



NEW ZEALAND INSTITUTE OF CHARTERED ACCOUNTANTS ACT 1996

IN THE MATTER of the New Zealand Institute of Chartered Accountants Act 1996 and the Rules made thereunder

AND

IN THE MATTER of **A Member**

**DETERMINATION OF THE DISCIPLINARY TRIBUNAL OF THE NEW ZEALAND
INSTITUTE OF CHARTERED ACCOUNTANTS
10 December 2013**

Hearing: 10 December 2013

Tribunal: Mr RJO Hoare FCA (Chairman)
Mr P Herrod CA
Prof DJD Macdonald FCA
Mr MJ Whale FCA
Ms B Gibson (lay member)

Legal Assessor: Mr Bruce Corkill QC

Counsel: Mr Richard Moon for the prosecution
Mr Andrew Gilchrist for the Member

At a hearing of the Disciplinary Tribunal held in public at which the Member was in attendance by videoconference and represented by counsel the Member admitted the particulars and pleaded guilty to the charge.

The charge and particulars as laid were as follows:

Charge

THAT in terms of the New Zealand Institute of Chartered Accountants Act 1996 and the Rules made thereunder, and in particular Rule 21.30(f) the Member has breached the Institute's Code of Ethics.

Particulars

IN THAT

In his role as a Chartered Accountant in public practice and in relation to a complaint by the Complainants, the Member:

- 1) In entering into a property investment transaction, with his clients, the Complainants, namely the purchase of two properties via W Limited, he failed to put in place appropriate safeguards to manage threats to his objectivity and/or conflicts of interest between himself and his clients, in that he failed to:
 - a) disclose in writing the circumstances of his conflict of interest; and/or
 - b) advise the Complainants in writing that they may wish to seek alternative independent advice; and/or
 - c) obtain in writing the informed consent of the Complainants to act,in breach of Rule 5 *Disclosure of Conflict of Interests* and/or paragraphs 63 and/or 64 of the Code of Ethics; and/or
- 2) Approved payment of invoices by W Limited to his accounting practice, without seeking the approval of the other director of W Limited, such that he compromised his objectivity and/or failed to manage the conflict of interest between his personal interests and that of his clients, the Complainants, in breach of Rule 3 *Objectivity* and/or paragraphs 43 and/or 44 of the Code of Ethics.

DECISION

The Member and the complainant were friends for many years before they entered into a property investment venture together and became business partners. Over time their business arrangements became more involved. The complainant also received accounting services from the Member's accounting business.

While some arrangements were put in place to ensure the Member did not personally undertake the accounting work, the Member's accounting business did not put in place a formal letter of engagement for services provided by his accounting business, nor did he advise the complainant

in writing of the potential or actual conflict of interest and advise them in writing to seek independent advice.

The Member's practices in relation to their joint business was not of the expected standard, for example the complainant was not supplied with copies of invoices which the Member approved, only received limited information on fees charged and there was no disclosure of the total paid to the Member's accounting business in the related party notes in the financial statements. A dispute arose between the parties and this has led to the complainant changing accounting provider and the two of them seeking to cease their joint business.

The Member submitted that this issue was a relatively minor matter. The Tribunal disagrees. The management of conflicts of interest is an essential aspect of maintaining the public's trust in the profession and can never be regarded as a minor matter. Especially in situations where there is perceived to be a personal relationship, members must manage all actual and perceived conflicts of interest in accordance with the Code of Ethics and ensure that the terms of engagement are documented in accordance with relevant Professional Engagement Standards.

PENALTY

Pursuant to Rule 21.31(k) of the Rules of the New Zealand Institute of Chartered Accountants the Disciplinary Tribunal orders that the Member be censured.

COSTS

The Professional Conduct Committee seeks full costs of \$6,717.

The Tribunal's general approach is that the starting point is 100% of costs, noting that the Institute already bears the cost of abandoned investigations and costs up to the Professional Conduct Committee's decision to hold a Final Determination.

Submissions were made on the Member's behalf that he should pay a lesser amount.

After considering the matters raised and submissions by both parties, pursuant to Rule 21.33 of the Rules of the New Zealand Institute of Chartered Accountants the Disciplinary Tribunal orders that the Member pay to the Institute the sum of \$6,000 in respect of the costs and expenses of the hearing before the Disciplinary Tribunal and the investigation by the Professional Conduct Committee. No GST is payable.

SUPPRESSION ORDERS

Pursuant to Rule 21.52 (b) of the Rules of the New Zealand Institute of Chartered Accountants the Disciplinary Tribunal orders that the Member's name, that of the complainant and all businesses and the Member's location are suppressed.

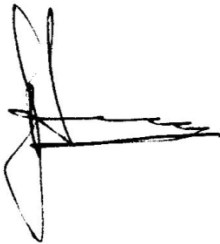
PUBLICATION

In accordance with Rule 21.35 of the Rules of the New Zealand Institute of Chartered Accountants the decision of the Disciplinary Tribunal shall be published on the Institute's website and in the *Chartered Accountants' Journal* without mention of the Member's name and locality.

RIGHT OF APPEAL

Pursuant to Rule 21.41 of the Rules of the New Zealand Institute of Chartered Accountants which were in force at the time of the original notice of complaint, the Member may, not later than 14 days after the notification to the Member of this Tribunal's exercise of its powers, appeal in writing to the Appeals Council of the Institute against the decision.

No decision other than the direction as to publicity and the suppression orders shall take effect while the Member remains entitled to appeal, or while any such appeal by the Member awaits determination by the Appeals Council.

A handwritten signature in black ink, appearing to read 'R J O Hoare', with a stylized flourish extending to the right.

R J O Hoare FCA
Chairman
Disciplinary Tribunal