IMMIGRATION ADVISERS COMPLAINTS AND DISCIPLINARY TRIBUNAL

Decision No: [2023] NZIACDT 16

Reference No: IACDT 011/22

IN THE MATTER	of a referral under s 48 of the Immigration Advisers Licensing Act 2007
BY	**THE REGISTRAR OF IMMIGRATION ADVISERS** Registrar
BETWEEN	**WS** Complainant
AND	**JOHN DESMOND LAWLOR** Adviser

SUBJECT TO SUPPRESSION ORDER

DECISION
(Sanctions)
Dated 9 May 2023

REPRESENTATION:

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

INTRODUCTION

[1] The complainant, WS, instructed the adviser, John Desmond Lawlor, to seek a work visa and residence. The applications were successful, but Mr Lawlor committed numerous breaches of his professional obligations.

[2] A complaint 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 23 March 2023 in *WS v Lawlor*.[1] Mr Lawlor was found guilty of dishonest or misleading behaviour and of breaching the Licensed Immigration Advisers Code of Conduct 2014 (the Code), both being grounds of 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 Lawlor, a licensed immigration adviser at the relevant time, is a director of Lawlor & Associates Ltd, of Thames.

[6] The complainant is a national of India who was working in New Zealand. She signed a services agreement with Mr Lawlor on 19 March 2019. He filed an expression of interest for residence with Immigration New Zealand (Immigration NZ) and on 21 March 2019, it invited her to apply for residence. He then successfully sought work visas for the complainant and her partner. The application for residence was made on 15 July 2019, but it was not accepted as the police certificates were missing.

[7] A second expression was filed on about 9 October 2019. It was selected for a credibility check process. Immigration NZ wrote to Mr Lawlor on 5 November 2019 stating the complainant would not be invited to apply for residence. In a telephone discussion with the visa officer that day, Mr Lawlor confirmed that the complainant's primary Indian degree qualification would be assessed by the New Zealand Qualifications Authority (NZQA). There followed numerous texts and emails between the complainant and Mr Lawlor as to the progress of such an assessment application (which was not, in fact, made). The complainant did not learn until 19 February 2020 that no such application had been made.

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[1] *WS v Lawlor* [2023] NZIACDT 9.

[8] On 14 May 2020, Mr Lawlor filed a third expression of interest. The complainant sent texts and emails to Mr Lawlor seeking news of progress.

[9] The complainant effectively terminated Mr Lawlor's services on 12 January 2021.

[10] In March 2022, the complainant personally filed a residence application. It was granted on 22 November 2022.

[11] Meanwhile, on 9 March 2022, the complainant filed a complaint against Mr Lawlor with the Authority.

Decision of the Tribunal

[12] The Tribunal found that Mr Lawlor had misled the complainant and breached the Code:

(1) Claimed to the complainant he had filed the assessment application with NZQA when he had not and providing her with updates of the non-existent application, thereby deliberately misleading the complainant.

(2) Failed to provide the complainant with timely updates regarding the work visa application, in breach of cl 26(b).

(3) Failed to exercise due care to ensure the residence application filed was complete, in breach of cl 1.

(4) Failed to provide the complainant with timely updates regarding the residence application, in breach of cl 26(b).

(5) Failed to exercise due care to file the second expression in a timely manner, in breach of cl 1.

(6) Failed to provide the complainant with timely updates regarding the second expression, in breach of cl 26(b).

(7) Failed to exercise due care to file the assessment application with NZQA in a timely manner, in breach of cl 1.

(8) Failed to provide a new or amended written agreement for the assessment, in breach of cl 18(a).

(9) Failed to provide invoices for the fees paid, in breach of cl 22.

(10) Failed to ensure the refund obligation could be met, in breach of cls 24(b), 25(a), (e) and (f).

(11) Failed to promptly pay the refund, in breach of cl 24(c).

