which she had expressed her frustrations in correspondence with Immigration New Zealand. She acknowledged that it was neither professional nor appropriate.

[39] Counsel submits that Ms Tian's conduct warrants a maximum penalty not greater than $1,000, having regard to the lack of harm caused to the public and her acknowledgement of the errors. She had already sustained losses and costs many times larger as a result of the matter. She will continue being an advocate for her clients acting first and foremost in their best interests, but informed by what she has learned and with a much reduced level of clients.

[40] In his reply memorandum of August 2019, Mr Rennie QC notes that at the time Ms Tian acted for these clients, she succumbed to a number of pressures and was, in her own words, "mentally destroyed" and exhausted. She had severe work pressure. Her emotional state also coloured her response to the complaint. Ms Tian then lacked insight into the difficulties she was facing, until she sought help from her former counsel, Hon. Paul East QC. Mr Rennie QC records that she had intended her earlier apology to be more general.

[41] Counsel repeats his submission that it would be wrong and unfair to censure Ms Tian, though she recognises that a caution is warranted.

JURISDICTION

[42] The Tribunal's jurisdiction to impose sanctions is set out in the Act. Having heard a complaint, the Tribunal may take the following action:[4]

> **50 Determination of complaint by Tribunal**
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> After hearing a complaint, the Tribunal may—
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> (a) determine to dismiss the complaint:
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> (b) uphold the complaint but determine to take no further action:
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> (c) uphold the complaint and impose on the licensed immigration adviser or former licensed immigration adviser any 1 or more of the sanctions set out in section 51.

[43] The sanctions that may be imposed are set out at s 51(1) of the Act:

> **51 Disciplinary sanctions**
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> (1) The sanctions that the Tribunal may impose are—
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> (a) caution or censure:
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> (b) a requirement to undertake specified training or otherwise remedy any deficiency within a specified period:
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> (c) suspension of licence for the unexpired period of the licence, or until the person meets specified conditions:
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> (d) cancellation of licence:
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> (e) an order preventing the person from reapplying for a licence for a period not exceeding 2 years, or until the person meets specified conditions:
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> (f) an order for the payment of a penalty not exceeding $ 10,000:
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> (g) an order for the payment of all or any of the costs or expenses of the investigation, inquiry, or hearing, or any related prosecution:
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> (h) an order directing the licensed immigration adviser or former licensed immigration adviser to refund all or any part of fees or expenses paid by the complainant or another person to the licensed immigration adviser or former licensed immigration adviser:
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> (i) an order directing the licensed immigration adviser or former licensed immigration adviser to pay reasonable compensation to the complainant or other person.

[4] Immigration Advisers Licensing Act 2007.

[44] In determining the appropriate sanction, it is relevant to note the purpose of the Act:

> **3 Purpose and scheme of Act**
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> The purpose of this Act is to promote and protect the interests of consumers receiving immigration advice, and to enhance the reputation of New Zealand as a migration destination, by providing for the regulation of persons who give immigration advice.

[45] The focus of professional disciplinary proceedings is not punishment, but the protection of the public:[5]

> …It is well established that professional disciplinary proceedings are civil and not criminal in nature. That is because 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.
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> …
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> The purpose of disciplinary proceedings is materially different to that of a criminal trial. It is to ascertain whether a practitioner has met appropriate standards of conduct in the occupation concerned and what may be required to ensure that, in the public interest, such standards are met in the future. The protection of the public is the central focus.
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> …
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> Lord Diplock pointed out in *Ziderman v General Dental Council* that the purpose of disciplinary proceedings is to protect the public who may come to a practitioner and to maintain the high standards and good reputation of an honourable profession.

[46] Professional conduct schemes, with their attached compliance regimes, exist to maintain high standards of propriety and professional conduct not just for the public good, but also to protect the profession itself.[6]

[47] While protection of the public and the profession is the focus, the issues of punishment and deterrence must also be taken into account in selecting the appropriate penalty.[7]

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[5] *Z v Dental Complaints Assessment Committee* [2008] NZSC 55, [2009] 1 NZLR 1 at [97], [128] & [151] (citations omitted).

[6] *Dentice v Valuers Registration Board* [1992] 1 NZLR 720 (HC) at 724–725 & 727; *Z v Dental Complaints Assessment Committee,* above n 5, at [151].

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

[48] The most appropriate penalty is that which:[8]

(a) most appropriately protects the public and deters others;

(b) facilitates the Tribunal's important role in setting professional standards;

(c) punishes the practitioner;

(d) allows for the rehabilitation of the practitioner;

(e) promotes consistency with penalties in similar cases;

(f) reflects the seriousness of the misconduct;

(g) is the least restrictive penalty appropriate in the circumstances; and

(h) looked at overall, is the penalty which is fair, reasonable and proportionate in the circumstances.

