IN THE DISTRICT COURT
AT WELLINGTON

CIV-2015-085-000368
[2016] NZDC 2414

BETWEEN	ZHIRON (GORDON) WANG Appellant
AND	IMMIGRATION ADVISERS AUTHORITY Respondent

Hearing: 9 February 2016

Appearances: H F McKenzie for the Appellant
E F Tait for the Respondent

Judgment: 18 February 2016

DECISION OF JUDGE W K HASTINGS

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[1] Mr Wang appeals against a decision of the Immigration Advisers Complaints and Disciplinary Tribunal to cancel his licence, to prevent him reapplying for a licence for two years, and to fine him $5,000. The decision appealed from is reported as *Afrez Tasheef Ali v Zhirong (Gordon) Wang [Imposition of Sanctions]* [2015] NZIACDT 50. I will refer to it as the "sanctions decision".

[2] Mr Wang does not appeal the Tribunal's decision to censure him or the order to refund fees of $2,460 to the complainant. Ms McKenzie submitted that his decision not to appeal the order to refund fees indicates Mr Wang's regret "at the effects that Mr Martin's conduct might have had on the complainant, and his client-centred approach."

[3] Mr Wang was employed by Richard Martin Immigration Ltd. Although Mr Wang was an immigration adviser, Mr Martin was not.

[4] The Authority opposes the appeal.

The law

[5] Mr Wang brought his appeal under s 81(1) of the Immigration Advisers Licensing Act 2007 which provides as follows:

> **81 Right of appeal**
>
> (1) A person may appeal to a District Court against any of the following decisions:
>
> (a) a decision of the Registrar to refuse to license the person as an immigration adviser:
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> (b) a decision of the Registrar to grant the person a limited or a provisional licence only, rather than a full licence:
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> (c) a decision of the Tribunal to cancel or suspend the person's licence:
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> (d) any other decision of the Tribunal imposing on the person a sanction of a kind referred to in section 51(1)(a) to (i):
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> (e) a decision of the Tribunal to reject an appeal under section 55.

[6] Section 81 has been considered by Priestley J in *ZW v Immigration Advisers Authority* [2012] NZHC 1069 and by Collins J in *Loh and Gu-Chang v Immigration Advisers and Complaints Tribunal and Immigration Advisers Authority* [2014] NZHC 1166. Priestley J said at [33] and [34]:

> [33] The Judge's interpretation of s 81(1) was correct. Parliament has conferred a right of appeal to the District Court in respect of only the five s 81(1) categories of decisions made by the Registrar and the Tribunal. An immigration advisor can only contest on appeal the Tribunal's decisions in respect of those five categories. There is no right of general appeal.
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> [34] Section 81 is in contrast to more extensive appeal rights conferred by statutes creating disciplinary bodies for other professionals and occupational groups. However, Parliament is certainly entitled to adopt a more stringent approach to appeal rights from the Tribunal if it so chooses. I see no warrant to give s 81(1) an expansive interpretation beyond its clear words.

Collins J affirmed Priestley J's dictum. This is therefore not a general appeal and is strictly limited to an appeal from some of the sanctions imposed. Nor is it a hearing de novo. This appeal is by way of rehearing under rule 18.19 of the District Court

Rules 2014, which means I must consider for myself "the issues which had to be determined at the original hearing and the effect of the evidence then heard as it appears in the record of the proceedings" (*Pratt v Wanganui Education Board* [1977] 1 NZLR 476 (CA)).

[7] Further, there is no right of appeal from the Tribunal's decision to uphold a complaint (the substantive decision containing conduct findings). The right of appeal is confined to the sanctions imposed by the Tribunal in its separate sanctions decision.

[8] The sanctions that may be imposed by the Tribunal are set out in s 51:

> **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:
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> (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:
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> (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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> (2) The Tribunal must notify its decision to the complainant (if any) and the person complained about in writing, giving reasons for the decision.

(3) A person subject to a sanction under this section has the right to appeal, under section 81, the Tribunal's decision to impose the sanction.

(4) If an immigration adviser fails to demonstrate, to the satisfaction of the Registrar, compliance with a requirement imposed under subsection (1)(b), the adviser's licence is deemed to be cancelled at the end of the specified period.

(5) Any payment ordered by the Tribunal under subsection (1)(f) or (g) may be recovered as a debt due to the Crown.

[9] The District Court hearing an appeal of a sanctions decision has the following powers under s 84:

84 Determination of appeal

(1) In determining an appeal, a District Court may confirm, vary, or reverse the decision of the Registrar or the Tribunal.