SUBMISSIONS

Submissions from the Registrar

[13] In her submissions (14 April 2023), Ms Issar of the Registrar's office, observes that the Tribunal found Mr Lawlor's communications with the complainant to be false. He had pretended an assessment application had been made when it had not. He had made up reasons for what he claimed were NZQA's delays.

[14] It is submitted by the Registrar that Mr Lawlor's conduct shows a severe lack of compliance with professional standards. Dishonest or misleading behaviour is the most serious ground of complaint. He has admitted negligence and breaches of the Code, but he has not admitted he deliberately misled his client. It is further noted he has a disciplinary record.

[15] Mr Lawlor should be required to undertake the LAWS 7015 paper at Toi Ohomai Institute of Technology. Until he does so, his licence should be suspended to protect the public.

[16] The Registrar contends that the appropriate sanctions would be:

(1) Censure.

(2) Completion of LAWS 7015 at its next intake.

(3) Suspension of Mr Lawlor's licence pending completion of LAWS 7015.

(4) A penalty in the vicinity of $5,000.

Submissions from the complainant

[17] In her submissions (10 April 2023), the complainant states that Mr Lawlor not only demonstrated misleading, dishonest and negligent behaviour, but he kept lying for months about applying for the NZQA assessment. He should therefore be stopped from practising as a licensed adviser so his conduct cannot be repeated.

[18] The complainant regrets her decision to seek his services. His negligence had cost her and her husband time and opportunity. In those three years, they should have put their effort into finding better jobs and refining their skills. It was exhausting and draining to chase him. His unprofessional behaviour put them through immense mental stress. He put them under significant financial pressure. They were both unemployed for a period because of him. Mr Lawlor should be held accountable for failing to do his job and compensate them for the financial pressure caused.

[19] There is a reply (1 May 2023) from the complainant to Mr Moses' initial submissions on behalf of Mr Lawlor. The complainant repeats her allegations against Mr Lawlor. She says three years of their lives were wasted.

[20] The complainant sets out the following its of "specific loss":

(1) Loss of opportunity – The complainant lost her job (not Mr Lawlor's fault), but under pressure due to Mr Lawlor's wrongdoing she had to find a job which matched her visa condition, rather than the best for her career or financially.

(2) Financial distress and loss of life – From mid-2020 until early 2021, she and her husband struggled to find jobs due to the limited visa which put them under huge financial constraint.

(3) Cheating and lying about the NZQA assessment – Mr Lawlor's deceptive and dishonest behaviour gave them false hope that there was an ongoing assessment. They were devastated and vulnerable when they discovered no such application had been filed.

(4) Loss of time – Mr Lawlor wasted not only their time in settling in New Zealand, but also their time in chasing him. That should not have been their job. They should be compensated for their time wasted from 2019 until 2022.

(5) Loss of opportunity – If Mr Lawlor had filed an expression in a timely manner, they would have been eligible to apply for Phase 1 of the 2021 Resident Visa (from 1 December 2021). But they had to wait for Phase 2 in March 2022. This caused further delay.

(6) Emotional distress – Mr Lawlor's unprofessional behaviour caused extreme frustration and stress to the complainant and her husband. They have no

words to describe the length to which he tormented them. It was an excruciatingly painful experience dealing with him.

(7) Refund – Mr Lawlor did not file the second expression and the complainant had to apply for an essential skills visa. He should compensate them $495 for the essential skills visa in July 2021. Furthermore, they paid him $6,500 (excluding the fees of Immigration NZ), but he had refunded only $2,730. He should refund the remaining amount, $3770.

[21] The total claimed against Mr Lawlor is:

Refund	$ 3,770
Visa fee	$ 495
Loss of opportunity/financial and emotional distress	$15,000

[22] In addition, the complainant seeks to be paid for three hours of her time to complete the essential skills visa in July 2021 (no dollar figure is given).

