

**IMMIGRATION ADVISERS COMPLAINTS AND DISCIPLINARY TRIBUNAL**

Decision No: [2020] NZIACDT 13

Reference No: IACDT 014/19

**IN THE MATTER** of a referral under s 48 of  
the Immigration Advisers  
Licensing Act 2007

**BY** **THE REGISTRAR OF  
IMMIGRATION ADVISERS**  
Registrar

**BETWEEN** **THE REGISTRAR OF  
IMMIGRATION ADVISERS**  
Complainant

**AND** **PETER GRAEME RYAN**  
Adviser

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**DECISION  
(Sanctions)  
Dated 27 February 2020**

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**REPRESENTATION:**

Registrar/Complainant: T Thompson, counsel  
Adviser: V Nisbet, counsel

## INTRODUCTION

[1] The complainant is the Registrar of Immigration Advisers (the Registrar) who initiated an investigation of Mr Ryan following media reports of an immigration scam perpetrated by him. It was alleged that many of his clients had obtained work and/or residence visas in New Zealand as a result of false employment offers from paper companies controlled by Mr Ryan.

[2] Mr Ryan provided no explanation or evidence to the Tribunal, which upheld the complaint against him in a decision issued on 7 November 2019 in *Registrar of Immigration Advisers v Ryan*.<sup>1</sup> It was found that he had been dishonest, a ground of complaint under the Immigration Advisers Licensing Act 2007 (the Act). He had also breached the Licensed Immigration Advisers Code of Conduct 2014 (the Code).

[3] It is now for the Tribunal to determine the appropriate sanctions.

## BACKGROUND

[4] 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.

[5] It is recorded that a separate complaint was made to the Immigration Advisers Authority (the Authority) by one of Mr Ryan's clients, Mr Karamjeet Singh. This client was the primary witness in the Registrar's broader investigation into Mr Ryan's practice. The allegations in the two complaints are identical. That complaint concerning Mr Singh was also referred to the Tribunal and resulted in a decision issued on 8 November 2019.<sup>2</sup>

[6] Mr Peter Graeme Ryan was until recently a licensed immigration adviser. As a result of the two complaints, he surrendered his licence on 27 September 2019. He is the sole director and shareholder of Capital Immigration Services NZ Ltd (Capital Immigration).

[7] Mr Ryan was also the sole director and majority shareholder of BC International Ltd. Mr Ryan's wife, Mrs Caroline Anne Ryan, is also a licensed immigration adviser working as an employee at Capital Immigration. She was the sole director of Bite Consulting NZ Ltd.

[8] The complaint concerned 17 predominantly Indian nationals, including Mr Singh, all of whom were offered employment by BC International and/or Bite Consulting NZ, both New Zealand companies. They purportedly operated in the IT industry. It was

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<sup>1</sup> *Registrar of Immigration Advisers v Ryan* [2019] NZIACDT 75.

<sup>2</sup> *Singh v Ryan* [2019] NZIACDT 76.

claimed they were connected with the BITE group in the United Kingdom. The clients were all offered employment while Mr Ryan represented himself as the director and/or Asia Pacific operations manager of Bite in New Zealand. He had a dual role, as he was also the immigration adviser acting for many of them.

[9] Mr Peter Kerr allegedly succeeded Mr Ryan as the Asia Pacific operations manager of the companies.

#### *Decision of the Tribunal*

[10] It was found that Mr Ryan was the principal party in a scheme to present to Immigration New Zealand visa applications based on fraudulent employment. In the dual roles of immigration adviser and/or employer, he was responsible for false employment documents being lodged with Immigration New Zealand. His companies, BC International/Bite Consulting NZ, were paper companies with no real IT work and no real jobs. They had no connection with the real United Kingdom BITE group in the IT industry.

[11] Mr Ryan and Mr Kerr were, for the purpose of the fake business, one and the same person. Communications purportedly authored by Mr Kerr were actually from Mr Ryan.

