

**IMMIGRATION ADVISERS COMPLAINTS AND DISCIPLINARY TRIBUNAL**

Decision No: [2023] NZIACDT 15

Reference No: IACDT 06/22

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

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

**BETWEEN** **TC**  
Complainant

**AND** **IAIN CRAIG MacLEOD**  
Adviser

**SUBJECT TO SUPPRESSION ORDER**

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**DECISION  
(Sanctions)  
Dated 1 May 2023**

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**REPRESENTATION:**

Registrar: Self-represented  
Complainant: Self-represented  
Adviser: S Laurent, counsel

## INTRODUCTION

[1] Iain Craig MacLeod, the adviser, was engaged by TC, the complainant, to seek a work visa and residence under the entrepreneur category. However, Mr MacLeod failed to properly recall or understand the financial forecasts of the complainant's business.

[2] A complaint against Mr MacLeod to the Immigration Advisers Authority (the Authority) was referred by the Registrar of Immigration Advisers (the Registrar) to the Tribunal. It was upheld in a decision issued on 7 February 2023 in *TC v MacLeod*.<sup>1</sup> Mr MacLeod was found to have breached a number of provisions of the Licensed Immigration Advisers Code of Conduct 2014 (the Code), 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 and will only be briefly summarised here.

[5] Mr MacLeod, a licensed immigration adviser, is a director of IMMagine New Zealand Ltd, trading as IMMagine Australia and New Zealand, of Auckland.

[6] The complainant, a national of South Africa, purchased an engineering business in a provincial New Zealand city. He was granted a Long Term Business Visa (LTBV) on 30 April 2013 and moved to New Zealand the same year to operate the business.

[7] On 14 April 2016, Mr MacLeod filed an entrepreneur residence application for the complainant and his family. It incorporated a business plan (BP). Immigration New Zealand (Immigration NZ) declined the residence visa on 29 September 2016 as it was not satisfied the business was trading profitably. An appeal to the Immigration and Protection Tribunal was declined on 13 July 2017.

[8] On 17 January 2019, a second entrepreneur residence application was filed on behalf of the complainant and his family. Immigration NZ sent a letter to Mr MacLeod on 30 September 2019 raising concerns about the application. It noted that the business had to be trading profitably. Mr MacLeod then engaged in an extensive exchange of emails with Immigration NZ and the complainant concerning the BP sales forecast. By 10 October 2019, Mr MacLeod had realised that Immigration NZ was correct in asserting

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<sup>1</sup> *TC v MacLeod* [2023] NZIACDT 4.

that the third year forecast in the BP was around \$379,000. According to him, everybody had been under the impression it was \$235,000.

[9] On 28 November 2019, Mr MacLeod sent revised financial statements to Immigration NZ and on 22 January 2020, the family were granted residence visas.

[10] IMMagine issued three invoices to the complainant from 8 October 2019 to 21 January 2020, for a total of \$22,540. The complainant declined to pay which led to IMMagine filing a claim in the Disputes Tribunal. It is understood by this Tribunal that the Disputes Tribunal has deferred the claim, pending the outcome of the professional complaint against Mr MacLeod.

#### *Decision of the Tribunal*

[11] The Tribunal upheld a number of heads of complaint against Mr MacLeod:

- (1) Failing to take care in ensuring he had sufficient knowledge of the complainant's BP and thereby not being aware the third year revenue forecast was \$379,950, in breach of cl 1 of the Code.
- (2) Failing to provide an estimate of time in the written agreement, in breach of cl 19(f).
- (3) Failing to ensure the fees charged were fair and reasonable, in breach of cl 20(a).
- (4) Failing to work in a manner that did not unnecessarily increase fees, in breach of cl 20(b).
- (5) Blaming the complainant and Immigration NZ for his wrong advice that the third year forecast was \$235,000 instead of \$379,950, thereby failing to be professional and respectful, in breach of cl 1.
- (6) Claiming that Immigration NZ had given him written advice that the third year forecast was \$235,000 when there was no evidence Immigration NZ had done so, thereby failing to exercise diligence and due care, in breach of cl 1.
- (7) Claiming that Immigration NZ had never mentioned the third year forecast was \$379,950 when there was evidence it had done so, thereby failing to exercise diligence and due care, in breach of cl 1.

