

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

Decision No: [2013] NZIACDT 55

Reference No: IACDT 014/11

**IN THE MATTER**

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

**BY**

**Immigration Advisers Authority**

Authority

**BETWEEN**

**Zi Chen**

Complainant

**AND**

**Bae Lian Loh**

Adviser

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**DECISION**  
IMPOSITION OF DISCIPLINARY SANCTIONS

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**REPRESENTATION:**

**Complainant:** Mr T Delamere, Licensed Immigration Adviser, Auckland.

**Adviser:** Mr S Laurent, Laurent Law, Lawyer, Auckland.

Date Issued: 30 August 2013

## DECISION

### Introduction

- [1] The Tribunal upheld this complaint in a decision dated 19 March 2013.
- [2] The same circumstances have resulted in a complaint against both Mr Loh and another licensed immigration adviser, Ms Gu-Chang, being upheld. Both Mr Loh and Ms Gu-Chang were working in the same organisation and were dealing with the same instructions from Mr Chen.
- [3] Ms Gu-Chang and Mr Loh addressed the issue of sanctions in a joint submission. Their respective roles are discussed in the separate decisions upholding the complaint against each of them. There are important differences between them in relation to the Tribunal's jurisdiction. Ms Gu-Chang was not a licensed immigration adviser for all of the material time.
- [4] Accordingly, separate decisions will be issued in respect of the sanctions imposed on Mr Loh and Ms Gu-Chang.
- [5] The central element of the complaint was that Mr Loh and Ms Gu-Chang charged Mr Chen \$29,600 for the renewal of a passport and an application for ministerial discretion. The allegation was that this sum was grossly in excess of what the fee ought to have been, and the fee was taken and retained dishonestly.
- [6] In addition, the complaint alleged that the professional relationship was not established in accordance with the Licensed Immigration Advisers Code of Conduct, the excessive fees were not refunded, there was a failure to report properly, and a failure to return the file when required.
- [7] In the decision dated 19 March 2013, the Tribunal found that:
- [7.1] The professional relationship, including terms and notice regarding fees, was not established in compliance with the Code of Conduct; and
- [7.2] Mr Chen was grossly overcharged and that it was done so dishonestly and the fees were not returned.

### The parties' positions on sanctions

#### *Mr Chen's position*

- [8] Mr Chen sought compensation and the return of fees:
- [8.1] \$29,600 as a refund of fees;
- [8.2] Compensation for loss of time, and the cost of living in Auckland from December 2009 to March 2011, discounted to 50% being \$15,000 in total; and
- [8.3] Compensation of \$5,000 for dishonesty, giving false hope, and emotional damage.

#### *Mr Loh's position*

- [9] Through his counsel, Mr Loh presented an extensive submission on sanctions.
- [10] First his counsel pointed to a number of years of experience as an immigration adviser and earlier occupational experience.
- [11] Testimonials were provided which referred favourably to Mr Loh's standards and character. They included clients who spoke of professional services delivered with excellent results and professionalism.

[12] This, Mr Laurent said, established that it was:

“... perhaps worth re-evaluating the extent of the Advisers’ perceived offending and in particular the finding of dishonesty made against them.”

[13] For Mr Loh the submission was made that the complaint was an isolated incident and not part of a body of complaints against Mr Loh. The submission emphasised the importance of suspension or cancellation of a licence and that those sanctions should be reserved for egregious cases. It was submitted that Mr Loh’s case was not one which warranted this type of sanction as Mr Loh provided valuable assistance to many migrants in difficulty and did so “with a heart”.

[14] In addition, it was submitted that Mr Loh’s clients needed his ongoing assistance and that the cancellation or suspension of his licence may prejudice their cases.

[15] In relation to the circumstances of the complaint, it was submitted that Mr Loh believed he could secure a successful outcome for Mr Chen and this was not a case of charging a high fee to extort money when there was little or no likelihood of success.

[16] In support of this submission, a number of previous cases were provided as examples of where Mr Loh had been able to assist in cases that appeared hopeless.

[17] Mr Loh’s position is that, at the time, he did not perceive that what Mr Chen was charged was so far beyond the norm as to be dishonest. In support of that proposition he produced a declaration from Ms Yang; it relates to immigration services she received from the adviser now representing Mr Chen. There was also similar material relating to services provided by an unrelated immigration adviser.

[18] Mr Loh says he accepts the fees were too high, but submits that he was not “malicious” in the setting of the fees.