(2) The District Court's decision in the determination of an appeal is final.

(3) To avoid doubt, nothing in this section affects the right of any person—

(a) to apply, in accordance with law, for judicial review; or

(b) to appeal to the High Court on a question of law under section 85.

The grounds of appeal

[10] There are three grounds of appeal:

Ground A is that the Tribunal failed to take into account relevant matters, including the practical limitations of the extent to which a part time employee of a limited liability company, and subsequently, an employee who has resigned from that company, can be expected to monitor what his employer is doing;

Ground B is that the Tribunal took into account irrelevant matters, including the gravity of the employer's conduct, the appellant's previous matter before the tribunal, and the appellant's "apparent non-acceptance of the Tribunal's findings in a setting where there is no ability to appeal a conduct finding";

Ground C is that the Tribunal was plainly wrong to impose the sanctions which are the subject of the appeal. Ms McKenzie submitted that because the Tribunal made no finding of dishonesty against the appellant, and in light of the mitigating circumstances, his conduct does not sit at the most serious end of the spectrum and therefore does not warrant cancellation, a two year prohibition on reapplying, and a $5,000 fine.

[11] I turn now to the background which is taken from the substantive decision of the Tribunal dated 22 January 2015 and reported at [2015] NZIACDT 2, and the Adviser's Supporting Submissions dated 24 March 2014.

Background

[12] Mr Wang was employed by Richard Martin Immigration Limited (RMIL) as a part-time employee working 12 hours a week from 20 October 2009 to 11 April 2011. He was a licensed immigration adviser. On the day he started work, he initiated a memorandum to manage compliance with the Code of Conduct while worked part-time. During this time, RMIL employed one other immigration adviser, Mr Lepcha, on a full-time basis. Mr Lepcha resigned on 21 January 2011, leaving Mr Wang as the only licensed adviser. Mr Wang expressed his concern to Mr Martin about his ability to handle the caseload at RMIL and reminded Mr Martin that he could not give immigration advice. Mr Martin assured him that a replacement would be hired in reasonably short order. That did not happen.

[13] On 4 February 2011, the complainant attended a meeting at RMIL. Also in attendance were the complainant's potential employers. The purpose of the meeting was to engage RMIL's services to obtain a work visa for the complainant. Mr Wang was there at the beginning of the meeting to give advice on the work visa application. He left when Mr Martin came in. He said Mr Martin's contribution was limited to doing clerical work on the file. Ms McKenzie submitted that this meeting "was not an opportunity for Mr Martin to provide immigration advice which he was not allowed to do. This point is important because the Appellant submits that Mr Martin did not have the opportunity to review the documentation at the 4 February 2011 meeting because it was not available until 3 and 4 March 2011. This in turn

relates to whether Mr Martin provided immigration advice which was an integral part of the Tribunal's findings against the Appellant". As this is not an appeal from the Tribunal's substantive decision, I cannot disturb the Tribunal's finding in this respect.

[14] Mr Wang resigned effective 11 April 2011. He notified clients of his departure, including the complainant. The tribunal found at [17] that "He considered he could do no more for the existing clients as he was under a restraint of trade agreement with Richard Martin Immigration Ltd."

[15] In its substantive decision, the Tribunal made the following findings:

> [82] Accordingly, I am satisfied on the balance of probabilities Mr Wang was a party to Mr Martin unlawfully providing immigration advice. He was aware of what Mr Martin did and agreed he should do so. I find Mr Wang breached clause 1.1 of the Code of Conduct as he failed to act with professionalism. His failures to ensure the complainant's instructions were performed by a licensed immigration adviser, or person exempt from licensing meant he had unprofessionally allowed a person who could not lawfully perform the work to engage in the instructions.
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> [83] I am also satisfied Mr Wang acted with a lack of care, diligence and professionalism as he failed to take charge of the instructions and client relationship, and to deliver professional advice and services. The complainant's work, apart from establishing the client relationship and a review of the documents, was not under Mr Wang's control; Mr Martin dealt with the work. For reasons discussed, allowing Mr Martin access to a client both involved a breach of the Act, and an unprofessional disregard for the risks clients faced in being exposed to him.
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> ...
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> [89] ... I am satisfied Mr Wang had, and when he gave advice still had, a grossly incomplete comprehension of his professional responsibility. However, that is a very different matter to dishonesty though making a false statement to Immigration New Zealand.
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> ...
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> [93] If Mr Wang could not control clients' relationships when he left, then that was entirely foreseeable when he accepted the instructions. When he accepted the instructions he did not have control over the Practice's personnel, the finances, and importantly Mr Martin would not accept direction or authority exercised over him. For the reasons discussed, Mr Martin was a hazard to clients, and allowed Mr Wang only such control as he chose. At the commencement of his role as the sole licensee in the Practice, Mr Wang could have insisted on having proper control, or refused to be involved if Mr Martin did not allow that. When he left there were potential

strategies, including reporting to the Authority that he did not have access to clients' records and clients to comply with the Code's requirements that he:

> [93.1] Take reasonable steps to ensure clients' interests are represented when he could not continue as a representative (Code of Conduct, clause 1.1(c));
>
> [93.2] Return documents (Code of Conduct clause 1.3(b));
>
> [93.3] Confirm in writing when work ceased (Code of Conduct clause 3(b)); and
>
> [93.4] Refund any fees when ending the contract (Code of Conduct clause 3(d)).

[94] Mr Wang's position is that he was entitled not to concern himself with those responsibilities, and could leave the complainant's interests in Mr Martin's hands. That has no sensible connection with his duties under that Act and the Code. A professional evaluation of the situation when he left would have caused Mr Wang to appreciate his client's affairs had been mishandled through the intervention of an unlicensed person. Furthermore, the application failed. Mr Wang said he regarded the application as straight forward and he evaluated the process and documentation submitted to Immigration New Zealand. To his credit he has subsequently accepted that he made mistakes. The result was that the complainant's application failed for what I am satisfied were foreseeable reasons and directly connected with Mr Wang not managing the instructions properly; he then left the complainant without representation.

[16] These findings are set out to provide the background to those aspects of the penalty decision under appeal. I turn now to consider each ground of appeal.

Discussion

[17] The first ground of appeal, Ground A, is that the Tribunal failed to take into account relevant matters, including the practical limitations of the extent to which a part time employee of a limited liability company, and subsequently, an employee who has resigned from that company, can be expected to monitor what his employer is doing. The appellant submits that these are mitigating circumstances relating to the complaint that the penalty decision does not reflect.

[18] At the hearing, Ms McKenzie took some issue with the Tribunal's finding that Mr Wang allowed Mr Martin to review the complainant's documentation following the meeting of 4 February 2011 because she submitted that those documents were not produced for another month. That finding however cannot be

the subject of this appeal. The sanctions decision was however careful to refer to the Tribunal's findings in the substantive decision that were relevant to penalty. The Tribunal also took into account Mr Wang's previous breach of the Act in similar circumstances and assessed the gravity of the offending in the following terms:

> [32] The Tribunal did not find dishonesty; however, despite Mr Wang's submissions to the contrary, it did find Mr Wang's offending was at the most serious end of the spectrum. He knew the Tribunal took the view what he did was serious professional offending; regardless he did not take charge of professional service delivery. He allowed Mr Martin to continue to offend, after the Tribunal's findings on the earlier complaint regarding similar conduct.
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> [33] Mr Wang continued to allow Mr Martin to engage with clients who were entitled to the protection afforded by the Act; Parliament enacted the Act to prevent persons such as Mr Martin having contact with clients, and dealing with their affairs. The Act has severe criminal sanctions to enforce that objective.
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> [34] Mr Wang's offending undermined the protections of the Act, as a licensed immigration adviser was obliged to deliver those protections to clients, and not allow Mr Martin to offend against them.

[19] The Tribunal knew from Mr Wang's submissions that he took steps to manage the workload following Mr Lepcha's departure, but came to the view that he could have taken steps to do more. It set out these steps at [93] and [94] of the substantive decision.

[20] Ms McKenzie submitted that "the appellant appears to be being held accountable for the actions of RMIL/Richard Martin his employer", but the basis of the Tribunal's sanctions decision is that Mr Wang knew from the Tribunal's decision and the scheme of the Act that the Act imposes personal responsibility on individual advisers. Only individual advisers can be licensed. This individual liability cannot be diminished by the corporate structure within which Mr Wang worked or the part-time nature of his employment. Notwithstanding the steps he took on the day he started employment, the steps he took when Mr Lepcha resigned, and the steps he took when he resigned, the Tribunal found that the Act itself required him to do more to discharge his statutory responsibility. I do not read the Tribunal's decision as requiring the appellant to have taken steps after he left RMIL, but it certainly required him to take steps before he left to manage his departure. It was up to him to come up with systems to manage the obligations imposed on him by the statute

despite the ill-fitting arrangement under which he was engaged. In this regard, I respectfully disagree with the reasoning of His Honour Judge Somerville in *Yap v Immigration Advisers Authority* (CIV-2013-009-001684, Christchurch DC, 20 January 2014) who, in deciding that he Tribunal was "plainly wrong" to hold an adviser accountable for the actions of her corporate employer, stated at [76] and [77] that

