

IMMIGRATION ADVISERS COMPLAINTS AND DISCIPLINARY TRIBUNAL

Decision No: [2019] NZIACDT 13

Reference No: IACDT 008/17

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 **JOHN WIREMU HORAN**
Adviser

DECISION
Dated 11 March 2019

REPRESENTATION:

Registrar: In person
Complainant: In person
Adviser: In person

PRELIMINARY

[1] Mr Horan, the adviser, has repeatedly engaged in what Immigration New Zealand complains is disrespectful and offensive criticisms of its staff in correspondence with the agency.

[2] The essential issue is whether Mr Horan's inappropriate correspondence crosses the threshold justifying disciplinary action.

BACKGROUND

[3] Mr John Wiremu Horan was a licensed immigration adviser. He traded as New Zealand 4 Ever Ltd. He is no longer licensed, as a renewal application was refused on 17 August 2016 for reasons unknown to the Tribunal.

[4] The complaint concerns his written communications to Immigration New Zealand on behalf of a number of clients during 2015.

[5] On 10 March 2015, Mr Horan sent an email to Mr L, an Immigration New Zealand area manager, in which he stated (*verbatim*):

You have made mention of the possibility of "relationship management difficulties" then you may know I have had many of them – WHY you may ask? then let me respectfully explain; and please excuse the terms; (1) I am here to serve my client's = our mutual paying clients – to the very best of my ability; (2) I am not obliged to "kowitz" to any public servant at whatever level; (3) I am not obliged to "kiss arse" to appease any public servant at any level they may have been promoted to; (4) I am simply here to serve my fellow human being and when I do so it is with every fibre of my being and I am respected for that dedication.

I have had some inept public servants make formal complaints against me, and in some instances they have colluded in such actions however they have all fallen short due to their callous intentions their inconsequential complaints have been vexatious and without foundation.

[6] On 22 March 2015, Mr Horan sent an email to Ms S, an immigration officer, and others in which he stated (*verbatim*):

May I say at the outset that it is one of the most arrogant, insensitive, uncaring and accusatory PPI letters I have had the displeasure of receiving.

...

So here we have a situation where the wife of a New Zealand Resident (my client – the applicant) is soon to have a child; who when born will be a New Zealand Citizen; and you and your Manager as representatives of Immigration New Zealand have decided to issue a PPI letter that without any doubt would place total and unnecessary stress on the Mother (my client the applicant) I do

not believe that I have ever seen such an uncaring and insensitive action by any New Zealand government agency.

I myself am at a loss to understand how a New Zealand Government Agency can act in what I consider to be such a terrible manner with not one iota of consideration for the applicant. I myself have decided NOT to bring your PPI letter to the attention of my client (the applicant) as I have no intention of bringing any stress to her in her current situation, my role is to be her Adviser and to give her the best service possible and your PPI letter is most certainly not in that category.

...

I am quite frankly disgusted that we have such arrogant public servants who cannot distinguish basic human rights when their own principles of fairness, natural justice and consistency are demanded to be adhered to but yet ignored. Such negative immigration profiling is abhorrent in any decent democratic society and INZ should take remedial actions to ensure that their principles under the Immigration Act are meaningful and worthy of a place in NZ society.

Your demands that mean I should bring your unfounded allegations to my client (the applicant) at such a crucial time could without doubt adversely affect her health and that of her yet to be born child which you and INZ should recognise. The question begs "do you INZ take responsibility for any adverse effects to my client (the applicant) by your insensitive, arrogant demands"? No you are never accountable for your actions.

Accordingly I have no intention of responding to your PPI letter that is based currently on only your statements and therefore under the OIA legislation I and my legal advocates consider that all my client (the applicant) files; and that is to include any and all supplementary; i.e. Customer Interaction, inter branch in branch memos be released to me in accordance with the Act.

