

NEW ZEALAND INSTITUTE OF CHARTERED ACCOUNTANTS

PROCEDURE TO BE FOLLOWED AT HEARINGS OF THE DISCIPLINARY TRIBUNAL

Commencement of hearing

1. The parties (representatives of the Professional Conduct Committee (PCC) and of the member), Tribunal Secretariat, the legal assessor, the stenographer (or audio recording technician) and any members of the public or representatives of the news media take their seats in the hearing room. (A notice of hearing will have been published by the Tribunal Secretariat on NZICA's website approximately one month prior to the hearing and in the local newspaper one week prior to the hearing.)
2. The Tribunal members enter the hearing room and take their seats.
3. If the member is not represented by counsel, immediately prior to the commencement of the hearing (and at other times if appropriate), the legal assessor will explain the procedure and provide any other assistance to the member that is appropriate.
4. The Chairman opens the meeting, introduces the members of the Tribunal, explains the nature of the proceedings and advises that the hearing will be held in public unless an application is made under Rule 13.62 to hold the hearing or part of the hearing in private and the Tribunal so orders (after hearing from the parties on the issue if necessary). If the PCC or the member seeks suppression orders of any kind under Rule 13.62 an application should be made for interim suppression orders to apply during the hearing. (The Tribunal will make any permanent suppression orders when it makes its final determination.) The media, on request – immediately prior to the commencement of the day's hearings - will already have been advised of the name of the member and have been given a copy of the notice of charge on the condition that there is to be no publication prior to the Tribunal hearing.

Member's pleading

5. The Chairman asks the member's counsel (or the member if not represented) how the member pleads (refer to Rule 13.29 (d) for the requirement to provide written notice to the Tribunal not less than seven days before the date of the hearing of, amongst other things, which if any charges are admitted and which are disputed).



6. If a member pleads guilty to all charges and admits all particulars, then counsel for the PCC will present evidence of the facts giving rise to the charges (this may be an agreed summary of facts or refer to the evidence previously served on the member by the PCC). After receiving any further comments from the member and directions on the issue of liability from the legal assessor, the Tribunal will deliberate on the question of liability; given that, despite a guilty plea, it is for the Tribunal to be satisfied that a charge has been made out – and if necessary will retire to do so. If it is satisfied that a charge has been made out, then the hearing proceeds in accordance with steps 23 to 28 below.
7. If a member pleads not guilty to any charge or to any particular then the hearing proceeds in accordance with paragraphs 10 to 29 below.

Procedure if the member is not present

8. If the member does not attend the hearing of the Tribunal, then the hearing will proceed as follows:
 - a. The PCC will provide evidence to the Tribunal to establish that the notice of charges has been served on the member and will provide information on, or copies of, any communications between the Institute and/or the PCC and the member.
 - b. In the event that any communications from the member do not advise clearly that the member wishes to plead guilty to the charges or any part of them, or if there has been no communication with the member, then the Tribunal will record the fact that the member is taken to have entered no plea to the charges.
 - c. In the event that it is sufficiently clear that the member has pleaded guilty to all charges and admits all particulars, then the hearing will proceed in accordance with paragraph 7 above. The Tribunal Secretariat will produce to the Tribunal any written submissions received from or on behalf of a member who does not attend the hearing.
 - d. In the event that the position is as described in subparagraph b above, then the PCC will present its case, as described in paragraphs 11 to 14 below (but without involvement from the member). The Tribunal Secretariat will produce to the Tribunal any written submissions received from or on behalf of a member who does not attend the hearing.
 - e. In the event that the Tribunal finds a member who is not present guilty of a charge, then the hearing will proceed in accordance with paragraphs 24 to 29 (having regard to any written submissions filed on behalf of the member as to penalty, costs and, if relevant, publication under Rule 13.44 and/or Rule 13.62).

Presence of witnesses

9. Unless the PCC and the member agree or the Tribunal otherwise orders, witnesses (with the exception of the member and the professional conduct case manager) should not be present until called upon to give their evidence and, after they have given their evidence, they should not discuss it with those still to give evidence.