> It is hard to see why the Authority has tolerated the presence of companies within the industry, especially those, such as Oceania, owned by shareholders and controlled by directors none of whom are Licensed Immigration Advisors. ... It is certainly regrettable that the Authority's awareness of this corporate structure and the implied approval it has given to it, has led to no one who can be held accountable for charging, and attempting to retain, fees to Ms G that were in excess of the contract rate, but Ms Y should not be penalised for that.

[21] I am of the view that it is not part of the Authority's functions or powers to tolerate or implicitly approve the business structure in which advisers give advice. The legislation is clear that the statutory obligations of advisers are personal to the adviser. It is for the adviser to take steps to ensure her or his obligations are met regardless of the business structure in which she or he gives advice. It is not possible for advisors to use a business structure to opt out of some or all of these statutory professional obligations. I accept that when *Yap* was appealed, the High Court did not determine this aspect of the judgment ([2014] NZHC 1215 at [14]). But I respectfully agree with His Honour Judge MacAskill who, in *McHugh v Immigration Advisers Authority* (CIV-2013-085-001004, Christchurch DC, 28 January 2015) observed at [20] that the fact that "Oceania [the employer company] was potentially implicated in the dishonesty in no way excuses her [the employee adviser's] conduct." His Honour went on to observe at [21] that:

> It seems to me that the appellant still fails to grasp that professional responsibility is essentially a personal responsibility and that an adviser cannot shelter behind their employer's practices or general reviews by the assessors.

[22] Given its findings that Mr Wang could have done more, that he was sufficiently aware of what Mr Martin was doing to be responsible for not providing the services himself, that he allowed Mr Martin to provide those services, and that he knew he should have done more from the Tribunal's previous decision upholding a

complaint against him on similar grounds, it is perhaps unsurprising that the Tribunal gave particular weight to the significant aggravating features of Mr Wang's conduct. I am satisfied that to the extent the matters raised by the appellant are relevant, the Tribunal gave them appropriate weight. This ground of appeal fails.

[23] The second ground of appeal, Ground B, is that the Tribunal took into account irrelevant matters, including the gravity of the employer's conduct, the appellant's previous matter before the tribunal, the appellant's "apparent non-acceptance of the Tribunal's findings in a setting where there is no ability to appeal a conduct finding", and the weight the Tribunal put on punishment as distinct from ensuring the maintenance of appropriate standards of professional conduct.

[24] The Tribunal turned its mind to the gravity of the employer's conduct. I do not, however, consider this to be an irrelevant consideration because its finding against Mr Wang is linked to that conduct. The Tribunal found that Mr Wang allowed Mr Martin to deliver immigration services unlawfully. The Tribunal stated that this was not a determination that Mr Wang aided and abetted Mr Martin to offend, but what Mr Wang "allowed to occur was extremely serious, particularly as the Tribunal had recently upheld a complaint against him on similar grounds." The Tribunal expressed its conclusion on this point at [28] of the sanctions decision:

> That Mr Martin was probably committing a serious criminal offence does mark the gravity of Mr Wang's professional offending, but no more, nor less, than that.

To my mind, this indicates that the Tribunal was particular about the weight it gave Mr Martin's very serious offending when it assessed the gravity of Mr Wang's offending, and was careful to put it in that context.

[25] The Tribunal also took into account the proximity in time, and the similarity, of an earlier complaint against Mr Wang which it upheld. This cannot be considered an irrelevant matter either. Indeed, it is highly relevant. In *Withers v Standards Committee No 3 of the Canterbury Westland Branch of the New Zealand Law Society* [2014] NZHC 611, a Full Court said at [74]:

> We do not accept that Mr Withers' disciplinary history was accorded undue weight.... His disciplinary record is of significant concern, particularly the

> previous breaches of an undertaking and an instruction in favour of a familial interest. This history, when added to the serious misconduct, rendered the outcome inevitable.