Submissions from the adviser

[23] Counsel for Mr Lawlor is Mr Moses. In his submissions (18 April 2023), counsel states that Mr Lawlor accepts the Tribunal's decision. He advises that Mr Lawlor has withdrawn his application to renew his licence, so it has expired. He has terminated his remaining client matters. This is an acknowledgement by Mr Lawlor of his professional shortcomings.

[24] Mr Moses notes his instructions that Mr Lawlor was mentally and physically unwell during the relevant period. He apologises to the complainant for the difficulties caused to her. He understands how disappointing and frustrating his conduct has been for her and he is deeply embarrassed. Mr Lawlor asks that his contrition and insight into his misconduct are taken into account in determining the sanctions.

[25] It is acknowledged that censure is inevitable. As for a fine, while inevitable, there are a number of mitigating factors:

(1) Mr Lawlor's poor health, which contributed to his misconduct. It also affected the financial viability of his business.

(2) Mr Lawlor's mature and co-operative approach to the disciplinary process. He has already refunded the complainant's fee.

(3) Mr Lawlor has now left the industry, having concluded that he should discontinue placing himself and his clients in a situation where he is at risk of prejudicing them. As a result, his financial ability to pay a fine and compensation is very limited. He has given up his former livelihood and it will not be an easy prospect finding alternative employment in his early sixties.

[26] Mr Moses submits that, to the extent possible, compensation to the complainant is to be prioritised over payment of a fine. A fine of around $3,000 would therefore be appropriate.

[27] As for compensation, the complainant has not proven any specific loss so it would be appropriate to direct compensation for emotional distress only. In the *BU* case, the Tribunal ordered such compensation of $2,000.[2] The breaches were of greater severity in that case, so payment of compensation of $1,000 to $1,500 would be appropriate.

[28] The Registrar has sought suspension of Mr Lawlor's licence. It is noted by counsel that if Mr Lawlor was to re-apply for a licence in the future, the Registrar has the ability to impose a supervision requirement under s 19(5) of the Act. Furthermore, once he has been unlicensed for 12 months, he would need to complete the entire Graduate Diploma in order to be licensed. In any event, Mr Lawlor has decided to cease practice and given his age and disciplinary history, a return to the industry is entirely unlikely.

[29] A letter (18 April 2023) from Mr Lawlor to the Authority has been produced. He notified the withdrawal of his application for renewal. He says he was unable to deal with the stresses of practising since an illness in 2020.

[30] Mr Moses in turn responded (2 May 2023) to the reply submissions of the complainant. He states that Mr Lawlor acknowledges the complainant's distress caused by his unprofessional conduct. He has therefore conceded that an award of damages for emotional distress would be appropriate.

[31] In relation to whether there ought to be a further refund, Mr Lawlor points out that his work for the complainant's essential skills work visa and her husband's partnership visa was successful. The breaches identified by the Tribunal did not relate to that work, but rather to the resident visa application. Therefore, there is no principled basis for the Tribunal to order any further refund.

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[2] *BU v McCarthy* [2022] NZIACDT 13.

[32] The expression application ultimately enabled the complainant to file her successful 2021 resident visa application. The fee was not paid in vain, so it is not appropriate to refund this fee.

JURISDICTION

[33] The Tribunal's jurisdiction to impose sanctions is set out in the Act. Having heard a complaint, the Tribunal may take the following actions:[3]

> **50 Determination of complaint by Tribunal**
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> After hearing a complaint, the Tribunal may—
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> (a) determine to dismiss the complaint:
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> (b) uphold the complaint but determine to take no further action:
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> (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.

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

> **51 Disciplinary sanctions**
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> (1) The sanctions that the Tribunal may impose are—
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> (a) caution or censure:
>
> (b) a requirement to undertake specified training or otherwise remedy any deficiency within a specified period:
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> (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:

[3] Immigration Advisers Licensing Act 2007.

(i) an order directing the licensed immigration adviser or former licensed immigration adviser to pay reasonable compensation to the complainant or other person.