[12] Furthermore, Mr Ryan's communications with Immigration New Zealand concerning the job offers, whether in his capacity as an adviser or an employer, were as deceptive as the employment documents themselves. The Bite Consulting NZ promotional and organisation documentation produced to Immigration New Zealand was false.

[13] Mr Ryan had provided false information to Immigration New Zealand. His behaviour was dishonest. The provision of false information to Immigration New Zealand, contrary to the Immigration Act 2009, was a breach of cl 3(c) of the Code. He had also provided false information and evidence to the Authority, a ground for complaint under the Act and therefore also a breach of cl 3(c).

[14] The complaint was upheld in respect of seven clients, including Mr Singh.

## **SUBMISSIONS**

#### *Submissions from the Registrar*

[15] Ms Thompson is counsel for the Registrar, who is also the complainant. In her submissions of 26 November 2019, she contends that Mr Ryan's conduct is at the very

upper end of seriousness of a breach by a licensed immigration adviser with statutory obligations. His conduct was sustained, deliberate, and arguably for financial gain. It brings the licensed immigration adviser regime into disrepute.

[16] It is submitted by Ms Thompson that censure and the maximum penalty of \$10,000 are appropriate. In addition, Mr Ryan should be prevented from reapplying for a licence for a period not exceeding two years.

[17] Ms Thompson also seeks a nominal sum of \$5,000 towards the cost of the investigation. The investigation of Mr Ryan covered approximately seven years of evidence and involved analysing 87 visa applications. There were numerous witnesses to contact and collect evidence from, including clients of Mr Ryan, the Department of Corrections, the BITE company in the United Kingdom and Immigration New Zealand's officers. Due to the serious nature of the grounds identified, the Authority took the infrequent step of applying to the Tribunal for immediate suspension of Mr Ryan's licence pending the outcome of the complaint, which resulted in additional work being completed by the Authority and counsel compared to routine complaint referrals.

#### *Submissions from Mr Ryan*

[18] Counsel for Mr Ryan, Mr Nisbet, in his submissions of 29 November 2019, accepts that the sanctions proposed by the Registrar are appropriate, namely censure, an order for payment of a penalty, an order preventing Mr Ryan from reapplying for a licence within two years and an order for the payment of \$5,000 towards the cost of the investigation and inquiry.

## **JURISDICTION**

[19] The Tribunal's jurisdiction to impose sanctions is set out in the Act. Having heard a complaint, the Tribunal may take the following action:<sup>3</sup>

### **50 Determination of complaint by Tribunal**

After hearing a complaint, the Tribunal may—

- (a) determine to dismiss the complaint:
- (b) uphold the complaint but determine to take no further action:
- (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.

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<sup>3</sup> Immigration Advisers Licensing Act 2007.

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

### **51 Disciplinary sanctions**

- (1) The sanctions that the Tribunal may impose are—
- (a) caution or censure:
  - (b) a requirement to undertake specified training or otherwise remedy any deficiency within a specified period:
  - (c) suspension of licence for the unexpired period of the licence, or until the person meets specified conditions:
  - (d) cancellation of licence:
  - (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:
  - (f) an order for the payment of a penalty not exceeding \$ 10,000:
  - (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:
  - (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:
  - (i) an order directing the licensed immigration adviser or former licensed immigration adviser to pay reasonable compensation to the complainant or other person.

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

### **3 Purpose and scheme of Act**

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.

[22] The focus of professional disciplinary proceedings is not punishment, but the protection of the public:<sup>4</sup>

...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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<sup>4</sup> *Z v Dental Complaints Assessment Committee* [2008] NZSC 55, [2009] 1 NZLR 1 at [97], [128] & [151] (citations omitted).

...

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.

...

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.

[23] 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.<sup>5</sup>

[24] 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.<sup>6</sup>

[25] The most appropriate penalty is that which:<sup>7</sup>

- (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.

