

IMMIGRATION ADVISERS COMPLAINTS AND DISCIPLINARY TRIBUNAL

Decision No: [2019] NZIACDT 55

Reference No: IACDT 028 & 032/17

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 **WOEI JYE FRANKIE WONG**
Adviser

**DECISION
(Sanctions)
Dated 5 August 2019**

REPRESENTATION:

Registrar: T Thompson, counsel
Complainant: G La Hood, counsel
Adviser: In person

INTRODUCTION

[1] The Tribunal upheld this complaint against Mr Wong, the adviser, in a decision issued on 27 June 2019 in *Immigration New Zealand (Calder) v Wong*.¹ It found that Mr Wong had entered information on a client's immigration application form after it had been signed by the client. This was contrary to the Immigration Act 2009 and therefore a breach of the Licensed Immigration Advisers Code of Conduct 2014 (the Code). Additionally, Mr Wong had failed to provide a full copy of his client files for inspection by the Immigration Advisers Authority (the Authority) when requested to do so, in breach of the Code.

BACKGROUND

[2] 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.

[3] Mr Woei Jye Frankie Wong was at the relevant time a licensed immigration adviser. He was the sole director of HF Consultants Ltd. His licence was suspended on 5 October 2017 and while it expired on 22 June 2018, the status of his licence formally remains as suspended.

Complaint

[4] Immigration New Zealand filed a complaint with the Authority against Mr Wong on 13 December 2016. The Registrar of Immigration Advisers (the Registrar), the head of the Authority, referred the complaint to the Tribunal on 16 October 2017. However, prior to that, on 5 October 2017, the Tribunal had suspended Mr Wong's licence at the request of the Registrar, given the seriousness of the complaint.

[5] In parallel with the disciplinary complaint investigated by the Authority, there was a criminal case against Mr Wong. He was acquitted of the criminal charges in July 2018. A hearing of the complaint before the Tribunal was then set down for 19 June 2019, but Mr Wong failed to attend. The relevance of his failure to appear before the Tribunal to explain his conduct will be discussed later.

¹ *Immigration New Zealand (Calder) v Wong* [2019] NZIACDT 44.

Decision of the Tribunal

[6] The disciplinary complaint and the criminal charges concerned four Malaysian clients of Mr Wong. As he was acquitted in the criminal case, his alleged conduct which was the subject of the criminal charges is irrelevant and will not be further considered.

[7] The allegation upheld by the Tribunal was that Mr Wong had asked one of his clients to sign a visa application form in blank. He did so for the convenience of his client who did not wish to return to his office to sign the form after Mr Wong had filled in the details. Once signed, Mr Wong then completed it in the absence of the client and filed it with Immigration New Zealand. This was contrary to the Immigration Act 2009.

[8] In respect of two other clients, the Tribunal found that Mr Wong had only produced the files for inspection by the Authority in a piecemeal fashion. He had failed to provide the full client files requested by the deadline set by the Authority. A number of explanations for his failure were rejected by the Tribunal.

[9] Mr Wong was found to be in breach of cls 3(c) (acting in accordance with the Immigration Act 2009) and 26(e) (maintaining and making available a full client file).

SUBMISSIONS

[10] Counsel for the Registrar, Ms Thompson, in her submissions of 15 July 2019, notes that the purpose of the Act is the protection of the public. She records that the breaches by Mr Wong are viewed seriously by the Registrar. In particular, his breach of cl 3(c) is for conduct contrary to s 348(a) of the Immigration Act 2009, which is an offence carrying up to seven years in prison and a \$100,000 fine.

[11] It is submitted that Mr Wong's conduct undermines the special position of trust that licensed advisers have with Immigration New Zealand, by being able to file applications with the agency. In response to the complaint, he had provided explanations which were unreliable, inaccurate and mobile. He continues to deny responsibility for the breaches.

[12] Counsel submits that the appropriate sanctions would be:

- (1) caution or censure;
- (2) cancellation of his licence;
- (3) an order preventing Mr Wong from reapplying for a licence for a period not exceeding two years; and

- (4) an order for payment of a penalty not exceeding \$7,000.

[13] Counsel for Immigration New Zealand, Mr La Hood, in his submissions of 16 July 2019, states that Immigration New Zealand also considers the breaches of the Code to be serious. He also observes that the breach of cl 3(c), on the basis of Mr Wong's conduct being contrary to s 348(a) of the Immigration Act 2009, carries a maximum penalty of seven years imprisonment and a fine of \$100,000.

[14] It is submitted that the imposition of the sanctions should reflect Parliament's intention in respect of Mr Wong's behaviour. He provided inaccurate information and dishonest statements on more than one occasion to Immigration New Zealand, the Authority and the Tribunal. A punitive sanction would be appropriate.

[15] Mr Wong took advantage of vulnerable clients with language difficulties who would have had difficulty understanding the gravity of his behaviour and he has therefore abused his position of trust. He continues to deny the breaches of the Code.

[16] Mr Wong's behaviour has more generally affected the reputation of the immigration advisers' regime and the integrity of the immigration system. Immigration New Zealand relies on the appropriate conduct of advisers and expects them to advise clients and apply for visas with a high standard of behaviour. The sanctions should deter other advisers.

[17] As for the failure to provide files, Mr Wong dishonestly claimed he was prevented from doing so. Again, this breach warrants a punitive sanction as there has been a pattern of deceiving institutions involved in regulating the immigration system and advisers.

JURISDICTION

[18] The Tribunal's jurisdiction to impose sanctions is set out in the Immigration Advisers Licensing Act 2007 (the Act). Having heard a complaint, the Tribunal may take the following action:²

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:

² Immigration Advisers Licensing Act 2007.

- (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.

[19] 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.

[20] 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.