## SUBMISSIONS

### *Submissions from the Registrar*

[12] In her submissions (1 March 2023), Ms Issar, of the Registrar's office, submits that the key purposes of sanctions in this case are accountability, and both general and specific deterrence to emphasise the importance of maintaining professional standards. She suggests the conduct is towards the lower end of "moderate".

[13] It is noted Mr MacLeod failed to take due care in ensuring he was cognisant of a basic, but critical, aspect of the complainant's visa application (being the correct third year BP forecast figure). This failure was exacerbated and compounded by:

- (1) The substantial length of time that elapsed where the mistake was not identified.
- (2) The fact the mistake was not ultimately identified by Mr MacLeod but rather brought to his attention by Immigration NZ.
- (3) Once the mistake was identified, Mr MacLeod attempted to direct blame for the error to the complainant and Immigration NZ.
- (4) The lack of any material acknowledgement of misconduct by Mr MacLeod and his continued denials of wrongdoing.

[14] In relation to his fees, it is submitted that Mr MacLeod's conduct can be considered towards the lower end of seriousness for this type of wrongdoing. This is because Mr MacLeod:

- (1) Did not deliberately run up excessive fees.
- (2) Has admitted he did not provide an estimate of his time and acknowledged that he spent time reviewing the complainant's file which, after a certain point, was not entirely justified.
- (3) Has not yet received payment for his services, which remains disputed. An appreciable period of time has elapsed since the invoices were issued.

[15] It is acknowledged by the Registrar that this is Mr MacLeod's first appearance before the Tribunal.

[16] In light of the above, the Registrar submits the appropriate sanctions would be:

- (1) Censure.
- (2) An order for payment to the Registrar of a penalty in the vicinity of \$1,500 to \$2,000.
- (3) An order for Mr MacLeod to pay the complainant compensation of \$2,000.

[17] Furthermore, the issue of a reasonable fee has been one of the central contentions in the complaint, so the Registrar submits that it may be reasonable for the Tribunal to indicate what the fee should be. If so, the Registrar notes the Tribunal's comment that the complainant should not have to pay for Mr MacLeod to work out what was so obvious from the BP.

#### *Submissions from the complainant*

[18] In his submissions of 28 February 2023, the complainant repeats his criticism of Mr MacLeod. He notes that he and his wife had an absolutely clear and unambiguous understanding that they should put all of their trust and faith in a specialist adviser who would drive their case as a true and experienced professional in a highly specialised field. Mr MacLeod claimed to be a professional person, charging professional rates and fees for his services in doing everything painstakingly "by the book".

[19] The complainant notes the Tribunal's finding that Mr MacLeod made a significant blunder in misinterpreting the BP.

[20] It is their belief that Mr MacLeod has considerable experience and that no amount of retraining would add any new dimension or depth to his expertise. This was not a case of ignorance of the procedures, misinterpretation or inexperience, but a clear case of a dreadful mistake which he should acknowledge and put in place procedures to avoid the same mistake in the future.

[21] In respect of costs and compensation, the complainant says he has taken advice and any action in this regard would be the subject of a civil lawsuit. He considers it would be counterproductive asking the Tribunal to adjudicate costs.

[22] On 14 March 2023, the complainant responded to counsel's memorandum (1 March 2023) and Mr MacLeod's affirmation (28 February 2023). It is contended that Mr MacLeod has doggedly refused to accept any real responsibility for his patent wrongdoing. The complainant says that Mr MacLeod's affirmation starts by accepting the Tribunal's findings of liability against him, but then seeks to apportion blame on other

entities once again. It is significant that nowhere has Mr MacLeod expressed any remorse, regret or self-reproach for the considerable damage and carnage his actions have inflicted. There is not even the remotest of apologies, just a narcissistic lament on how he perceives himself as the victim.