[19] Mr Loh said:

[19.1] He should not be subject to orders affecting his licence;

[19.2] He should not be subject to a financial penalty; and

[19.3] He should be allowed to retain \$8,280 of the total fee of \$29,600.

[20] The rationale for retaining \$6,210 of the \$8,280 fee was that the Tribunal had estimated that approximately 18 hours work could be accounted for by Mr Loh in relation to the section 35A application. This, Mr Loh suggested, could be properly charged at \$300/hr rather than the approximately \$1,200 per hour he had in fact charged.

[21] There was similar reasoning in relation to the work for getting a passport renewed. This, it was suggested, involved some 6 hours work and should have been charged at \$300/hr + GST; so a fee of \$2,070 (including GST), rather than the \$8,800 in fact charged, was appropriate.

[22] Mr Loh had originally charged Mr Chen \$8,800 for the passport renewal. He now submits that an allowance of 6 hours of work is reasonable for the passport renewal matters. It follows, by implication from his submissions that Mr Loh now accepts that he was charging Mr Chen in excess of \$1,450/hr (including GST) for that work.

[23] Mr Loh’s counsel submitted that some of the fee was justifiable and should be retained by Mr Loh.

[24] In relation to compensation, Mr Loh’s position is that Mr Chen’s claim for compensation for living expenses while remaining in Auckland is ill-founded. In short, Mr Chen had lived in Auckland prior to his interactions with the advisers and his objective was to remain living there.

*Reply to Mr Loh's submission*

- [25] The licensed immigration adviser who Ms Yang claimed had charged high fees replied. It is not necessary to review that reply for reasons that appear below.

**Discussion**

*Preliminary*

- [26] As the complaint has been upheld, section 51 of the Immigration Advisers Licensing Act 2007 ("the Act") allows the Tribunal to impose sanctions.
- [27] The critical decision is whether Mr Loh's licence should be suspended or cancelled, and if so, on what terms.
- [28] The Tribunal found Mr Loh acted dishonestly. There would be some strength in the arguments advanced by his counsel if that was not the case.
- [29] The Tribunal put Mr Loh on notice that he was at risk of a finding of being a party to dishonesty. This is not a case of simple overcharging.
- [30] I do not accept that there is any merit in the contention that the Tribunal should reconsider the finding of dishonesty because Mr Loh has presented testimonials and given evidence of an otherwise unblemished career. This Tribunal has dealt with a specific complaint and found there was dishonesty arising in relation to that complaint. It is seldom of great probative value to produce evidence that a person accused of dishonesty has, on other occasions, not been dishonest. Certainly, evidence of good character has some bearing; however, as in this case, it will seldom overcome evidence that establishes a person was dishonest on the occasion in question.
- [31] The first consideration is the gravity of the complaint that has been upheld.
- [32] The position taken by Mr Loh is not realistic. The Tribunal has found he was dishonest. The reasons for that are set out in the decision upholding the complaint. The submissions he has made in relation to sanctions do not present an analysis that improves his position.
- [33] Put simply, the Tribunal determined that Mr Chen was a vulnerable migrant and that on the expectation that he might be able to remain in New Zealand he was asked to pay \$29,600; the Tribunal estimated this amounted to be approximately \$1,200 per hour. The charge was so excessive it amounted to unconscionable exploitation.
- [34] Mr Loh, through his counsel, has suggested that \$300/hr plus GST would have been reasonable. However, that figure has not been justified by Mr Loh and it may well be grossly excessive. Mr Loh's work was not of high quality; the previous adviser had made similar points earlier and with a notably higher standard of presentation. However, it is not necessary to resolve the appropriate hourly rate as it was, on any view, only a fraction of what Mr Loh took from his client.
- [35] Mr Loh's own analysis of the fee for renewal of a passport involves his estimate of the time required, namely 6 hours. He charged a fee of \$8,800 and that means he charged a rate in excess of \$1,450/hr including GST.
- [36] It is inescapable that Mr Loh was dishonest and that the dishonesty involved the financial exploitation of a client for his own benefit; that is fundamentally inconsistent with minimum professional standards.
- [37] It was therefore inevitable that the removal of Mr Loh from the profession is an outcome that must be considered by the Tribunal. The factors Mr Loh has put forward to resist the loss or suspension of his licence must be considered.
- [38] Mr Loh points to his good standing and provides examples of clients who are satisfied with his performance. They are important considerations; however, when a person commits a

professional disciplinary offence involving dishonesty, it is of limited value to say they have dealt honestly with other clients. I accept there is only one matter before the Tribunal, but its gravity cannot be put aside on that basis.