Case for the prosecution

10. The Chairman calls upon counsel for the PCC to present the case for the PCC.
11. Counsel presents opening submissions for the PCC, summarising the nature of the charge and referring to any evidence the PCC proposes to tender under Rule 13.38.
12. The Chairman administers the oath or an affirmation to each witness as called.
13. Counsel for the member (or the member if not represented) may cross-examine each witness called. Counsel for the PCC may re-examine witnesses and then members of the Tribunal may question witnesses. If, as a result of questions asked by the Tribunal, either the counsel for the member (or the member if not represented) or counsel for the PCC wish to ask any questions arising from matters the Tribunal has raised, then such questions may be asked of a witness with the leave of the Chairman.

Case for the member

14. The Chairman calls upon counsel for the member (or the member if not represented) to present the case for the member.
15. Counsel for the member (or the member if not represented) presents opening submissions, summarising the nature of the defence and referring to any evidence which the member proposes to tender under Rule 13.38.
16. The member calls witnesses and the same procedure as that set out in paragraphs 13 and 14 applies as if references to counsel for the PCC are references to counsel for the member (or to the member if not represented) and vice versa.

Closing submissions

17. Counsel for the PCC presents closing submissions for the PCC.
18. Counsel for the member (or the member if not represented) presents the member's closing submissions.
19. In each case, members of the Tribunal may question counsel (or the member if not represented).

Advice from the legal assessor

20. The legal assessor provides directions for the Tribunal on the charges, the cases for the parties and any relevant legal principles. The Chairman and any Tribunal member may ask the legal assessor for further assistance.

Tribunal deliberations

21. The members of the Tribunal retire to deliberate on the question of whether or not the charges have been made out.
22. In the absence of the parties and the news media, the Tribunal members may consult with the legal assessor while the Tribunal is considering the case. If this occurs, the legal assessor will advise the parties of the questions that have been asked and of the advice that has been given when the hearing resumes and the parties will be able to ask any questions about, or make any comments on, any such advice.

Tribunal's decision on the charges

23. When a decision as to the member's guilt has been reached, the Chairman recalls the parties, including members of the public and the news media, and delivers the decision of the Tribunal including, wherever possible, reasons for the decision. The Tribunal's written decision with reasons, if not available on the day, will be provided to the PCC and the member as soon as practicable.

Submissions on penalty, costs, publication and suppression

24. Where the Tribunal finds a member guilty of a charge, then:
 - (a) A final schedule of costs is distributed by the Tribunal Secretariat. (Approximately one week prior to the hearing an interim cost schedule and a copy of the Tribunal's practice note as to costs and expenses will have been provided to the member.)
 - (b) Counsel for the PCC makes submissions on penalty, costs, and, if relevant, publication under Rule 13.44, and on any application under Rule 13.62 seeking to prohibit publication of the Tribunal's decision, a report of the proceedings, any document or the name of any party.
 - (c) Counsel for the member (or the member if not represented) makes submissions on penalty, costs (if making submissions on the inability to pay costs then evidence should be provided on the member's financial circumstances) and, if relevant, on publication and on any application for suppression of name or any other details under Rule 13.62.

- (d) The legal assessor provides directions to the Tribunal on penalty, costs and, if relevant, on publication and on any application for suppression of name or any other details under Rule 13.62.

Tribunal deliberation

- 25. The Tribunal retires to deliberate on the issues of penalty, costs and, if relevant, publication and suppression.
- 26. The Tribunal may consult with the legal assessor at this stage and if it does so then the points made in paragraph 23 will apply.

Tribunal's decision on penalty

- 27. When a decision is reached, the Chairman recalls the parties, including members of the public and the news media, and delivers the decision of the Tribunal including, where possible, reasons for the decision and advises the member of the member's appeal rights in terms of Rules 13.47 and 13.51. The Tribunal's written decision with reasons, if not available on the day, will be provided to the PCC and the member as soon as practicable. If the Tribunal has not reached its decision at the hearing, with the agreement of the member, the decision with reasons will be emailed to the member and the PCC instead.
- 28. Subject to any decision by the Tribunal restricting publication under Rules 13.62, 13.44 and/or 13.45, the Tribunal's decision will be able to be reported immediately after the hearing. The Tribunal's public decision (both full decision and abridged) will record that, under Rule 13.47, any decision of the Tribunal under Rules 13.40 and 13.42 will not take effect pending the determination of any appeal by the member.

This redrafted procedure was formally adopted by the Disciplinary Tribunal under Rule 13.35 at its meeting on 25 September 2014. This document was updated with new Rule references on 24 January 2015 (the Rules remain the same however the numbering has changed from series 21 of the Rules to series 13 of the Rules).