DISCUSSION

[49] In upholding this complaint, the Tribunal noted that the sanctions would reflect, not just the substantive complaint, but Ms Tian's approach to it, her disrespect for the Authority and her unfounded allegation of collusion by the Authority's former Registrar and former investigator with Immigration New Zealand in advancing a complaint made as an act of revenge.

[50] As for Ms Tian's correspondence with Immigration New Zealand, I have said before that the staff of a government agency should not be unduly sensitive in the face of criticism. Those representing prospective migrants sometimes need to be bold in vigorously representing their clients. They may even express themselves extravagantly and unfairly but this would not necessarily cross the disciplinary threshold.[9]

[51] I have found the comprehensive submissions of Mr Rennie QC to be very helpful. I also agree with him that the primary focus of the professional obligations is the relationship between the adviser and the client. The purpose of the Act is to protect the interests of consumers receiving immigration advice.[10]

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[8] *Liston v Director of Proceedings* [2018] NZHC 2981 at [34], citing *Roberts v Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354 at [44]–[51] and *Katamat v Professional Conduct Committee* [2012] NZHC 1633, [2013] NZAR 320 at [49].
[9] *Immigration New Zealand (Foley) v De'Ath*, above n 2, at [32].
[10] Immigration Advisers Licensing Act 2007, s 3.

[52] Nonetheless, the Act provides that a code of conduct and competency standards must be developed and maintained to set standards of professional and ethical conduct, including an adviser's obligations to Immigration New Zealand.[11] As the Code and competency standards make clear, persons other than the client must also be treated professionally and with respect. This includes the staff of Immigration New Zealand.

[53] While no complaint was brought by these clients, Ms Tian's conduct cannot have been in their best interests. She misunderstood the immigration instructions and persevered with what became futile applications once Immigration New Zealand required IELTS certificates. The appeals to the IPT were doomed to failure. Nor do I accept that her grossly unprofessional correspondence with Immigration New Zealand was in her clients' best interests.

[54] As for the failure to provide the files, I respectfully do not accept counsel's contention that the statutory demands gave rise to complex issues. The submissions do not elaborate on the issues of relevance, confidentiality, privilege and privacy. Any such matters would have been straightforward. Nor do I accept that it was a major task or beyond her immediate resources. The demands were quite specific, being confined to certain applications for five identified clients. Counsel acknowledges Ms Tian did not raise any such issues when faced with the demands.

[55] I have already found Ms Tian to be a deeply passionate and caring advocate who works tirelessly for her clients. She honestly believed her clients were being discriminated against. As counsel says, she allowed her anger and frustration to overwhelm her. It is noteworthy that Ms Tian has worked on other occasions with Immigration New Zealand to clarify and improve immigration criteria, including those setting the English language threshold.

[56] Ms Tian's counsel points out that Ms Tian suffered from severe work pressure and exhaustion, which also coloured her response to the complaint. She now recognises her previous state, so has reduced her workload and recovered her health. I accept this and hence that there will be no repetition of the misconduct.

[57] I accept the submission of Mr Rennie QC that Ms Tian's misconduct does not warrant her removal from the profession by the suspension or cancellation of her licence, nor is any period of prohibition appropriate. It is observed these sanctions have not been sought by the Registrar.

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[11] Sections 36 & 37, see particularly s 37(2)(b).

[58] Given that the immigration instructions in relation to the English language criteria have changed, Ms Tian cannot now make the same mistake again. Furthermore, she now understands the inappropriateness of her correspondence. I have little doubt she now also understands the need to comply with lawful statutory demands for files made by the Authority. There are no broader issues with her competence or conduct. It is acknowledged Ms Tian has been in practice for many years without any complaint from a client. Accordingly, I see no need to direct her to undergo training.

[59] The sanctions relevant here are whether Ms Tian should be censured or merely cautioned, and the level of financial penalty.

Censure or caution

[60] Ms Tian is appearing before the Tribunal for the first time. Her misinterpretation of an earlier version of the English language criteria would not justify censure. It is her conduct in relation to correspondence with Immigration New Zealand that is too serious to be sanctioned by way of a caution only.

[61] Ms Tian's correspondence with Immigration New Zealand is at the high end of unprofessional correspondence. This was no isolated outburst. It was not directed at 'the system' or a depersonalised government entity. It amounted to a sustained, personalised attack on not just the competence, but also the integrity and motivation of named officers. There was animosity against those officers.

[62] The correspondence was conducted over a prolonged period. There was no merit to it. It warrants denunciation. It was so unprofessional that it undermines the reputation of the profession. As I said in the earlier decision, I have little doubt that the majority of immigration advisers would be horrified by Ms Tian's lack of judgement.

[63] A reasonably fulsome apology was made by Ms Tian somewhat belatedly. In saying that, it is never too late to make an apology and express remorse. Her acknowledgement of wrong-doing extends to the recent submissions to the Tribunal. Ms Tian is entitled to credit for this. However, the credit is discounted somewhat by her failure even now to issue an apology personally and directly to the two principally impugned officers.