[7] On 29 March 2015, Mr Horan sent an email to Mr J, an Immigration New Zealand assistant area manager, and to another in which he stated (*verbatim*):

Your management showed how petty and entirely unhelpful you can be to paying applicants by sending all the passports and final migrant and levy actions back to INZ Henderson for them to do when you had all the resources at your branch to carry out the simple actions requested. I reiterate it was the most childish, petty unprofessional action your branch could display – if your intention was to show your lack of respect to me and my clients you most certainly succeeded as I now believe the current management administration of the [deleted] branch is the worst I have ever experienced by any government agency the leadership is negative and uncooperative and I regret to inform you of your branch's inadequacies; however I am entitled to do so based on the fact that this is a democratic nation with freedom of speech as long as the comments are truthful and are based on fact.

[8] On 7 May 2015, Mr Horan sent a letter to Mr L and others in which he stated (*verbatim*):

The above applications were a disaster for Immigration New Zealand for it showed a complete unfair and unjust system that abused its principles and displayed an ineptness, a callousness, an arrogance, and a total disregard for the family that are kept under extreme stress for more than three years, at extreme unnecessary extra cost and INZ's attempt to prove the unprovable.

[9] On 13 May 2015, Mr Horan sent a letter to Ms S and copied to an immigration manager, in which he stated (*verbatim*):

It would seem that Immigration New Zealand is attempting to use double jeopardy to unfairly punish the applicant's boyfriend (now her husband) and such an action is in such circumstances unconscionable and one has to question why a government agency would stoop to such a low level so as to question the character of a New Zealand resident when they have previously wrongly declined his residency.

...

It beggars belief that the public of New Zealand pays their taxes so that a government agency is allowed such unfettered powers to treat fellow humans' beings in such a way. What is the rationale of making a huge mountain out of what is a tiny ant hill?

...

However INZ seem to me of a mind; to by whatever unfair, unjust and inconsistent processing find some avenue to be able to deprive by client her just right as the Wife of a NZ resident and now the Mother of a New Zealand Citizen to be justly a resident of New Zealand.

...

Should the above be the case then on behalf of my client I will stringently seek compensation of such unfair, unjust and inconsistent actions by Immigration New Zealand who had acted in total disregard to the adherence of their own principles.

[10] On 9 June 2015, Mr Horan sent an email to Mr J and others in which he stated (*verbatim*):

Your INZ and Compliance actions are completely against any tenant of decency, we supportive New Zealanders treat our animals far better than your actions against these 3 wonderful young men whose actions in coaching young Canterbury is twenty times the value to our nation than are your actions in forcing them to starve because of the stupidity of your nonsensical regulations.

Quite frankly I would find it difficult to sleep at night if I was in your position and had to act in a callous manner.

[11] On 10 June 2015, Mr Horan sent an email to Ms J, an immigration manager, and others in which he stated (*verbatim*):

If you are unable to understand this simple English explanation of the rights of individuals then I would have to consider that your intellectual ability to appreciate the situation is some what lacking as mine is most certainly aligned to the rights that these three humans have under the UN Charter and the New Zealand Bill of Rights.

As I have already explained to Mr J and [deleted]; I and my three clients are most hoping to meet you Officials of INZ and INZ Compliance – however that will be at a neutral venue agreeable to both parties as my experience with such meetings is unfair and unjust as they are always in a biased environment and in any meeting I am at a disadvantage and therefore any meeting will also be attended by my legal advocate.

...

If you feel that I am acting in any way illegally in my support of my clients then please feel free to fine some definitive charge in that I am acting illegally in protecting the rights of my clients. I will of course vigorously challenge any action against me so I would advise proper rationale in any such irrational action however that is up to you as a public servant.

[12] On 13 August 2015, Mr Horan sent a letter to Mr N, an immigration manager, and others in which he stated (*verbatim*):

In doing so I have taken issue with incompetence, arrogance, unfairness, injustice and inconsistency and that has not endeared me to many officials within government agencies be they; INZ, IAA, or other MBIE agencies and I make no apologies for doing so as my previous military career taught me; (1) to be strong; (2) fight the good fight for those I serve; and (3) never give up if those I serve deserve my service.

