

IMMIGRATION ADVISERS COMPLAINTS AND DISCIPLINARY TRIBUNAL

Decision No: [2024] NZIACDT [11]

Reference No: IACDT 008/23

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

BY **THE REGISTRAR OF
IMMIGRATION ADVISERS**
Registrar

BETWEEN **UT**
Complainant

AND **JOHN DESMOND LAWLOR**
Adviser

Decision on the papers

**DECISION
(Sanctions)
Dated 11 March 2024**

REPRESENTATION:

Registrar: Self-represented
Complainant: No appearance
Adviser: No appearance

INTRODUCTION

[1] The complainant and her partner engaged the adviser to seek residence. The application was successful, but the adviser was unprofessional in his communications with the couple and failed to maintain a proper file.

[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 18 January 2024 in *UT v Lawlor*.¹ Mr Lawlor was found to have breached numerous provisions of the Licensed Immigration Advisers Code of Conduct 2014 (the Code), a ground 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 and will only be briefly summarised here.

[5] Mr Lawlor was at the relevant time a licensed immigration adviser and director of Lawlor & Associates Ltd, of Thames. His licence expired on 7 January 2023.

[6] The complainant is a national of Brazil whose partner is a national of India. The partner entered into an immigration services agreement with Mr Lawlor on 12 January 2022 concerning the filing of a resident visa application under the 2021 Resident Visa instructions. Applications were duly filed by Mr Lawlor and visas were approved for both of them on 19 May 2023. The couple made a complaint to the Authority alleging Mr Lawlor had misled them and had not replied to their communications.

Decision of the Tribunal

[7] It was found that Mr Lawlor had:

- (1) Failed to respond to the complainant's request to check the application status herself, in breach of cl 1 of the Code.
- (2) Failed to provide the complainant with an invoice containing a full description of the services the fee related to, in breach of cl 22.

¹ *UT v Lawlor* [2024] NZIACDT 5.

- (3) Failed to maintain a hard copy and/or electronic file for the complainant, in breach of cl 26(a).
- (4) Failed to maintain a well-managed filing system, in breach of cl 26(d).
- (5) Failed to make the records available for inspection on request by the Authority, in breach of cl 26(e).
- (6) Failed to make timely on-going updates about the visa application and to inform the complainant about Immigration New Zealand's request for evidence, in breach of cl 26(b).
- (7) Failed to inform Immigration New Zealand he could no longer represent the complainant and her partner as his licence had expired, in breach of cl 28(b).
- (8) Failed to inform the complainant and her partner about his expired licence and advise them where they could get assistance, in breach of cl 28(c).

SUBMISSIONS

From the Registrar

[8] In her submissions (23 February 2024), Ms Issar of the Registrar's office contends that Mr Lawlor's conduct shows a serious failure to maintain professional standards, particularly his withholding of information from the complainant. It is noted that this is the fourth complaint against him which has been upheld by the Tribunal. He has been previously held to have misled clients and breached the Code in ways similar to the current breaches. Mr Lawlor has not learned from the previous complaints or changed his behaviour.

[9] Mr Lawlor has not chosen to explain his conduct, or apologise or express any remorse.

[10] It is submitted that the appropriate sanctions would be:

- (1) Censure.
- (2) An order that Mr Lawlor be prevented from reapplying for a licence for two years from today's date.

- (3) An order requiring Mr Lawlor to complete the LAWS 7015 paper at Toi-Ohomai Institute of Technology prior to reapplying for a licence.
- (4) An order for payment of a penalty in the vicinity of \$8,000.

From the complainant

[11] There are no submissions from the complainant.

From the adviser

[12] There are no submissions from Mr Lawlor.

JURISDICTION

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

[14] 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:

² Immigration Advisers Licensing Act 2007.

- (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.

[15] 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.

[16] 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 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.

[17] Professional conduct schemes, with their attached compliance regimes, exist to maintain high standards of propriety and professional conduct not just for the public

³ *Z v Dental Complaints Assessment Committee* [2008] NZSC 55, [2009] 1 NZLR 1 at [97], [128] and [151].

good, but also to protect the collective reputation and public confidence in the profession itself.⁴

[18] 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

[19] 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
- (h) looked at overall, is the penalty which is fair, reasonable and proportionate in the circumstances.