- [39] There is also a claim that Mr Loh has provided effective service to clients in difficult positions and achieved good results. However, there are many members of the profession who both achieve good results in difficult circumstances and have consistently dealt with their clients fairly and honestly.
- [40] I accept too, that Mr Loh did not think the case was hopeless; however, the finding was not that he charged fees for a case he knew to be hopeless. The complaint that has been upheld is that he dishonestly grossly overcharged fees for a case that had little prospect of success.
- [41] I do not accept the claim that Mr Loh did not think the fee was so far beyond the norm as to be dishonest. The reasons for finding dishonesty are discussed in the decision upholding the complaint. Mr Loh's admission that he could only justify 6 hours work for the passport renewal work reinforces the Tribunal's conclusion.
- [42] I do not consider that the submission suggesting other practitioners have charged similar amounts is relevant for two reasons. First, there is no basis for determining what work was done in other unrelated cases by other licensed immigration advisers. However, the information presented in reply to Ms Yang's claim indicates that that matter was quite unlike the work for Mr Chen. More importantly, if other licensed immigration advisers have dishonestly exploited their clients, that is a matter to report to the Authority, not a justification or excuse for Mr Loh doing so.
- [43] The Tribunal's finding of dishonesty is founded on an examination of what Mr Loh did for Mr Chen, not a theoretical review.

*Principles for suspension or cancellation of licence*

- [44] The authorities indicate it is a "last resort" to deprive a person of the ability to work as a member of their profession. However, regard must be had to the public interest when considering whether a person should be excluded from a profession due to a professional disciplinary offence: *Complaints Committee of Waikato Bay of Plenty District Law Society v Osmond* [2003] NZAR 162 (HC) at [13] – [14].
- [45] Rehabilitation of a practitioner is an important factor when appropriate (*B v B* HC Auckland, HC4/92, 6 April 1993). In *Patel v Complaints Assessment Committee* HC Auckland CIV-2007-404-1818, 13 August 2007 at [30]-[31], the Court stressed, when imposing sanctions in the disciplinary process applicable to that case, that it was necessary to consider the "alternatives available short of removal and explain why lesser options have not been adopted in the circumstances of the case".
- [46] The purpose of professional disciplinary proceedings was affirmed by the Supreme Court in *Z v Dental Complaints Assessment Committee* [2008] NZSC 55 at [97]:
- [T]he 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.
- [47] The statutory purpose is achieved by considering at least four factors which materially bear upon maintaining appropriate standards of conduct:
- [47.1] Protecting the public: section 3 of the Act states "[t]he purpose of this Act is to promote and protect the interests of consumers receiving immigration advice ..."
- [47.2] Demanding minimum standards of conduct: *Dentice v Valuers Registration Board* [1992] 1 NZLR 720 (HC) at 725-726 and *Taylor v General Medical Council* [1990] 2 All ER 263 (PC), discuss this aspect.

[47.3] Punishment: the authorities, including *Z v Dental Complaints Assessment Committee* (at [1], [65], [70] & [149]-[153]), emphasise that punishment is not the purpose of disciplinary sanctions. Regardless, there is an element of punishment that serves as a deterrent to discourage unacceptable conduct (*Patel v Complaints Assessment Committee* HC Auckland CIV-2007-404-1818, 13 August 2007 at [28]).

[47.4] Rehabilitation: it is an important object to have the practitioner continue as a member of the profession practicing well, when practicable (*B v B* HC Auckland HC4/92, 6 April 1993).

#### *Background to regulating this profession*

[48] In *ZW v Immigration Advisers Authority* [2012] NZHC 1069, Priestley J observed at [41]:

In passing the Act, Parliament has clearly intended to provide a system of competency, standards, and a Conduct Code to clean up an industry which hitherto had been subject to much justified criticism. The Registrar and Tribunal have a Parliamentary mandate to enforce standards.

[49] The Act has established a regime in which, with limited exceptions, licensed advisers have an exclusive right to provide immigration advice. That exclusive right is enforced by criminal sanctions.

[50] Until the profession was regulated, the great majority of advisers were professional people acting responsibly and providing skilled services. A small minority of unskilled and unscrupulous people provided immigration services. Immigrants are a vulnerable group and, in some instances, suffered serious harm from such people. Immigration advisers have an important professional role in assisting clients. Their honesty, professionalism, and competence are fundamental requirements.