[26] The Tribunal referred to Mr Wang's "defiance" of the Tribunal's decision on the earlier complaint, and said that he continued to act on his own view "in relation to a matter of very real gravity". Ms McKenzie submitted that Mr Wang was simply exercising his legal right to appeal the earlier decision. I do not think the Tribunal's use of the word "defiance", or Mr Wang's decision to appeal the Tribunal's previous decision, indicates that the Tribunal took into account an irrelevant matter, or gave it inappropriate weight. Once again, the Tribunal was careful to put it in context at [30]:

> Mr Wang was of course fully entitled to challenge the Tribunal's decision in the Courts, as he did. He was also entitled to contend in his evidence the Tribunal was wrong, as he also did. It was also clearly appropriate for him to challenge the grounds of this complaint; the Tribunal has dismissed some of the grounds. However, that did not give him immunity from the consequences of continuing to offend if he was wrong about the Tribunal's view of his professional duties in relation to Mr Martin, which the Tribunal expressed in the previous complaint.

The Tribunal therefore did not use the word "defiance" in relation to Mr Wang's decision to appeal the Tribunal's first decision. The Tribunal was concerned that Mr Wang continued to conduct himself in the same way by allowing Mr Martin to give immigration advice unlawfully. It was Mr Wang's conduct, rather than exercising his right of appeal, that was of concern to the Tribunal. This is most certainly a relevant consideration.

[27] I accept that the focus of disciplinary proceedings must be to maintain professional standards rather than to punish the practitioner, but it is inevitable that that focus may also have a punitive effect (*Z v Dental Complaints Assessment Committee* [2008] NZSC 55 at [97]). In light of the Tribunal's statement at [18] that "those matters give dimension and perspective when evaluating what sanctions properly take account of the protection of the public, enforcing standards, punishment and deterrence, and rehabilitation", I do not accept that the Tribunal gave undue weight to punishment at the expense of enforcing standards.

[28] For these reasons, I do not consider that these matters were irrelevant, or that the weight the Tribunal placed on them was inappropriate. This ground of appeal fails.

[29] The third ground of appeal, Ground C, is that the Tribunal was plainly wrong to impose the sanctions which are the subject of the appeal. Ms McKenzie submitted that because the Tribunal made no finding of dishonesty against the appellant, and in light of the mitigating circumstances, his conduct does not sit at the most serious end of the spectrum and therefore does not warrant cancellation, a two year prohibition on reapplying, and a $5,000 fine.

[30] Ms McKenzie submitted that the complainant was primarily concerned with the conduct of the company rather than with Mr Wang, and that the mitigating factors including the steps he took on joining the company, when Mr Lepcha resigned, and before he left, mean that his conduct cannot be characterised as so serious as to warrant cancellation of his licence, a two year prohibition on reapplying for a licence, and a $5,000 fine. In other words, the sanctions were a disproportionate response to the offending conduct which was mitigated to some extent, and were therefore plainly wrong.

[31] Against this however is the appropriate weight the Tribunal gave to its findings with respect to the gravity of Mr Wang's conduct with respect to this complaint, his conduct after the first complaint, and to the need for parity. The Tribunal weighed these matters at [49] and [50]:

> [49] Given the course Mr Wang chose to take after the first complaint, it is unrealistic to expect the Tribunal to impose a lesser consequence in relation to his licence for his repeated and defiant offending. In relation to the previous complaint, the other license holder involved in the matter had his full licence cancelled. Mr Wang received a more lenient treatment and continued to practice under supervision.
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> [50] Mr Wang's defiance and the gravity of his offending are such that I am satisfied that the necessary, appropriate and proportionate outcome is to cancel Mr Wang's licence and prohibit him from applying for another licence for the statutory maximum of two years. That was the penalty imposed on his colleague in virtually identical circumstances in relation to the previous complaint.

In those circumstances I do not consider that the sanctions imposed were a disproportionate response to the gravity of the offending.

[32] Ms McKenzie also submitted that the Tribunal made a finding that Mr Wang's conduct was "at the most serious end of the spectrum" without making a finding of dishonesty. This issue concerns whether conduct falling short of dishonesty can nevertheless be characterised as at the most serious end of the spectrum. In my view, it can.

[33] The Tribunal considered precisely this point at [45]. Although the cases it cited concern law practitioners, I do think any real distinction can be made on that basis. Both professions are concerned with public confidence that professional standards are maintained. The Tribunal referred to *Shahadat v Westland District Law Society* [2009] NZAR 661:

> [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:
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> > 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.
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> [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:
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> > 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.