[64] To the unprofessional communications is added the contemptuous refusal to provide documentation to the Authority in the face of statutory demands. Ms Tian may have committed an offence. While it is not my role to assess any criminal conduct, that possibility underlies the seriousness of her conduct. I recognise though that it was only

one complete file she refused to disclose, as she had initially largely complied with the first demand for four files. I agree with Mr Rennie QC that the refusal to provide documents did not hinder the Authority's investigation.

[65] The censure of Ms Tian is reasonable and just, taking account of the interests of the maligned officers and the public, as well as the consequences for Ms Tian.

[66] Ms Tian is formally censured.

Financial penalty

[67] Mr Denyer relies on two recent decisions of the Tribunal concerning unprofessional communications with Immigration New Zealand. I do not find the other decisions cited by Mr Rennie QC to be comparable to the circumstances here, a point he makes himself in relation to *Niland* and *Cleland*.

[68] In *De'Ath*, the penalty was $750 for being unprofessional and disrespectful in relation to his conduct and communications with Immigration New Zealand. Mr De'Ath was also cautioned.

[69] In respect of one matter for one client, Mr De'Ath had made unjustified formal complaints against two immigration officers. He alleged one officer had provided false and misleading information and that the other was trying to cover up known wrong-doing and had a mind-set of disadvantaging migrants. There was no evidence to support his complaints. He threatened one of them with a private prosecution. He had also unprofessionally expressed criticisms of Immigration New Zealand staff, accusing them of lacking competence, of being unprofessional and of lacking integrity.

[70] In the face of the Authority's complaint against him, Mr De'Ath initially denied any wrong-doing, but once he had taken legal advice following the referral of the complaint to the Tribunal, he recognised his misconduct and wrote a written apology to one of the officers.

[71] The Tribunal found Mr De'Ath's communications with Immigration New Zealand to be inadequately worded, intemperate, unnecessarily abrasive, accusatory and ill-advised. However, there was no personal *animus* and his language was not abusive or offensive. He was not intimidating and his threat of a private prosecution could not be taken seriously.

[72] In *Horan*, the penalty was $2,500 for multiple complaints, these being — unprofessional and disrespectful communications with Immigration New Zealand, withholding information from one of his clients and copying communications to people in breach of his clients' confidentiality. Mr Horan was also censured for his combined wrong-doing. By the time of the Tribunal's decision, he no longer held a licence, so his removal from the profession, even temporarily, or retraining were not options.

[73] In respect of the unprofessional communications, Mr Horan had accused immigration officers of being inept, callous, arrogant, insensitive, uncaring, unconscionable, unprofessional, of being unable to distinguish basic human rights, of ignoring the principles of fairness, of treating clients worse than animals and of being corrupt, overzealous and overbearing. It was found his communications would tend to bring the profession into disrepute. His conduct was aggravated by the previous issue of a warning letter by the Authority as to the inappropriate nature of his communications.

[74] Mr Horan offered no apology and maintained that his conduct was justified. He had displayed contempt for Immigration New Zealand's complaint and the Authority's role in investigating it. He alleged that the Authority had colluded with Immigration New Zealand in raising the action against him. According to him, his clients were being maliciously deprived of due diligence and justice, which amounted to corruption.

[75] In setting the penalty at $2,500, the Tribunal regarded the withholding of information and breach of confidence as the more serious complaints.

[76] The gravity of Ms Tian's misconduct in terms of her correspondence with Immigration New Zealand is more analogous to that of Mr Horan than Mr De'Ath.

[77] Like Mr Horan, Ms Tian's conduct is exacerbated by her unprofessional approach to the Authority's investigation, in drawing the Authority into the conspiracy against her. However, hers was a more sustained campaign against the officers over a prolonged period. In her case, the campaign shows personal animosity. On the other hand, Ms Tian has recognised her wrong-doing and given some measure of apology.

[78] It is not just the inappropriate communications which warrant a financial penalty, so does the refusal to comply with the statutory demands for documents. In respect of one of the clients, she refused to provide the entire file, though most of the documents were provided in relation to the other four clients. However, I do not think that the circumstances here warrant a financial penalty for the misinterpretation of a no longer extant version of the English criteria.

[79] Counsel observes that Ms Tian has apparently suffered a heavy financial burden since 2016, as she has downsized her business. Along with the cost of legal representation and the stress of the uncertainty as to what could happen to her, all of this had been a major and unforgettable penalty. The losses are said to have been sustained as a result of this matter.

[80] I acknowledge the cost of legal representation and the stress of complaints, with the process stretching over a prolonged period of three years for Ms Tian. However, it is not clear how the complaint led to the reduction in the size of her business. Nonetheless, I accept that Ms Tian's income may be modest now.

[81] The penalty is set at $2,000.

OUTCOME

[82] Ms Tian is:

(1) censured; and

(2) ordered to immediately pay to the Registrar a penalty of $2,000.

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D J Plunkett
Chair