[51] The Act records its purpose in section 3 as:

[T]o promote and protect the interests of the 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.

[52] When the Act came into force, many people had experience giving immigration advice. There were no professional qualifications specifically targeted at New Zealand immigration advisers; though, of course, there were various relevant qualifications that some advisers held.

[53] To establish the profession, a relatively low threshold was applied. It required a person to demonstrate competent handling of immigration applications in the past, knowledge and understanding of the new professional environment, and language and communication skills. A significant number of people who had relied on providing immigration advice for their livelihood could not meet those standards. They lost their livelihoods.

[54] The low threshold for entry into the profession, in that entry has not required a long period of academic training with mentored experience, has inevitably resulted in some people entering the profession with no real commitment to maintaining professional standards. It is important that this Tribunal exercises the power to remove people from the profession who are in this category.

[55] In a sense, the transitional entry has put a correlative obligation on entrants to the profession to ensure they attain professional standards, having been entrusted with the privilege of entry to the profession.

#### *Alternatives short of cancellation of licence*

[56] Section 51 provides for various sanctions. The key options short of cancellation or suspension of a licence are punishments intended to effect deterrence, namely censure, and financial penalties not exceeding \$10,000.

- [57] In relation to licences there are three options:
- [57.1] cancellation and a direction that the person may not apply for a licence for up to two years (s 51(d) & (e)); or
- [57.2] suspension (s 51(c)); or
- [57.3] cancellation of a full licence and the holder of the licence permitted to apply for a different class of licence. In this way a person may be prevented practising on their own account and put in a situation where they are practising under supervision while they hold a provisional licence (s 51(1)(b) & (d)).
- [58] Other possibilities include training and specified conditions (s 51(b)). There are also powers relating to imposing costs and compensation (s 51(g)-(i)).
- [59] In this decision I am satisfied the range of possibilities to weigh are:
- [59.1] cancellation of Mr Loh's licence and a prohibition on reapplying for a licence for a period of up to two years;
- [59.2] cancellation of Mr Loh's full licence and allowing an application for a provisional licence (with supervision conditions);
- [59.3] training requirements;
- [59.4] a financial penalty on its own or in combination with the preceding directions.
- [60] Suspension has a potential role in ensuring that a proportional consequence is imposed: *A v Professional Conduct Committee* HC Auckland CIV-2008-404-2927, 5 September 2008 at [81], and would potentially bring home to Mr Loh the nature of the professional obligations he carries.
- [61] However, restriction to a provisional licence would likely be more effective in rehabilitation than suspension as mentoring in professional standards would likely be of more benefit.
- [62] In making this decision the Tribunal is required to weigh the public interest against Mr Loh's interests (*A v Professional Conduct Committee* at [82]).
- [63] When dealing with integrity issues there is never any certainty that, short of exclusion from a profession, a person will not reoffend. This Tribunal must carefully weigh the circumstances. It is appropriate to place an element of considered trust in a practitioner who has shown the capacity and willingness to rehabilitate.
- [64] A significant factor in this case is that it involves dishonesty.
- [65] Dishonesty points to the need to remove a practitioner from a profession. In *Shahadat v Westland District Law Society* [2009] NZAR 661 the High Court commented:
- [29] A finding of dishonesty is not necessarily required for a practitioner to be struck off. Of course, dishonesty inevitably, although not always, may lead to striking off. But as said in *Bolton v Law Society* [ [1994] 1 WLR 512 (CA) ] at pp 491–492:
- If a solicitor is not shown to have acted dishonestly, but is shown to have fallen below the required standards of integrity, probity and trustworthiness, his lapse is less serious but it remains very serious indeed in a member of a profession whose reputation depends upon trust. A striking-off order will not necessarily follow in such a case, but it may well. The decision whether to strike off or to suspend will often involve a fine and difficult exercise of judgment, to be made by the tribunal as an informed and expert body on all the facts of the case.
- [30] As a Full Court observed in *McDonald v Canterbury District Law Society* (High Court, Wellington, M 215/87, 10 August 1989, Eichelbaum CJ, Heron and Ellis JJ) at p 12:

Even in the absence of dishonesty, striking-off will be appropriate where there has been a serious breach of a solicitor's fundamental duties to his client.

[31] It is important to bear in mind that "dishonesty" can have different connotations. (It may describe criminal acts. But it may comprise acting deceitfully towards a client or deceiving a client through acts or omissions.)