[23] It is contended that Mr MacLeod has throughout the years been paid very well for his services. The current dispute is about his final payment, which he proposed would be around \$4,000 – \$5,000, but which was ultimately billed at \$25,181.87. The complainant asserts that Mr MacLeod has refused to provide bills in the manner prescribed by the Authority. He has not been presented with any clear or detailed invoices. He notes that Mr MacLeod has now offered a discount of some 10 to 12 hours, which is unexplained.

[24] The complainant agrees with Mr Laurent that the invoices and billing are still possibly subject to the Disputes Tribunal. He would like the opportunity to seek legal advice on whether the Disputes Tribunal is the correct and desired body to hear the issue, or whether it should be addressed in an open court of law where he can be legally represented.

[25] The complainant submits that it is not possible for the Tribunal (the disciplinary tribunal) at this point in time to make any definitive assessment of a fair amount for Mr MacLeod, especially with the limited and vague documentation available.

[26] The complainant twice replied on 16 March 2023 (at 4:14 pm and 4:40 pm) to counsel's second memorandum on Mr MacLeod's invoicing. He noted that the "DT" (presumably this Tribunal) had upheld his complaint that certain charges should not be at his expense. He asks how this could be determined without scrutinising the invoices.

[27] The Tribunal gave the complainant until 11 April 2023 for further submissions on sanctions, including any claim for compensation.

[28] The complainant made an additional submission on 10 April 2023. He says Mr MacLeod should accept his wrongdoing. He had paid lip-service to accepting limited wrongdoing by immediately demonstrating how he was a victim and again blaming Immigration NZ. Mr MacLeod had demonstrated only arrogance and contempt, failing to apologise or even express remorse.

[29] As for the fees, the complainant said an estimate of \$4,500 ballooned to a total fee of \$26,936.84. Mr MacLeod is not entitled to more than \$4,500 (pending further action).

[30] As for compensation, this would require expert advice and investigation from legal experts, so the complainant requests the Tribunal not to make an assessment as it is his intention to bring a civil lawsuit against Mr MacLeod.

*Submissions from Mr MacLeod*

[31] There is a memorandum (1 March 2023) from Mr Laurent, supported by an affirmation from Mr MacLeod (28 February 2023).

[32] Counsel repeats Mr MacLeod's acceptance of the Tribunal's findings. In his affirmation, Mr MacLeod sets out the lessons he and his professional team have learned from the complaint and why he is of the view that the circumstances leading to the complaint are unlikely to occur again.

[33] It is submitted that the entrepreneur category is generally acknowledged to be one of the most challenging types of visa processes to navigate. This was complicated by the long passage of time starting in 2013. The complaint straddled both the LTBV and Entrepreneur policies.

[34] This is the first complaint faced by Mr MacLeod in a long and distinguished career spanning 33 years, before and subsequent to licensing.

[35] It can be seen from the administrative and quality assurance processes which Mr MacLeod's firm has adopted, as set out in his affirmation, that he takes his professional obligations seriously.

[36] It is accepted that the infractions are towards the lower end of moderate, as the Registrar describes them.

[37] As for the penalty of \$2,000 proposed, Mr MacLeod is prepared to pay a penalty. Such a figure would reflect his cooperation with the disciplinary process and acceptance of the Tribunal's ruling.

[38] Mr Laurent disagrees with the Authority's proposition that compensation of a notional sum of \$2,000 should be paid.

[39] No award for the costs of the investigation is warranted. Mr MacLeod complied with the requirements of the disciplinary process and there has been no oral hearing.

[40] In his affirmation (28 February 2023), Mr MacLeod accepts the Tribunal's findings. A major lesson Mr MacLeod says he has learned from the case is that he has not since represented another entrepreneur case. This is not because he does not

understand the immigration instructions or cannot read a BP, but because of various factors, including a decline rate of 90 per cent plus.

