

**IMMIGRATION ADVISERS COMPLAINTS AND DISCIPLINARY TRIBUNAL**

Decision No: [2022] NZIACDT 15

Reference No: IACDT 010 & 013/21

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

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

**BETWEEN** **BC**  
Complainant

**AND** **JOHN DESMOND LAWLOR**  
Adviser

**SUBJECT TO SUPPRESSION ORDER**

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**DECISION  
(Sanctions)  
Dated 29 June 2022**

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**REPRESENTATION:**

Registrar: Self-represented  
Complainant: Self-represented  
Adviser: P Moses, counsel

## INTRODUCTION

[1] BC (the complainant) made two complaints to the Immigration Advisers Authority (the Authority) against John Desmond Lawlor concerning work done for her brother-in-law and father.

[2] The complaints made to the Authority were referred by the Registrar of Immigration Advisers (the Registrar) to the Tribunal. They were upheld in a decision issued on 18 May 2022 in *BC v Lawlor*.<sup>1</sup> Mr Lawlor was found to have committed breaches of the Licensed Immigration Advisers Code of Conduct 2014 (the Code) and to have been negligent, a ground for complaint under the Immigration Advisers Licensing Act 2007 (the Act).

[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 earlier decision of the Tribunal upholding the complaint and will only be briefly summarised here.

[5] Mr Lawlor is a licensed immigration adviser and director of Lawlor & Associates, of Thames.

[6] The complainant, a national of [Country], is resident in New Zealand. Mr Lawlor acted for the brother-in-law and father, both being nationals of [Country].

[7] On 8 April 2016, Mr Lawlor filed a work to residence visa application for the brother-in-law and his family. Following issues raised by Immigration New Zealand (Immigration NZ), Mr Lawlor proposed to Immigration NZ that the brother-in-law be granted a work visa. The visa was approved on 17 May 2016, with an expiry date of 17 May 2019.

[8] On 16 April 2019, the New Zealand Qualifications Authority (NZQA) advised that the brother-in-law did not meet the relevant New Zealand requirements as a chef.

[9] However, on 17 May 2019, Mr Lawlor filed another work to residence application for the brother-in-law and his family. Immigration NZ raised concerns about the application, notifying Mr Lawlor. He provided no substantive response, so the work to residence visa was declined on 27 August 2019. Mr Lawlor then filed a reconsideration application on 10 September 2019, but did not ensure that payment of Immigration NZ's

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<sup>1</sup> *BC v Lawlor* [2022] NZIACDT 10.

fee was made. It was declined on 26 September 2019, as the fee had not been paid. Mr Lawlor then made two requests for a visa under s 61 of the Immigration Act 2009, but these were unsuccessful.

[10] In respect of the complainant's father, Mr Lawlor filed a parent/grandparent visitor visa application on 10 January 2019. He changed it to a general visitor visa which was approved by Immigration NZ on 26 March 2019. Another visitor visa application filed by Mr Lawlor on 1 July 2019 was declined. Mr Lawlor then sought a reconsideration, but this was declined by Immigration NZ. A request under s 61 was also refused by Immigration NZ on 8 September 2020.

#### *Decision of the Tribunal*

[11] The Tribunal found that Mr Lawlor had committed breaches of the Code and that the breaches amounted to negligence. In respect of the complainant's father, it was found that Mr Lawlor had:

- (1) Failed to take care in filing an application for which the father was not eligible, in breach of cl 1.
- (2) Failed to file a s 61 request in a timely manner and failed to acknowledge his role in the delay, in breach of cl 1.
- (3) Failed to have a written agreement with the father before he provided advice, in breach of cl 18(a).
- (4) Failed to obtain the father's approval to change the visa type, in breach of cl 2(e).
- (5) Failed to file a s 61 request when requested to do so, in breach of cl 2(e).
- (6) Failed to provide the complainant or her father with ongoing timely updates regarding his applications, in breach of cl 26(b).

[12] In respect of the complainant's brother-in-law, the Tribunal found Mr Lawlor had:

- (7) Failed to exercise due care and diligence by not recognising that the brother-in-law's qualifications did not meet the immigration instructions, in breach of cl 1.
- (8) Failed to exercise due care and diligence by not responding to a letter from Immigration NZ, in breach of cl 1.

- (9) Failed to exercise due care and diligence by not informing the brother-in-law and his family of their unlawful status and explaining that, in breach of cl 1.
- (10) Failed to exercise due care and diligence by not ensuring payment was made for reconsideration of the visa resulting in return of the application, in breach of cl 1.
- (11) Failed to advise the brother-in-law in a timely manner of the outcome of a s 61 request, in breach of cl 1.
- (12) Failed to file s 61 requests in a timely manner, in breach of cl 1.
- (13) Failed to provide timely updates on visa applications, in breach of cl 26(b).
- (14) Failed to confirm in writing to the brother-in-law the details of material discussions, in breach of cl 26(c).