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

> **3 Purpose and scheme of Act**
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> 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.

[36] The focus of professional disciplinary proceedings is not punishment, but the protection of the public:[4]

> …It is well established that professional disciplinary proceedings are civil and not criminal in nature. That is because the purpose of statutory disciplinary proceedings for various occupations is not to punish the practitioner for misbehaviour, although it may have that effect, but to ensure that appropriate standards of conduct are maintained in the occupation concerned.
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> …
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> 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.
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> …
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> 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.

[37] 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.[5]

[38] 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.[6]

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[4] *Z v Dental Complaints Assessment Committee* [2008] NZSC 55, [2009] 1 NZLR 1 at [97], [128] & [151].

[5] *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,* above n 4, at [151].

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

[39] The most appropriate penalty is that which:[7]

(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

[40] The misconduct found by the Tribunal is serious, given the finding of deceit in relation to the assessment application. As the Registrar notes, Mr Lawlor pretended to the complainant that such an application had been made when it had not. When she sought updates, he falsely blamed NZQA and invented reasons for what he alleged to be delays to the agency's decision (concerning an application that had never been made). In addition, there were 13 breaches of the Code. They relate to a lack of diligence, inadequate client communications, an inadequate client agreement and breaches in relation to his obligations concerning his client's fees.

[41] This is not the first time Mr Lawlor has appeared before the Tribunal. A complaint was upheld on 18 May 2022 in the *BC* decision.[8] Mr Lawlor was found guilty of 14 breaches of the Code amounting to negligence. Most are very similar to those in the current complaint. There was a lack of diligence, inadequate communications with his client and an inadequate client agreement. In addition, he failed to obtain instructions on a matter. The sanctions were censure and a financial penalty of $2,000.[9]

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[7] *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].
[8] *BC v Lawlor* [2022] NZIACDT 10.
[9] *BC v Lawlor* [2022] NZIACDT 15.

[42] There is evidence that Mr Lawlor's health, both physical and mental, deteriorated in the relevant period. The Tribunal notes the details set out in the earlier decision, particularly the report of Ms Batenburg (29 March 2022). It is not necessary to repeat them in this decision. His medical condition provides some context and explanation, but no justification for misleading the complainant or breaching his professional obligations.

[43] It is notable that Mr Lawlor has acknowledged his wrongdoing, expressed remorse and more recently apologised. Indeed, his acceptance of his professional failings has led him to give up his practice. This insight is to his credit.

[44] The Tribunal will now consider the potential sanctions.

Caution or censure

[45] A caution would be inadequate. The Tribunal marks its disapproval of Mr Lawlor's conduct by censuring him.

Training

[46] Since Mr Lawlor has relinquished his licence and is most unlikely to return to the profession, no training will be ordered. Mr Moses is correct in contending that s 19(5) of the Act would permit the Registrar to require Mr Lawson to be supervised should he seek a new licence.

Suspension/Prohibition against Reapplying

[47] The Registrar sought suspension pending further training, but since the Registrar's submissions were received, Mr Lawlor has withdrawn his application to renew his licence. There is no need for suspension now.

[48] The Tribunal is not minded to make an order prohibiting Mr Lawlor from reapplying for a licence and nor is such an order sought by the Registrar. Should any application be made, the Registrar can take into account Mr Lawlor's disciplinary record and, as noted already, a supervision requirement can be imposed if a licence is granted.[10]

[10] Immigration Advisers Licensing Act 2007, ss 17(b), 19(1)(b).

Financial penalty

[49] The Registrar submits about $5,000 would be appropriate, given Mr Lawlor's disciplinary record and the gravity of his wrongdoing. Mr Moses submits a fine of around $3,000 would be appropriate, having regard to Mr Lawlor's income earning ability and according some priority to compensating the complainant.