[41] One way Mr MacLeod has used the experience is to share the entire decision with his team and several industry leaders. He has used it to reinforce the message around their systems, the importance of notes, file records and the use of precise language with both clients and Immigration NZ.

[42] Mr MacLeod sets out in some detail the processes of his firm in order to show their systematic approach to the management of client files, which is intended to minimise risk such as that encountered in this case.

[43] As for his fees, Mr MacLeod thinks it would be fair to deduct 10 to 12 hours (at \$400 hourly plus GST) for the time spent reading the Immigration NZ file and his own file, after receiving the letter of concern from the visa officer. This would lead to a reduction of \$4,600 to \$5,520 off the fee of \$22,540.

[44] In his affirmation, Mr MacLeod sets out his impressive record of service to the immigration industry.

[45] Mr MacLeod notes the significant legal costs of representation, as well as the inevitable damage to his personal reputation arising from publication of the Tribunal's decisions.

[46] The further submissions (14 March 2023) from the complainant prompted a second memorandum (15 March 2023) from counsel and an email (16 March 2023) from Mr MacLeod.

[47] In answer to the complainant's claim that he did not receive clear or detailed invoices, it is not clear to counsel what sort of detail the complainant believed himself to be entitled. Clause 22 of the Code specifies invoices must contain a full description of the services, but it does not say how they are to be enumerated. It is submitted that Mr MacLeod's invoices were compliant. Counsel enclosed a copy of the invoice of 8 October 2019.

[48] In his email to the Tribunal, Mr MacLeod notes that Mr Laurent had addressed the false claim that the complainant did not receive itemised invoices. He goes on to make brief comments on what a fair fee might be. He attaches copies of the other two invoices (17 December 2019, 24 January 2020).



## JURISDICTION

[49] 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 actions:<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.

[50] 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.

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

[51] 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.

[52] 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.

[53] 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>

[54] 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>

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

<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].

[55] 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

[56] Mr MacLeod committed seven breaches of his professional obligations in representing the complainant.

[57] In what the Tribunal described as a significant blunder, Mr MacLeod misinterpreted the BP, or perhaps did not consult it, as regards the third year sales forecast. He then blamed everyone but himself for the error, notably the complainant. Four of the Code breaches related to this blunder.

[58] In his earlier submissions to the Tribunal, the complainant says Mr MacLeod's blunder was far reaching and destructive. He had to work very long days to boost sales. This strained relationships in the family. The Tribunal acknowledges that Mr MacLeod's mistake had a significant personal effect on the complainant and his family, but it must also be recognised that the second residence application filed by Mr MacLeod was successful.

[59] Mr MacLeod now accepts that he was wrong to believe that Immigration NZ had accepted the third year forecast was \$235,000. He says he has owned the error. The Tribunal notes, as the complainant points out, that Mr MacLeod has not offered any apology to him or Immigration NZ for wrongly blaming them for his own error. The lack

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<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].

of any apology will be taken into account by the Tribunal. There is also some merit to the complainant's contention that Mr MacLeod continues to blame Immigration NZ in his affirmation.

[60] As for the likelihood of any similar error in the future, the Tribunal observes that Mr MacLeod no longer handles entrepreneur cases. It also acknowledges the systematic and comprehensive file management system in place at his firm, including "two sets of eyes" on important aspects of work for a client and that every action results in a file note. Such systems would be regarded as best practice. It is accepted by the Tribunal that a repeat of the wrongdoing is most unlikely.

[61] The other three breaches of the Code related to Mr MacLeod's fee of \$22,540, which was too high in the circumstances. In respect of his fees, the Tribunal found he did not deliberately run up excessive fees. Mr MacLeod acknowledged early in the disciplinary process that not all his fee might be justifiable.

[62] The Tribunal agrees with the Registrar and Mr Laurent that the professional breaches, cumulatively, can be characterised as towards the lower end of moderate in terms of their gravity.