## **SUBMISSIONS**

### *Submissions from the Registrar*

[13] Mr Connor, the Registrar, provided submissions on 9 June 2022. He submits that Mr Lawlor's conduct shows a severe lack in maintaining professional standards on this occasion and notes that when Mr Lawlor became aware of his health issues, he had an obligation to recognise that he was not able to provide a professional service and should have informed the complainant accordingly.

[14] It is acknowledged by the Registrar that Mr Lawlor had accepted his breaches of the Code and that they amounted to negligence.

[15] Mr Lawlor had failed to undertake the fundamental duties expected of a licensed adviser, including:

- (1) Assessing eligibility for visa categories.
- (2) Obtaining the client's lawful instructions.
- (3) Responding to enquiries from Immigration NZ.
- (4) Responding to client enquiries and providing timely updates.

- (5) Lodging visa requests in a timely manner.
- (6) Providing written agreements to clients.

[16] Mr Connor submits that the consequences of Mr Lawlor's conduct were significant for the brother-in-law and father, as they both had visa applications declined and were unlawful for a significant period of time. It meant the brother-in-law was unable to work and support his family. Both he and the father faced uncertainty about their future and the risk of deportation. Furthermore, they both now have declined visas recorded on their immigration history which they will need to declare in the future.

[17] It is submitted that the circumstances relating to the complaints and the consequences for the complainant's brother-in-law and father justify an award of compensation. The appropriate sanctions are:

- (1) Censure.
- (2) An order for payment to the Registrar of a penalty in the vicinity of \$3,000.
- (3) Reasonable compensation to be paid to the complainant's brother-in-law and father for their emotional and mental distress.

*Submissions from the complainant*

[18] There are no submissions from the complainant.

*Submissions from Mr Lawlor*

[19] Counsel for Mr Lawlor is Mr Moses, who produced submissions on 10 June 2022. It is accepted that the breaches are serious and that their volume and the consequences for the complainant's family are significant. Mr Lawlor has never contended otherwise.

[20] Mr Lawlor has provided an explanation of the context in which his conduct arose. He does not claim it to be a defence. There is clear psychological evidence suggesting that he was affected by ill health at the time that he acted in breach of his obligations. He has now "turned a page" in terms of his health. Mr Lawlor is well aware of the need for continuity of service for his clients during periods of ill health and is taking steps to practice safely. His conduct in this regard is to his credit.

[21] It is important to note that Mr Lawlor will have to contend, in any event, with the Tribunal's decisions on liability and sanction being published. This is a very significant sanction in its own right and something to be taken into account when determining the magnitude of the fine or other sanction.

[22] It is accepted by Mr Lawlor that censure is inevitable.

[23] The Registrar does not seek an order that Mr Lawlor attend further training. The misconduct here did not arise from a lack of understanding of the rules of professional conduct. It was a failure to manage his incapacity appropriately. Mr Lawlor instructs that he is not opposed to further training but he does not consider it would be helpful to him. The time and the expenses incurred might be better spent attending counselling sessions or compensating the complainant's family for their emotional distress.

[24] Mr Moses notes that the maximum penalty is \$10,000 and the range suggested by the Registrar at about \$3,000 is not generally disproportionate to the misconduct in question. However, the Tribunal is asked to consider a penalty in the region of \$2,000, given that the conduct arose from Mr Lawlor's ill health, that he has taken adequate steps to remedy his erstwhile problem, that he has responded in a professional and responsible manner to the complaint and that he is only slowly recovering from both his former ill health and the effects of the COVID-19 pandemic on the immigration industry in general. He has attested to the pressures, including financial pressures, arising from the collapse of his practice as a result of the COVID-19 lockdowns, which significantly impacted his physical and mental health.

[25] There is a statement from Mr Lawlor (10 June 2022). He accepts the decision of the Tribunal. It is clear to him that he failed to act as a professional. He has previously apologised to the complainant and her family and he sincerely regrets failing to advance their interests.

[26] In his statement, Mr Lawlor sets out his medical and psychological issues. He refers to a report from Ms Batenburg (29 March 2022) and advises that he has continued monthly counselling sessions with her since then. He has regained his equilibrium and is managing various stressors well.

[27] Mr Lawlor reports that his immigration practice continues to recover. He is becoming familiar with a practice management software programme for immigration practitioners. It provides a helpful framework to assist in managing files, including reminders and prompts.

[28] A report from Marijke Batenburg, psychologist, dated 29 March 2022, has been produced to the Tribunal. She records that Mr Lawlor requested psychological support in June 2021. He had suffered infections from late 2019 and then experienced a dramatic loss of work due to the COVID-19 lockdown in March 2020. These factors had a significant impact on Mr Lawlor's mental health.

[29] According to Ms Batenburg, Mr Lawlor has attended to his physical and psychological health. Both had improved significantly in the past 12 months. At the commencement of counselling, his symptoms of a psychological condition were in the severe range, but they were now in the normal range.

[30] There is also a brief medical report (9 June 2022) from Mr Lawlor's general practitioner confirming an illness and stress.