So I would like to make it very clear that if there is any agenda against any of my clients' because of my robust and positive application to my personal principles in serving my clients that I recognise as actual humans with needs and rights and that I as their representative must persevere in all my actions on their behalf; then I will do all in my power and ability to make those that infringe any principles to be accountable for such corrupt actions.

There is substantive proof of medium public servants making vexatious complaints against my integrity, character and abilities in pursuit of my client's rights all of have been found to be frivolous and lacking foundation. However if it comes to my attention that there is any substance in any way that impugns the lawful rights of my client's or my integrity then I will most certainly take issue should that be the case.

[13] On 28 August 2015, Mr Horan sent a letter to Ms P, an Immigration New Zealand area manager and others in which he stated (*verbatim*):

Accordingly I have to allege that I believe that actions of a corrupt nature were taken by those two managers against me as an individual. In their collusion to attempt to impinge my integrity and credibility they have seriously disadvantaged my two very young clients and their New Zealand citizen mother. Such actions against any applicant/s or their representative; by any officer at any level needs to be thoroughly investigated by an independent body so as to ensure transparency and those found at fault need to be dismissed from public service.

...

Their undeniable rights of being the adopted sons of their mother have been trampled upon by negligent public servants whose agenda in attempting to prejudice me as the Licensed Adviser of these children has diverted them in carrying out their duties and responsibilities with due diligence and respect for those they serve.

...

Finally as previously mentioned I allege impropriety by those managers and I require an investigation by an independent body so that transparency can be seen in the result of such an investigation.

[14] On 21 September 2015, Mr Horan sent an email to Mr W, an Immigration New Zealand manager, and others in which he stated (*verbatim*):

There were many reasons for the extensions requested and they related to many issues that you do not seem to have empathy for. I would expect that if a situation arose that it was necessary for a further extension to be requested, that you would have the level of professionalism and objectivity to consider the request on its merits as opposed to the predetermined bias you have now shown towards this client. Except for one other public service manager your conduct is the worst I have had the displeasure to have to deal with. Until such time you show some respect for your applicants position and my position in acting as their representative then I will most definitely not display any respect for your position.

Should I require to assist my client by a further request of an extension in time to protect her position and that of her husband and you in your bombastic manner refuse such a request based on your mission to get at me then I will take the matter far above your minor management position.

Your superior overzealous approach to those who are your applicants or clients falls well short of "promoting New Zealand as a migrant destination" which is the governments intent. Unless there has been some unannounced change in the government agenda it would appear that either personally or professionally you are at odds with the very purpose of the role you are employed in.

Your email to me today was distasteful and you would be better served attempting to be helpful and I would hope in time that your management style would change to the positive rather than the destroying attitude you display; as your role is dealing in people and they are humans so the sooner you consider that rather than attempting to attack me then the better manager you might be.

...

You will note that I have copied this to my legal adviser; the fact that I do that should not require you to again bring your overzealous, overbearing management style to question this; the fact that my clients know that my legal advisers are aware of their support for them has nothing to do with you unless in your agenda you are in some "conflict of interest" with other government agencies to attempt to discredit me by using my clients to do so.

COMPLAINT

[15] Immigration New Zealand made a formal complaint on 16 November 2015 to the Immigration Advisers Authority (Authority), headed by the Registrar of Immigration Advisers (Registrar).

[16] The primary reason for making the complaint was expressed as being to protect Immigration New Zealand's staff from threatening behaviour and harassment. They had been adversely affected by Mr Horan's behaviour. They had described how it made them feel belittled, stressed, incompetent, upset, threatened, powerless, offended, fearful, bullied, intimidated, distressed and demeaned. The supporting materials included staff statements. As a responsible employer, Immigration New

Zealand had a duty towards its staff and was obliged to take all practical steps to provide a safe working environment.

[17] Numerous attempts had been made to deescalate interactions with Mr Horan, but these had been unsuccessful. Immigration New Zealand was also concerned that some of Mr Horan's actions had been detrimental to his clients and that his behaviour might bring the profession into disrepute. Mr Horan's conduct went beyond what could be considered vigorous advocacy.