[63] It is noted that this is Mr MacLeod's first appearance before the Tribunal. Furthermore, he has a long and distinguished record of contribution to the industry.

[64] The Tribunal will now consider the sanctions potentially applicable.

#### *Caution or censure*

[65] Only censure would reflect the Tribunal's disapproval of Mr MacLeod's conduct.

#### *Monetary penalty*

[66] The maximum penalty is \$10,000. The Tribunal has already found the gravity of the cumulative wrongdoing here to be at the lower end of moderate.

[67] The Registrar proposes a fine in the vicinity of \$1,500 to \$2,000. Mr Laurent does not disagree.

[68] While there were seven breaches of four provisions of the Code, there is considerable overlap. They arise from two overarching errors:

1. Failing to appreciate the third year sales forecast was \$379,950 (compounded by blaming his mistake on the complainant and Immigration NZ).
2. Charging fees which were too high because time was spent understanding the mistake over the third year forecast (an error which itself largely arises from his first error above). In addition, there was the failure to provide an estimate of time in the written agreement.

[69] The penalty will reflect the interrelated nature of the multiple breaches. They were honest mistakes.

[70] Mr MacLeod has, somewhat belatedly, admitted his wrongdoing. However, he has made no apology. It had a significant effect on the complainant and his family, though the residence application filed by Mr MacLeod was ultimately successful.

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

#### *Costs or expenses of the investigation*

[72] The Tribunal does not routinely direct an adviser against whom a complaint has been upheld to pay any part of the costs or expenses of the inquiry. No such order is sought by the Authority. Mr MacLeod has cooperated in the disciplinary process. No order will be made.

[73] The complainant has requested that the Tribunal not adjudicate on "costs". In any event, the Tribunal has no jurisdiction to make an award for the costs of any party (usually a reference to legal costs). A party's expenses resulting from the reference to the Tribunal might be considered as part of an award of compensation, but the Tribunal has been asked by the complainant not to deal with compensation.

#### *Refund*

[74] The issue of any refund does not arise, as the complainant has not paid IMMagine's final three invoices which are the subject of proceedings in the Disputes Tribunal. No refund has been sought for any earlier invoices paid.

[75] In the decision upholding the complaint, this Tribunal invited the parties to address whether it should indicate what a reasonable fee should be and, if so, how much.

[76] Mr MacLeod has provided such submissions. The other parties have not made any submissions on what a reasonable fee would be. The complainant says the Tribunal

could not make any definitive assessment of a fair fee, with the limited and vague documentation available. The Tribunal agrees. It does not even know how much Mr MacLeod billed the complainant in total over the years. That would be relevant to assessing the reasonableness of the final three invoices. There appears to be disagreement even as to how much is currently in dispute. Mr MacLeod says it is \$22,540. The complainant has given two figures, \$25,181.17 and \$26,936.84.

[77] Any order as to the amount to be paid by the complainant to IMMagine is a matter for the Disputes Tribunal. It is therefore for that tribunal to ultimately determine a reasonable fee.

### *Compensation*

[78] The complainant has asked the Tribunal not to adjudicate on compensation, as it is to be the subject of a civil lawsuit. The Tribunal accordingly will not order compensation.

[79] Mr Laurent opposes the award of what he describes as the notional sum of \$2,000 recommended by the Registrar. The Tribunal agrees with counsel. The losses or expenses that might be awarded as compensation must be shown to have arisen out of the professional breaches upheld.<sup>7</sup>

## **OUTCOME**

[80] Mr MacLeod is:

- (1) Censured.
- (2) Ordered to pay the Registrar within 21 days the sum of \$2,000.

## **ORDER FOR SUPPRESSION**

[81] The Tribunal has the power to order that any part of the evidence or the name of any witness not be published.<sup>8</sup>

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

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<sup>7</sup> *NLT v Coetzee* [2020] NZIACDT 7 at [47].

<sup>8</sup> Immigration Advisers Licensing Act 2007, s 50A.

[83] 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