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<sup>5</sup> *Dentice v Valuers Registration Board* [1992] 1 NZLR 720 (HC) at 724–725 & 727; *Z v Dental Complaints Assessment Committee*, above n 4, at [151].

<sup>6</sup> *Patel v Complaints Assessment Committee* HC Auckland CIV-2007-404-1818, 13 August 2007 at [28].

<sup>7</sup> *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].

## DISCUSSION

[26] As recorded in the Tribunal's earlier decision on this complaint, Mr Ryan will be separately sanctioned for his misconduct concerning Mr Singh.<sup>8</sup> Such misconduct will not be taken into account here.

[27] Mr Ryan was found to be the principal perpetrator of a fraudulent scheme in which six foreign nationals (not including Mr Singh) have secured work and/or residence visas in New Zealand. He provided them with false employment offers from companies controlled by him. He did so for financial gain.

[28] I agree with the description of Mr Ryan's conduct by Ms Thompson. It is at the very upper end of seriousness of a breach by a licensed immigration adviser of his or her statutory and professional obligations. It was sustained and deliberate. There is no question that Mr Ryan has brought the licensed immigration adviser regime into disrepute. Moreover, his behaviour has harmed the integrity of New Zealand's immigration system.

[29] In sanctioning Mr Ryan, I consider the objectives to be the severest level of denunciation of his conduct, deterring other advisers from similar conduct and protecting the public from him for the maximum period permitted by the legislation. I take into account that he was motivated by avarice, that he admits no wrongdoing and expresses no remorse. There is no indication that his future professional behaviour would be any different, if he was allowed to practice. There is no suggestion from him that rehabilitation can be achieved. There is no explanation and no mitigation. The sanctions should be punitive.

[30] I will now consider the potentially appropriate sanctions.

### *Caution or censure*

[31] The only appropriate sanction is censure. His conduct is egregious and is denounced.

### *Prohibition*

[32] Mr Ryan himself accepts that he should be prevented from reapplying for a licence for the maximum period of two years.

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<sup>8</sup> *Registrar of Immigration Advisers v Ryan* [2019] NZIACDT 75 at [186].

[33] If it was possible to prohibit Mr Ryan from reapplying for a licence for life, I would do so. Mr Ryan should never regain an immigration adviser's licence. It is not just that his professional misconduct is of the most serious kind, but he has expressed no remorse nor stated that his conduct would be any different if allowed to practice again.

*Financial penalty*

[34] Mr Ryan's misconduct is the most serious that can be perpetrated by an adviser in performing the core duty of presenting immigration applications to Immigration New Zealand. Mr Ryan did not merely turn a blind eye to fraud perpetrated by a client, itself serious enough. In this case, the fraudulent documents were actually created by Mr Ryan himself, though plainly the clients were willing parties.

[35] The fraud for which Mr Ryan is being sanctioned involved six clients. It was not an isolated incident. As an adviser for these clients, he presented false documents and information to Immigration New Zealand on numerous occasions over some two years from about June 2014 to about May 2016, and to the Authority on 30 April 2019 and 29 July 2019.

[36] The penalty will be the maximum available of \$10,000. For the sake of clarity, this is in addition to the same penalty imposed in the other sanctions decision being issued today.

*Cost of investigation or inquiry*

[37] Ms Thompson claims a nominal amount of \$5,000 as a contribution towards the costs of the investigation. I agree that the investigation was extensive. There were additional costs of investigating Mr Ryan, over and above those that are ordinarily incidental in any investigation and complaint. Mr Nisbet, on behalf of Mr Ryan, accepts that such an order is appropriate. I will therefore order that Mr Ryan pay \$5,000.

**OUTCOME**

[38] Mr Ryan is:

- (1) censured;
- (2) prevented from reapplying for a licence for two years from today's date;
- (3) ordered to immediately pay to the Registrar the sum of \$10,000 by way of penalty; and



- (4) ordered to immediately pay to the Registrar the sum of \$5,000 in costs and expenses.

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D J Plunkett  
Chair