[18] Immigration New Zealand noted in its complaint that it had previously made a complaint to the Authority about Mr Horan. The Authority had previously found that there were potential breaches of the Code of Conduct 2010 but that aspects of the case diminished any potential breaches. The Authority had clearly set out its expectation around how Mr Horan should conduct himself in the future, in particular stating that his communications with Immigration New Zealand must be compliant with the Code of Conduct 2014 (the Code). However, Mr Horan's communications had not improved. He had demonstrated that he was either unwilling to improve his behaviour or incapable of doing so.

[19] In response to a request from the Authority for his files, Mr Horan wrote a letter to the investigator on 8 May 2016, in which he stated (*verbatim*):

I can further state that I have never every had a single complaint made against me by the hundreds of clients I have served over the last two decades.

...

For a Public Servant Manager in such a senior position to use that position to file such a vindictive attack against a Licensed Immigration Adviser is without precedence; I as a professional adviser have not one complaint against me; therefore I believe his attack against me is totally vindictive and is part of an agenda that has a corrupt slant to its instigation.

...

To use such terms as; *my behaviour made INZ staff feel; "belittled, stressed, incompetent, upset, threatened, powerless, offended, fearful, bullied, intimidated, distressed and demeaned"* how totally ridiculous, emotive and arrogant and clearly put together by another Public Servant Manager [Mr J] in an attempt to make a statement so as to immediately place me in a bad light.

...

I have no wish for this obviously contrived trumped up allegation against me to go any further. It should be quashed otherwise the ramifications against an innocent individual NZ Citizen by a government agency may cause further negative public perception of Immigration New Zealand.

...

It should be remembered that officials of Immigration New Zealand used their position and the banner of Immigration New Zealand as a pivotal force against me as a New Zealand Citizen and this is remanence of the actions of the governments of Stalin and Hitler and that is exactly the rationale for the institution of the NZ Bill of Right and the NZ Constitution that protects the rights of citizens against the excesses of government officials such as PS Manager [Mr C].

[20] Mr Horan attached to his reply numerous testimonials from clients and one licensed immigration adviser as to his success, competence, tenacity, dedication and zeal for his clients and confirming a campaign to destroy him by a group within Immigration New Zealand.

[21] The Authority wrote to Mr Horan on 28 November 2016 formally advising him of the complaint and setting out the grounds. He was invited to provide an explanation.

[22] A reply to the Authority was sent by Mr Horan on 26 January 2017. He contended that Immigration New Zealand and the Authority were collectively "raising an action" against him. Their collusion could be construed as a conflict of interest and contrary to the democratic process. He therefore questioned all collective action of Immigration New Zealand and the Authority which was designed to inhibit his ability to perform his legal obligations to his clients.

[23] According to Mr Horan, neither Immigration New Zealand nor the Authority had ever received any complaint against him from one of his clients. This complaint had been contrived by Mr C, a senior manager from Immigration New Zealand.

[24] Mr Horan stated that before he gave a proper response, he required the release of information. The contrived consultations between public servants would also have to be released to him. He questioned why a government agency required consultative meetings against a mere licensed immigration adviser who had been refused a licence renewal by those very agencies who had waged the contrived agenda against him over the last two years. He questioned whether he was a threat to national security.

[25] Mr Horan stated that his hundreds of migrant clients and professional colleagues would attest to his integrity due to his unrelenting pursuit of fairness and justice for every human being. He would make a formal complaint to the chief ombudsman about his treatment by Immigration New Zealand and its unfair collusion with the Authority. The two agencies had purposefully and actively contrived against him and used their malice to negatively deprive his clients of due diligence and justice. This was corruption.

[26] In conclusion, Mr Horan said that he required a reasonable time once all the relevant information had been released to him and his legal consultant. As a fair minded New Zealand citizen, he had always had one goal in mind which had been to do the very best for all those who had contracted with him. To his detractors, he could only ask whether they had the same satisfaction and whether they could sleep soundly at night. Mr Horan sent his best regards to all, except “for those whose agenda has created a ‘travesty of injustice based on their own incompetence’”.