[50] In his one previous appearance before the Tribunal, Mr Lawlor was fined $2,000. The wrongdoing in the current complaint is more serious, since it involves dishonesty. A penalty of $5,000 would ordinarily be appropriate. While the Tribunal has been given few details of Mr Lawlor's financial circumstances, it acknowledges that he has lost his primary income and finding alternative work might be challenging at his age. The Tribunal further agrees with Mr Moses that some priority should be given to compensating the complainant. In setting the penalty, the Tribunal can take into account the totality of all the sanctions, including compensation. The penalty will be $3,000.

Refund

[51] Mr Lawlor refunded $2,730 of the total fee of $6,500 paid. The basis for the figure of $2,730 is not known. The complainant seeks a refund of the balance, being $3,770. Mr Moses says this is not appropriate, as Mr Lawlor successfully obtained work visas for both the complainant and her husband.

[52] There is no breakdown of the total fee of $6,500 in the services agreement (19 March 2019). The complainant says in her submissions it was for her essential skills work visa, her partner's partnership visa, an expression and finally filing the residence application. It is conceivable that $2,730 represents the inadequate residence application, which built on the work done and documents supplied for the earlier work visas and the expression. The visa applications were successful, as was the expression. There is no evidence before the Tribunal that $2,730 does not fairly represent the work inadequately undertaken by Mr Lawlor on the residence application. No further refund will be directed.

Compensation

[53] The Tribunal can award reasonable compensation for expenses or losses arising out of the wrongdoing upheld by it.

[54] In her reply submissions (1 May 2023), the complainant seeks $15,495 for what are said to be specific losses.

[55] There is no breakdown for the claim of $15,000, which is a figure plucked from the air. It seems to encompass an unknown amount of time at an unknown hourly rate for the time of the complainant and her partner attending to their immigration matters (matters Mr Lawlor should have professionally dealt with) and damages for what has been described as the loss of opportunity. There is no principled basis on which the Tribunal could uphold such a vague claim. Nor is it clear such heads of claim (even if properly itemised) would be recoverable in the Tribunal.

[56] The $495 reimbursement sought is understood to be Immigration NZ's fee for an essential skills work visa in July 2021. The complainant presumably regards this as an additional fee which would not have been paid had Mr Lawlor competently handled the residence application in July 2019 or the second expression. However, that presupposes that one of those applications would have succeeded. While the complainant eventually obtained residence, she did so under a different policy from the skilled migrant policy. In particular, it is not known whether the NZQA assessment would have been successful. It has not been established that the additional work visa fee arises from any wrongdoing of Mr Lawlor upheld by the Tribunal.

[57] It is clear, however, that the complainant and her partner suffered considerable stress and anguish arising from Mr Lawlor's wrongdoing. It must have been particularly upsetting for them to have realised he had lied to them over a prolonged period. The Tribunal can award modest general damages for such suffering. It does not award substantial damages for emotional suffering. The appropriateness of such an award is properly conceded by Mr Lawlor.

[58] Mr Moses refers the Tribunal to *BU*[11] where $2,000 was awarded. It is submitted that $1,000 to $1,500 would be appropriate here, given a comparison of the severity of the breaches in the two cases. While such a comparison is a relevant factor, it is more important to look at the effect of the breaches on the clients. It would seem to the Tribunal that the effect of Mr Lawlor's misconduct on the complainant and her partner would have been no less than that in *BU*. The award will be $2,000.

OUTCOME

[59] Mr Lawlor is:

(1) Censured.

(2) Ordered to pay $3,000 to the Registrar within one month.

[11] *BU v McCarthy*, above n 2. See the discussion at [38]–[40] therein.

(3) Ordered to pay $2,000 to the complainant within one month.

ORDER FOR SUPPRESSION

[60] The Tribunal has the power to order that any part of the evidence or the name of any witness not be published.[12]

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

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

D J Plunkett
Chair

[12] Immigration Advisers Licensing Act 2007, s 50A.