DISCUSSION

[20] The Tribunal upheld heads of complaint involving the breach of eight provisions of the Code. They establish that Mr Lawlor's communications with the complainant and her partner and with Immigration New Zealand were unprofessional, and that he failed to maintain a proper file. His conduct is exacerbated, not just from his poor disciplinary history, but his contempt for the disciplinary process. He failed to engage with the Authority and the Tribunal in any meaningful way. He has provided no apology and shown no insight into his wrongdoing.

[21] Mr Lawlor's disciplinary history is a significant aggravating factor.

⁴ *Dentice v Valuers Registration Board* [1992] 1 NZLR 720 (HC) at 724–725 and 727; *Bolton v Law Society* [1994] 2 All ER 486 (EWCA) at 492; and *Z*, 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].

[22] In the *BC* decision issued by the Tribunal on 18 May 2022, Mr Lawlor was found guilty of 14 breaches of the Code amounting to negligence.⁷ There was a lack of diligence, inadequate communications with his client, an inadequate client agreement and a failure to obtain instructions on a matter. The sanctions were censure and a financial penalty of \$2,000.⁸

[23] In the *WS* decision issued on 23 March 2023, Mr Lawlor was found to have deceived his client and to have committed 13 breaches of the Code.⁹ The deceit occurred when Mr Lawlor pretended to his client that an application had been made to NZQA, but no such application had actually been made. He invented reasons for what he asserted were delays by NZQA. The breaches of the Code related to a lack of diligence, inadequate client communications, an inadequate client agreement and to his obligations concerning client fees. The penalties were censure, a financial penalty of \$3,000 and compensation to the client of \$2,000.¹⁰

[24] In the *WN* decision issued on 26 June 2023, Mr Lawlor was found to have deliberately misled his client about the return of documents and a refund, to have failed to ensure his refund obligations could be met and a refund made promptly, and to have failed to return personal documents to the complainant without delay when requested.¹¹ There were four breaches of the Code. The sanctions were censure, an order preventing Mr Lawlor from reapplying for a licence for two years, a penalty of \$7,000 and a refund to the client of \$3,495.¹²

[25] This brings the Tribunal to consideration of the sanctions for the current complaint.

Caution or censure

[26] Given Mr Lawlor's disciplinary history, only censure would mark the Tribunal's disapproval of his conduct.

Training

[27] The Registrar seeks an order that Mr Lawlor undergo refresher training in the event he applies to be relicensed at the end of the prohibition period. While it will be a matter for the Registrar at the time, it might be thought highly improbable that Mr Lawlor

⁷ *BC v Lawlor* [2022] NZIACDT 10.

⁸ *BC v Lawlor* [2022] NZIACDT 15.

⁹ *WS v Lawlor* [2023] NZIACDT 9.

¹⁰ *WS v Lawlor* [2023] NZIACDT 16.

¹¹ *WN v Lawlor* [2023] NZIACDT 21.

¹² *WN v Lawlor* [2023] NZIACDT 24.

could recover his licence given his disciplinary record (involving numerous breaches, and which include dishonesty) and his lack of engagement in the disciplinary process. He would have to show he is a fit and appropriate person to be licensed.¹³ The Tribunal declines to make the training order, lest it signal that the Tribunal would approve any relicensing.

Prohibiting relicensing

[28] Mr Lawlor's licence expired on 7 January 2023 and he has not sought to renew it. On 25 August 2023, the Tribunal ordered that Mr Lawlor be prevented from reapplying for any licence for two years. In light of his cumulative disciplinary history (40 offences), the prohibition will be renewed. It is not opposed by Mr Lawlor who has chosen not to make any submission on the sanctions.

Penalty

[29] The Registrar submits that a financial penalty in the vicinity of \$8,000 be imposed.

[30] The Tribunal has previously imposed penalties of \$2,000, \$3,000 and \$7,000. The last order of \$7,000 was on the basis of four breaches of the Code, including deceit. There is no dishonesty in the current offending, so no escalation of the penalty would be warranted. On the other hand, there were eight breaches of the Code. Having regard to his history and the multiple breaches on this occasion, the penalty will be \$7,000.

OUTCOME

[31] Mr Lawlor is:

- (1) Censured.
- (2) Prevented from reapplying for any licence for a period of two years from the date of this decision.
- (3) Ordered to pay a penalty of \$7,000 within one month.

D J Plunkett
Chair

¹³ Immigration Advisers Licensing Act, ss 10(c), 17(b).