[27] The Authority filed a statement of complaint (dated 9 May 2017) with the Tribunal, together with supporting documents. It alleges Mr Horan breached the Code in the following respects:

- (1) Expressed criticisms of Immigration New Zealand and its staff in a manner which was contrary to the obligation to be professional and respectful, in breach of cl 1.
- (2) Raised concerns with Immigration New Zealand in a way which was inconsistent with his obligation to be professional, diligent and respectful, in breach of cl 1.
- (3) Withheld information from one of his clients and did not obtain her instructions, in breach of cl 2(e).
- (4) Copied correspondence with Immigration New Zealand concerning his clients to individuals who were not connected with the immigration matter, disclosing their personal information without their consent, in breach of cl 4(a).

JURISDICTION AND PROCEDURE

[28] The grounds for a complaint to the Registrar made against an immigration adviser or former immigration adviser are set out in s 44(2) of the Immigration Advisers Licensing Act 2007 (the Act):

- (a) negligence;
- (b) incompetence;
- (c) incapacity;
- (d) dishonest or misleading behaviour; and
- (e) a breach of the Code of Conduct.

[29] The Tribunal hears those complaints which the Registrar decides to refer to the Tribunal.¹

[30] The Tribunal must hear complaints on the papers, but may in its discretion request further information or any person to appear before the Tribunal.²

[31] After hearing a complaint, the Tribunal may dismiss it, uphold it but take no further action or uphold it and impose one or more sanctions.³

[32] The sanctions that may be imposed by the Tribunal are set out in the Act.⁴ It may also suspend a licence pending the outcome of a complaint.⁵

[33] It is the civil standard of proof, the balance of probabilities, that is applicable in professional disciplinary proceedings. However, the quality of the evidence required to meet that standard may differ in cogency, depending on the gravity of the charges.⁶

[34] The complaint and supporting documents were sent by the Tribunal to Mr Horan on 17 May 2017. He was advised that complaints were usually determined on the papers and invited to complete a statement of reply.

[35] Mr Horan did not complete the statement of reply form. Instead, he sent an email to the Tribunal and others on 2 June 2017 complaining about the “miserable” 10 working days allowed to file the statement of reply. He then noted the 2.7 years it had taken to collude and gather information regarding the public service vendetta against him.

[36] In response to his request for release of more information, Mr Horan stated in his email that it had taken six months to send him 190 pages of which 97 were blacked out. He and all others would not “kowtow to their demands and arrogance”.

[37] According to Mr Horan, any Tribunal action or decision which infringed his right of defence against a deliberately arranged vendetta by public servants who had denied his freedom of speech and entrapped him by selective negative comments, was incestuous and lacked credibility. Any decision made would be obviously biased against him and he would not recognise it until he had received a fair allocation of time to respond. That would be impossible until all information in the 97 blacked out pages and sensitive files held had been released to him. The present situation was a denial

¹ Immigration Advisers Licensing Act 2007, s 45(2) & (3).

² Section 49(3) & (4).

³ Section 50.

⁴ Section 51(1).

⁵ Section 53(1).

⁶ *Z v Dental Complaints Assessment Committee* [2008] NZSC 55, [2009] 1 NZLR 1 at [97], [101]–[102] & [112].

of the democratic rights of a New Zealand citizen and unconstitutional in a democracy. A convicted and imprisoned person had more rights than he did.

[38] A Minute was issued by the Tribunal on 14 February 2019 giving the parties the opportunity to file submissions and/or evidence. The Registrar provided further documents, as requested by the Tribunal. Mr Horan copied to the Tribunal his letter of 28 February 2019 to various Ministers and the Attorney-General. This letter is expressed to be a formal complaint against Immigration New Zealand, the Authority and the Tribunal.

ASSESSMENT

[39] The Registrar relies on the following provisions of the Code:

General

1. A licensed immigration adviser must be honest, professional, diligent and respectful and conduct themselves with due care and in a timely manner.

Client Care

2. A licensed immigration adviser must:

...

- e. obtain and carry out the informed lawful instructions of the client, and

...