[66] As observed by the Court in *Shahadat*, dishonest conduct "inevitably, although not always, may lead to striking off". It is important to look carefully at whether rehabilitation is realistic.

*Weighing the alternatives*

[67] First Mr Loh's circumstances are no doubt such that loss of his licence and the consequent loss of the ability to continue to practise as a licensed immigration adviser are considerable.

[68] However, the consequences of breaching professional standards are inevitably going to impact harshly. Mr Loh was required to understand the consequences of breaching professional standards when he chose to conduct himself in the manner he did. He had to demonstrate an understanding of professional obligations before he was licensed.

[69] Mr Loh's conduct involves dishonestly putting his financial interests before his client's interests and abusing the trust he was accorded as a licensed professional; he cannot expect to be immune from the consequences.

[70] The primary issues are whether:

[70.1] The dishonest conduct was so serious there is no alternative to removal from the profession; and if not

[70.2] Whether it can be reasonably considered that Mr Loh will in the future discharge his professional duties in a manner that does "promote and protect the interests of consumers receiving immigration advice" as section 3 of the Act contemplates.

[71] I have had to conclude both that the findings require removal from the profession and that Mr Loh has exhibited none of the qualities which could lead to an expectation that he will commit to meeting professional standards in the future.

*Mr Loh's attitude to the grounds of the complaint*

[72] Mr Loh has consistently attempted to minimise his conduct and now suggests that the Tribunal should revisit the findings of dishonesty as he has produced favourable testimonials and claims to have an otherwise exemplary professional history.

[73] Had Mr Loh admitted the complaint promptly, expressed contrition and shown insight, a more favourable view could be formed. He has done none of those things.

[74] Despite the fact Mr Loh accepts he should return over \$21,000 of a fee of \$29,600, he says he is entitled to the balance. He appears to have no insight into the fact he procured the engagement and fees dishonestly.

[75] I am satisfied:

[75.1] Mr Loh was guilty of serious dishonesty on clear evidence. It involved the dishonest treatment of a client, by abusing the client's trust. It was a vulnerable client. Mr Loh has been, and is, uncomprehending of the gravity of that.

[75.2] He was aware of his professional obligations when he offended; the only apparent alternative explanation would be that, both then and now, he had no understanding of the obligations of professionalism. Each possibility is equally concerning as to future conduct.



[75.3] In the course of the complaint being addressed by the Tribunal, he has shown little insight. He rejects the findings against him. He contends he should suffer no financial penalty, should continue to practise and only have some of the fees refunded.

*Mr Loh's licence will be cancelled and a financial penalty imposed*

- [76] Mr Loh's offending was serious; it is an example of the conduct the Act was intended to eradicate.
- [77] It will be an exceptional situation where serious dishonesty of this kind will leave the Tribunal satisfied that a licensed immigration adviser should continue to hold a licence. As the authorities indicate, dishonesty will usually result in removal from a profession.
- [78] There is little to suggest that the generally inevitable consequences of dishonesty should not follow here. It will require more than a demonstration that the professional concerned has other clients who are satisfied or that there is only one instance of dishonesty.
- [79] The dishonesty in relation to fees, given the magnitude (at least \$21,000) and proportion (less than a third of the fee could potentially be justified), is sufficient to require that Mr Loh have his licence cancelled. Removal from the profession is the only appropriate consequence.
- [80] Mr Loh's response to the complaint is not a matter that is distinctive in a favourable way. His reluctance to accept responsibility does nothing to suggest the Tribunal should consider that Mr Loh's dishonesty should not be followed by the usual consequences.
- [81] I am satisfied Mr Loh should be removed from the profession. His licence will be cancelled and he will not be permitted to apply for any licence for a period of two years. After that point Mr Loh will have to qualify for the profession and satisfy the Registrar that he otherwise meets the statutory requirements.
- [82] I have considered whether allowing Mr Loh to hold a provisional licence, after establishing a regime of appropriate supervision, is an option. I am satisfied that is not appropriate.
- [83] The seriousness of the dishonesty is such that he is not fit to hold a licence. The Act was intended to eradicate behaviour of the kind in which Mr Loh engaged and the legislation requires firm action to achieve that objective.
- [84] I am satisfied that, if he is to practice, Mr Loh should qualify for professional practice through the mechanism of academic study and mentoring, and satisfy the Registrar that he otherwise meets the standards of the profession. He has abused the privileged entry he had to the profession and used the standing accorded to licensed professionals to engage with a client dishonestly. Any lesser response than removal from the profession would fail to enforce the Act adequately.
- [85] The financial penalty must have regard to the amount involved in the dishonesty. On the figures Mr Loh is using, he has taken fees of \$29,600 and now says the work was worth only \$8,280 of that. While that may well be very generous to Mr Loh, the extent of the dishonesty was \$21,320 on those figures. I consider that the starting point is a penalty of \$8,000, which is necessarily related to the statutory maximum of \$10,000. The figure will be discounted having regard to Mr Loh's previous good standing, the loss of his livelihood and the fact that Ms Gu-Chang was involved in the offending. I am satisfied that a financial penalty of \$6,000 against Mr Loh is appropriate.
- [86] Mr Loh appears to be the only person holding a licence in at least one practice where he operates. He may have a substantial number of active files and it will take time to arrange for substituted licensed immigration advisers to take over such files.
- [87] It is a matter of some concern that Mr Loh should undertake that process without supervision; however, there is no jurisdiction to impose conditions.