[21] The focus of professional disciplinary proceedings is not punishment, but the protection of the public:³

...It is well established that professional disciplinary proceedings are civil and not criminal in nature. That is because the purpose of statutory disciplinary

³ *Z v Dental Complaints Assessment Committee* [2008] NZSC 55, [2009] 1 NZLR 1 at [97], [128] & [151] (citations omitted).

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.

[22] 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.⁴

[23] 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.⁵

[24] The most appropriate penalty is that which:⁶

- (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

⁴ *Dentice v Valuers Registration Board* [1992] 1 NZLR 720 (HC) at 724–725 & 727; *Z v Dental Complaints Assessment Committee*, above n 3, at [151].

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

⁶ *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].

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

DISCUSSION

[25] In the decision upholding the complaint, it was noted that the sanctions would take into account, not just Mr Wong's conduct which gave rise to the heads of complaint upheld, but also his production of evidence to the Tribunal which was false and his failure to attend the Tribunal's hearing to explain his contradictory evidence.

[26] I agree with both counsel that Mr Wong's conduct is serious and that it is appropriate for the sanctions to be punitive and deter other advisers from accepting application forms signed in blank or from attempting to deceive the Tribunal.

[27] However, I would not go so far as to adopt Mr La Hood's description of a pattern of deceiving institutions regulating immigration and licensed advisers. Mr Wong provided explanations for his tardy production of files which were not accepted, but I decline to label them as attempts to deceive. I reserve that label for the evidence sent to the Tribunal on 1 May 2019.

[28] Nor do I accept Mr La Hood's submission that Mr Wong has taken advantage of vulnerable migrants with language difficulties who will not have understood the gravity of his behaviour and his abuse of trust. As Mr Wong was acquitted in the criminal case, I will not say much more, but the clients had worked in New Zealand before and would have known Immigration New Zealand's requirements. They were willing participants in the conduct complained of (to the extent upheld).

[29] This brings me to reminding myself that the sanctions are for the disciplinary complaints upheld and not for Mr Wong's alleged conduct which was the subject of the failed criminal charges. In this regard, I note that the complaint upheld concerning the completion of a visa form signed in blank by the client, while potentially an offence, was not one of the charges. In saying that, it is not my role to assess whether this conduct was criminal, but that possibility shows the seriousness of the disciplinary complaint upheld.

[30] I will consider the potentially appropriate sanctions in the order in which they are set out in s 51.

Caution or censure

[31] While this is the first time Mr Wong has been subject to disciplinary proceedings in the Tribunal, it is appropriate to censure Mr Wong given the seriousness of the complaint upheld. A caution would not reflect the gravity attaching to his wrongdoing.

Cancellation of licence

[32] Counsel for the Registrar seeks cancellation of Mr Wong's licence. As the adviser may be deprived of his or her livelihood, this is generally a penalty of last resort, though not necessarily where the complaint concerns dishonesty or moral turpitude.⁷ Nonetheless, it should be imposed only if it is necessary to protect the public. I note that Mr Wong has not raised any objection to the cancellation of his licence or indeed made any submissions to the Tribunal on sanctions, despite the express invitation to do so.

[33] Mr Wong's provision of false evidence to the Tribunal and his failure to attend a hearing to explain the variable explanations given for signing the blank form show that it is not in the public interest to permit Mr Wong to practise as an immigration adviser. He has shown himself to be a person who will be untruthful when the occasion suits him. He has shown a disregard for the disciplinary regime governing his profession.

[34] On its own, the completion and filing of a visa form after it had been signed by the client would not usually give rise to cancellation of a licence, particularly where the adviser admits the mistake and expresses remorse. It is the aggravation of the original wrong-doing by providing false evidence to the Tribunal and then refusing to explain himself which justifies the cancellation of his licence.

Prohibition against applying for a licence

[35] For the same reasons that it is appropriate to cancel Mr Wong's licence, it is necessary in the public interest to prohibit him from reapplying for any licence for the maximum period of two years. Mr Wong still does not admit his wrongdoing or express any remorse. I cannot be confident that he will conduct himself in the future in compliance with the relevant immigration legislation. Furthermore, if he does not respect the disciplinary regime for advisers, there is a heightened risk he will not comply with the professional standards set out in the Code.

⁷ *Patel v The Complaints Assessment Committee* HC Auckland, CIV-2007-404-1818, 13 August 2007 at [29] & [81].

Penalty

[36] The maximum penalty that can be imposed by the Tribunal is \$10,000. Ms Thompson, on behalf of the Registrar, submits that there should be a penalty of not more than \$7,000.

[37] The imposition of a financial penalty is punitive. I accept that it is appropriate in this case. While this is the first time a complaint has been upheld against Mr Wong, he declined to attend the hearing to explain his serious wrongdoing and variable explanation for it. Moreover, the written evidence given to the Tribunal has been found to be false.

[38] I take into account that Mr Wong's licence has been suspended since October 2017. While the suspension was justified on the basis of the evidence then before the Tribunal, he was ultimately acquitted of all the charges. The suspension was in reality to support a failed prosecution. Mr Wong was prevented from practising for a prolonged period. It is right to discount the financial penalty, as he will have already suffered a financial loss. I do not know the extent of any such loss as Mr Wong has not seen fit to make submissions to the Tribunal. I will also take into account the totality of the sanctions, including the prohibition for another two years, in determining the financial penalty.

[39] The penalty will be set at \$6,000.

OUTCOME

[40] Mr Wong's licence is cancelled. In addition, Mr Wong is:

- (1) censured;
- (2) prevented from reapplying for a licence for a period of two years commencing on the date of this decision; and
- (3) ordered to immediately pay to the Registrar a penalty of \$6,000.

D J Plunkett
Chair