Confidentiality

4. A licensed immigration adviser must:

- a. preserve the confidentiality of the client except in the following circumstances:

- i. with the client's written consent, or

- ii. if making a complaint to the Immigration Advisers Authority relating to another adviser or reporting an alleged offence under the Immigration Advisers Licensing Act 2007, or

- iii. for the administration of the Immigration Advisers Licensing Act 2007, or

- iv. as required by law, and

...

- (1) *Expressed criticisms of Immigration New Zealand and its staff in a manner which was contrary to the obligation to be professional and respectful, in breach of cl 1*
- (2) *Raised concerns with Immigration New Zealand in a way which was inconsistent with his obligation to be professional, diligent and respectful, in breach of cl 1*

[40] I will start by dismissing Mr Horan's allegations of the existence of a personal vendetta against him by certain officers in Immigration New Zealand and of collusion between Immigration New Zealand, the Authority and the Tribunal.

[41] Mr Horan and some of his fellow advisers may believe there is a vendetta, but there is not a shred of credible evidence supporting this. Immigration New Zealand's own conduct has been professional and restrained in the face of his unfair allegations. The Authority's investigation of the complaint, notwithstanding Mr Horan's contempt for the disciplinary process, has been professional. The Tribunal has been, and will continue to be, impartial and independent in its assessment of the complaint against him.

[42] Turning to the complaint proper, the staff of Immigration New Zealand receiving his communications containing the criticisms of them state they feel "belittled, stressed, incompetent, upset, threatened, powerless, offended, fearful, bullied, intimidated, distressed and demeaned".

[43] The Tribunal has said before in relation to criticism by advisers of Immigration New Zealand staff made in communications with that agency:⁷

[32] ...Immigration officers and managers should not be unduly sensitive to criticism, even where extravagantly expressed. Those representing prospective migrants sometimes need to be bold. That is part of their role. Their criticism of staff might be unfair on occasion. Such conduct would not necessarily cross the disciplinary threshold.

[44] It is clear from the many testimonials sent by Mr Horan to the Authority that he enjoys the respect of his numerous clients and also of a number of his peers. He is known for his robust advocacy on behalf of his clients and has plainly been successful on many occasions.

[45] So, the question for me is whether Mr Horan has crossed the disciplinary threshold in the communications which are the subject of the complaint. Do his criticisms engage the disciplinary regime or are they merely examples of his vigorous representation of people who are sometimes vulnerable and whose rights he believes have been trampled, albeit colourfully expressed and unfair?

⁷ *Immigration New Zealand (Foley) v De'Ath* [2018] NZIACDT 51 at [32].

[46] Bearing in mind that the staff of a government agency should not be unduly sensitive in the face of criticism and while I do not doubt their honesty in describing their reactions, I do not accept that the most severe of the reactions expressed by the staff are justified. Nonetheless, I find that Mr Horan's criticisms are unprofessional and disrespectful. They cross the disciplinary threshold and they do so by a demonstrable margin.

[47] I accept that his communications are belittling, stressful, distressing, upsetting and bullying. There are so many examples of unprofessional criticisms in the extracts above that I will not individually list them. Every extract is replete with them.

[48] It is self-evident they allege incompetence, though it is questionable whether the mere allegation should make an officer feel incompetent. One instance of ineptness alleged against one officer might be correct, but Mr Horan casts his net too wide. They cannot all be justified.

[49] I can understand that the staff describe themselves as feeling somewhat powerless in the sense that beyond denying the allegations, their own professionalism and focus on their decision-making role would prevent them from defending themselves against the unfounded and distracting criticisms.

[50] However, while plainly unprofessional, Mr Horan's criticisms and language are not at the upper end of unprofessional communications. The staff may have been offended but the communications are not offensive. While it is offensive to compare immigration officials with Stalin or Hitler, that was done in a letter to the Authority which is not the subject of the complaint and has probably not been seen by the staff except Mr Calder, the complainant manager.⁸

[51] The staff describe being intimidated and threatened, but I do not regard the communications as intimidating or threatening in any unlawful sense. The threats Mr Horan makes are in essence merely to raise a complaint with the proper government agency, such as the Ombudsman, or to seek an investigation by an unnamed independent body or to seek compensation presumably through legal processes. Such action may be unwarranted, but is not unlawful or unprofessional if he believed his client had been wronged.