- [88] The Tribunal formally warns Mr Loh pursuant to section 51(1)(a) of the Act, that he is required to meet the standards of the profession while he continues to hold a licence. Any failure to do so in the face of that warning will be addressed sternly.

*Compensation and refund of fees*

- [89] There is no nexus between the grounds on which the complaint has been upheld and Mr Chen continuing to live in Auckland. That was what he wanted to do; he had his home there with his wife. The objective of seeking a visa was to remain in Auckland; he cannot link the cost of remaining in Auckland with the grounds of complaint.
- [90] The Tribunal has from time to time awarded compensation on similar principles to general damages, but on a basis that it does not become a penalty, which is routinely added to other penalties. Accordingly, the Tribunal has looked for more than the time, trouble and inconvenience that inevitably follows from a professional person failing to meet their obligations to a client.
- [91] In this case I am satisfied that Mr Loh's conduct does justify an award of general damages but it will be modest. Mr Loh has persistently resisted taking responsibility for refunding fees and effectively put Mr Chen to the greatest difficulty possible in addressing his misconduct.
- [92] I am satisfied an award of \$1,000 will reflect the time, trouble and stress Mr Chen has faced. I note there will be a similar award in relation to Ms Gu-Chang that is cumulative with this award.
- [93] Mr Loh contends that he should only be required to refund the fees in part and should be entitled to claim fees at a rate of \$300/hour plus GST for the work he and Ms Gu-Chang performed.
- [94] I am not satisfied the work was performed at a level that would justify that rate or that the work was well directed. Largely, what was done was repetitive of submissions already made, and more competently so, by a previous adviser.
- [95] However, the real difficulty with Mr Loh's contention is that he was a party to the professional engagement being entered into dishonestly. When an engagement is tainted by dishonesty then that unravels the foundation of the agreement.
- [96] If I were to apply the principles in the Illegal Contracts Act 1970 and consider whether there was discretion to grant some form of relief, in the circumstances of this case, I do not consider any fee should be retained.
- [97] In terms of setting professional standards, it is most unattractive to allow a professional to retain part of a fee for a professional engagement attended by dishonesty that directly relates to the fee.
- [98] In addition, this particular client was a vulnerable person who was exploited. If an informed bystander had advised Mr Chen of his immigration prospects and the proper cost of the work required, there can be little doubt that he would have rejected any involvement with Mr Loh and Ms Gu-Chang. They should not retain any benefit from their dishonesty.
- [99] That Mr Loh's professional time was wasted was his own fault and he should bear the cost of it.

**Determination and orders**

- [100] Mr Loh is:

[100.1] Censured.

[100.2] Ordered to pay a penalty of \$6,000.

[100.3] Directed to refund fees of \$29,600 (he has joint and several liability with Ms Gu-Chang).

[100.4] To pay Mr Chen the sum of \$1,000 in compensation.

[101] Any licence presently held under the Act by Mr Loh is cancelled with effect at 5:00 pm on the 30<sup>th</sup> clear calendar day after this decision is delivered to him.

[102] Mr Loh is prevented from reapplying for any category of licence as a licensed immigration adviser for a period of two years from the date his licence is cancelled.

[103] Mr Loh is cautioned that during the period he continues to hold a licence, he is bound by the Code of Conduct. He will be accountable for ensuring he conducts himself in a professional manner, including providing refunds of fees to the extent they are payable, as required by the Code.

**DATED** at WELLINGTON this 30<sup>th</sup> day of August 2013

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**G D Pearson**  
Chairperson