## **JURISDICTION**

[31] 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>2</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.

[32] 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:

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<sup>2</sup> Immigration Advisers Licensing Act 2007.

- (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.

[33] 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.

[34] The focus of professional disciplinary proceedings is not punishment, but the protection of the public:<sup>3</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.

...

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.

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<sup>3</sup> *Z v Dental Complaints Assessment Committee* [2008] NZSC 55, [2009] 1 NZLR 1 at [97], [128] & [151].



[35] 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 collective reputation and public confidence in the profession itself.<sup>4</sup>

[36] 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>5</sup>

[37] The most appropriate penalty is that which:<sup>6</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.

## DISCUSSION

[38] The misconduct found by the Tribunal, as Mr Lawlor accepts, is serious. There are a large number of breaches by Mr Lawlor of his professional obligations for two clients from the same family over a period of about 18 months. The Registrar points out that he failed to undertake a number of fundamental duties of advisers.

[39] There were significant consequences for the brother-in-law (and his family) and the father from Mr Lawlor's professional failures. Both became unlawful for lengthy

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<sup>4</sup> *Dentice v Valuers Registration Board* [1992] 1 NZLR 720 (HC) at 724–725 & 727; *Bolton v Law Society* [1994] 2 All ER 486 (EWCA) at 492; *Z v Dental Complaints Assessment Committee*, above n 3, at [151].

<sup>5</sup> *Patel v Complaints Assessment Committee* HC Auckland CIV-2007-404-1818, 13 August 2007 at [28].

<sup>6</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].

periods of time. The current immigration circumstances of the family are unknown to the Tribunal.

[40] Mr Lawlor has always accepted his wrongdoing. He did so as early as October 2020, just before the first complaint was made to the Authority, when he acknowledged an error in a letter to Immigration NZ written at the request of the family's new adviser.

[41] It is apparent that Mr Lawlor suffered from infections and then mental ill-health at the relevant time. There were stressors relating to his personal circumstances and the COVID-19 pandemic, which he did not cope well with. Appropriately, he does not advance these as justifications for his misconduct, but they explain what appears to the Tribunal to be out-of-character conduct. The Tribunal accepts that Mr Lawlor is a usually capable, reliable and professional practitioner. It is pleasing to note that his physical and mental wellbeing have become normal.

[42] Mr Moses observes that Mr Lawlor will have to contend with the adverse publicity due to the publication of the Tribunal's decisions. This is a usual consequence of professional misconduct and there is a limit as to the extent of its relevance to assessing sanctions.

[43] It is noted that this is Mr Lawlor's first appearance before the Tribunal.

[44] It will now consider the sanctions that might be appropriate.

#### *Caution or censure*

[45] Mr Lawlor is censured. A caution would not reflect the Tribunal's disapproval of his conduct.

#### *Training*

[46] The Registrar does not seek any retraining. The Tribunal agrees that the misconduct upheld here is better explained by Mr Lawlor's health, physical and mental, rather than any lack of competence or knowledge of immigration criteria or his professional obligations. No training will be directed.

#### *Financial penalty*

[47] The Registrar submits that a penalty in the vicinity of \$3,000 would be appropriate.

[48] Mr Moses acknowledges that such a penalty would not be disproportionate to the misconduct in question. However, he urges the Tribunal to consider a penalty in the region of \$2,000, given the factors identified by counsel.

[49] The Tribunal agrees that a penalty of \$2,000 would be appropriate in the circumstances. In particular, while the professional breaches are cumulatively serious and had significant consequences for the family, Mr Lawlor has readily acknowledged his failures, apologised, and set about ensuring they do not happen again (in terms of both his health and his practice management). He will be given credit for proactively attending to the causes of his failures. They go a considerable way to achieving the Tribunal's objective of protecting the public.

[50] The financial penalty will be \$2,000.

#### *Refund or compensation*

[51] There are no submissions from the complainant seeking a refund or compensation. She was invited to provide the particulars of any such claim in the Tribunal's earlier decision. So far as the Tribunal is aware, Mr Lawlor's services were *pro bono*. In any event, there is no evidence before the Tribunal of the cost (if any) of his services so no refund will be directed.

[52] As for compensation, the Registrar notes that the Tribunal has power to compensate clients for emotional distress. However, no such claim has been made and hence there is no evidence before the Tribunal warranting such compensation.

## **OUTCOME**

[53] Mr Lawlor is:

- (1) Censured.
- (2) Ordered to immediately pay to the Registrar \$2,000.

## **ORDER FOR SUPPRESSION**

[54] The Tribunal has the power to order that any part of the evidence or the name of any witness not be published.<sup>7</sup>

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<sup>7</sup> Immigration Advisers Licensing Act 2007, s 50A.

[55] There is no public interest in knowing the name of Mr Lawlor's client, the complainant.

[56] The Tribunal orders that no information identifying the complainant is to be published other than to Immigration NZ.

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D J Plunkett  
Chair