[52] Since the threats were not unlawful, any fearfulness on the part of the staff was not objectively justified.

⁸ Mr Calder is not Mr C and does not appear to be the subject of a complaint from Mr Horan.

[53] So while not at the upper end, I find that the substance, tone and text of Mr Horan's communications go beyond what could be properly considered robust advocacy. They are not just unfounded criticisms of the immigration system or the agency but are personal attacks against individual officers against whom he unjustly alleges such hurtful and serious accusations as callousness and corruption.

[54] I agree with Mr Calder that Mr Horan's language is not in the interests of his clients. His unjustified criticisms will distract the recipient immigration officer. They will without doubt delay the decision making, even if only because the officer puts the communication to one side for a day to calm down or seeks advice from a manager as to how to respond. As professional as the officers are, there might be some resentment to favouring someone whose representative advances unjustified personal attacks on them. Mr Horan should pause to consider whether his attacks are in the interests of his clients.

[55] Mr Calder is also correct in expressing a concern about Mr Horan bringing the profession into disrepute. Mr Horan's persistent unprofessional correspondence taints the advisers' profession generally. It would horrify the overwhelming majority of his colleagues.

[56] In assessing Mr Horan's communications as warranting disciplinary action, I note his belligerent refusal to acknowledge the unprofessional nature of his correspondence and the hurt to the staff of Immigration New Zealand, even in the face of a formal complaint. He displayed contempt for Immigration New Zealand's complaint and the Authority's role in investigating it. Indeed, he used the investigation to draw the Authority into his fantasy of a conspiracy against him. He seems to have the same view of the Tribunal.

[57] Furthermore, Mr Horan had earlier been put on notice as to the inappropriate nature of his communications. There was a previous complaint to the Authority from Immigration New Zealand concerning the general tone of his communications. The Authority advised him on 18 November 2014 that his communications appeared to be inconsistent with his obligation to maintain professional and respectful relationships. While the complaint was not further pursued since the Authority regarded it as disclosing only trivial or inconsequential matters, Mr Horan was warned of the need to ensure compliance with the Code and competency standards in future communications with Immigration New Zealand.

[58] Mr Horan's correspondence has been found to be demonstrably unprofessional, but I accept that he honestly believed his clients were being wronged. Such a belief

was unfounded but genuinely held. There is no evidence he was being malicious or motivated by ill-will, despite the extravagance of his language.

[59] I find Mr Horan to have been unprofessional and disrespectful in his communications with Immigration New Zealand, in breach of cl 1 of the Code.

(3) *Withheld information from one of his clients and did not obtain her instructions, in breach of cl 2(e)*

[60] In his email of 22 March 2015, Mr Horan advised the immigration officer that he would not bring the “PPI letter” (a letter containing potentially prejudicial information) to his client’s attention, as it would bring stress to her.⁹ Immigration New Zealand was, according to Mr Horan, making unfounded allegations at a crucial time, which could adversely affect the health of his client and her unborn child. He added that he would not respond to Immigration New Zealand.

[61] The email of 22 March was a response to Immigration New Zealand’s letter of 12 March 2015. That was a lengthy letter setting out the history of the exchange of communications between the agency and Mr Horan concerning his client’s application for a residence visa. Essentially, Immigration New Zealand’s officer had two concerns:

1. whether the client met the English language requirements; and
2. whether the client had provided false and misleading information in support of her application.

[62] In the letter of 12 March, the officer politely and professionally identified her concerns. If the officer had a concern which she was considering as the basis for declining the application, she was bound to draw it to Mr Horan’s attention in accordance with orthodox natural justice obligations.

[63] The client was pregnant, but there is no information in Mr Horan’s email of 22 March which indicates that she was particularly vulnerable. A pregnant woman is as entitled to know Immigration New Zealand’s concerns as anyone else.