[34] In light of the Tribunal's assessment of the gravity of Mr Wang's offending, it cannot be said that the Tribunal was plainly wrong to characterise his conduct as at the most serious end of the spectrum, even in the absence of a dishonesty finding.

[35] There is no doubt that the sanctions imposed are severe and will adversely affect Mr Wang. He has provided evidence of this in his affidavit of 18 June 2015. Harm to the appellant has been the subject of some judicial comment, once again in the context of lawyers' disciplinary appeals. There, it has often been submitted that suspension is an unreasonable or unduly harsh response to misconduct. Against this must be weighed the Tribunal's significant responsibility to uphold professional standards and mitigate risk to the public. Sir Thomas Bingham MR (as he then was) addressed this point in *Bolton v Law Society* [1994] 1 WLR 512 at 519:

> Because orders made by the tribunal are not primarily punitive, it follows that considerations which would ordinarily weigh in mitigation of punishment have less effect on the exercise of that jurisdiction than on the ordinary run of sentences imposed in criminal cases. It often happens that a solicitor appearing before the tribunal can adduce a wealth of glowing tributes from his professional brethren. He can often show that for him and his family the consequences of striking off or suspension would be little short of tragic. Often he will say, convincingly, that he has learned his lesson and will not offend again. On applying for restoration after striking off, all these points may be made, and the former solicitor may also be able to point to real efforts made to re-establish himself and redeem his reputation. All of these matters are relevant and should be considered. But none of them touches the essential issue, which is the need to maintain among members of the public a well-founded confidence that any solicitor whom they instruct will be a person of unquestionable integrity, probity and trustworthiness. Thus it can never be an objection to an order of suspension in an appropriate case that the solicitor may be unable to re-establish his practice when the period of suspension is past. If that proves, or appears to be likely, to be so the consequence for the individual and his family may be deeply unfortunate and unintended. But it does not make the suspension the wrong order if it is otherwise right.

These dicta were cited with approval by the Full Court in *Shahadat v Westland District Law Society*.

[36] The Tribunal took this into account at [52]:

> I have also had regard to the effect on Mr Wang of excluding him from the profession, at least for two years. It will inevitably be harsh; however, Mr Wang was required to understand his professional obligations before commencing practising as a licensed immigration adviser. That included understanding the gravity of offending under the Act; at the time of this offending he was on notice of the Tribunal's views as to how the Act affected his dealings with Mr Martin. The public interest in delivering the protection the Act provides to clients must override Mr Wang's personal interests in these circumstances. The public are entitled to expect this Tribunal will enforce standards. It would be wrong to treat this offending as naïve.

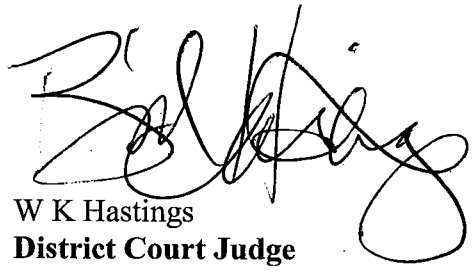
[37] Cancellation of licence and a two year ban on reapplying are at the highest end of the spectrum. A $5,000 penalty is at the midway point. The combination of sanctions would also be at the high end. But having assessed the gravity of the offending as serious, and having addressed the significance of the absence of a dishonesty finding, it cannot be said the Tribunal was plainly wrong to have imposed the sanctions it did. The third ground of appeal also fails.

[38] The Court may only interfere with the Tribunal's discretion to determine sanctions if the Tribunal acted on a wrong principle, took into account an irrelevant consideration, failed to take into account a relevant consideration, was plainly wrong, or if the sanctions it imposed were clearly excessive or inappropriate. As His Honour Judge MacAskill said in *McHugh* at [30]:

> The Tribunal was in the best position to weigh the seriousness of the appellant's professional misconduct. The Tribunal is familiar with the whole gradation of the seriousness of the cases that comes before it and it is particularly well qualified to say at what point on that gradation particular sanctions are appropriate.

[39] This does not mean that the Tribunal's wealth of experience immunises it from the scrutiny of appellate courts; quite the opposite. Such scrutiny provides the oversight necessary to ensure that public confidence in professional standards is maintained. In this case, the Tribunal's sanctions decision has withstood that scrutiny. The Tribunal did not take into account irrelevant matters, nor did it fail to consider or give inappropriate weight to relevant matters. The Tribunal's decision was not clearly wrong and I am not satisfied that the sanctions it imposed were inappropriate.

[40] For these reasons, the appeal is dismissed.



W K Hastings
District Court Judge