[64] Whether or not the officer was justified in the character concern is not for me to assess and is not the issue here.

[65] An adviser has an obligation to “obtain” the informed instructions of his client.¹⁰ By informed, it is meant the adviser should advise the client concerning the implications

⁹ Extracts from Mr Horan’s email which are set out above at [6].

¹⁰ Code of Conduct 2014, cl 2(e).

and options arising from the matter being addressed so an appropriate decision can be made by the client. By refusing to inform his client of the issues raised by Immigration New Zealand, let alone advising her and then responding to Immigration New Zealand once he had her instructions, Mr Horan put his client's application at grave risk of a decline based on the failure to answer the concerns expressed. Indeed, the residence application was ultimately declined on the failure to meet the English language criteria.

[66] I find that Mr Horan withheld information from his client and failed to obtain her informed instructions, in breach of cl 2(e) of the Code.

(4) *Copied correspondence with Immigration New Zealand concerning his clients to individuals who were not connected with the immigration matter, disclosing their personal information without their consent, in breach of cl 4(a)*

[67] Mr Horan has copied to his lawyer numerous letters and emails to Immigration New Zealand.¹¹ He does not assert this was with the consent of his clients. It was not done with the objective of protecting his clients by seeking the lawyer's advice to assist them. He claims to be protecting them and himself from the corruption of Immigration New Zealand's staff.¹² But I consider his practice of copying communications to the lawyer to be more of a veiled threat to the staff to embroil them and the agency in legal process if his clients fail. I note also that one of the recipients was not even a lawyer, so I am not clear how that was protecting his clients.

[68] Mr W pointed out to Mr Horan by email on 21 September 2015 that he needed his clients' consent and he was asked to provide his clients' authority for such disclosure. Mr Horan responded in an email to Mr W (*verbatim*):¹³

Now, Mr [W] if I ever need you to advise me that you may consider that I may have breached my client's privacy in regards to my having included another professional Licensed Immigration Adviser or a lawyer or any other individual then I will let you know.

However if you feel that your inference of my having done anything untoward has substance then you can use your position as a medium level public servant to go ahead and make a complaint against me however I should warn you that if you make a vexious complaint against me then like a another medium level public servant did; then your actions would also be found to be wanting, frivolous and lacking foundation.

I would have to wonder if you have another agenda such as the other medium level public servant had and if that is the case then I would have to consider

¹¹ Communications 22 & 29 March, 7 May, 9 & 10 June, 13 & 28 August, 7 & 21 September 2015.

¹² Mr Horan's email of 7 September 2015 to Mr W, at 39 of the Authority's supporting documents.

¹³ Email to Mr W of unknown date – see transcript at 67 of the Authority's supporting documents. Mr W's email of 21 September 2015 is at 59 of the documents.

your collective collusion and make a complaint at ministerial level and most definitely in the public arena.

[69] A professional person would reflect on whether the conduct was lawful when a manager from a government agency had firmly but politely drawn the issue to his attention more than once. Instead, Mr Horan peremptorily dismisses Mr W's concerns, at the same time threatening to complain to a higher authority about Mr W and to make that public. Mr Horan seems to be unaware of the breach of confidentiality.

[70] I find his copying of confidential communications to his lawyer and another adviser to be a breach of the confidentiality of his clients and therefore a breach of cl 4(a) of the Code. There is no evidence the permitted exceptions within cl 4 are applicable.

OUTCOME

[71] I uphold all heads of complaint. Mr Horan is in breach of cls 1, 2(e) and 4(a) of the Code.

SUBMISSION ON SANCTIONS

[72] As the complaint has been upheld, the Tribunal may impose sanctions pursuant to s 51 of the Act.

[73] A timetable is set out below. Any request for repayment of fees or the payment of costs or expenses or for compensation must be accompanied by a schedule particularising the amounts and basis of the claim.

Timetable

[74] The timetable for submissions will be as follows:

- (1) The Registrar, the complainant and Mr Horan are to make submissions by **2 April 2019**.
- (2) The Registrar, the complainant and Mr Horan may reply to the submissions of any other party by **16 April 2019**.