

**BEFORE THE NEW ZEALAND INSTITUTE OF CHARTERED ACCOUNTANTS  
APPEALS COUNCIL**

**IN THE MATTER OF** an appeal against the decision of the Disciplinary Tribunal of the New Zealand Institute of Chartered Accountants dated 24 February 2015

**BETWEEN** **LYNN ROBERTSON**, Accounting Technician (suspended) of Dunedin

**Appellant**

**AND** **THE PROFESSIONAL CONDUCT COMMITTEE OF THE NEW ZEALAND INSTITUTE OF CHARTERED ACCOUNTANTS**

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**DECISION OF APPEALS COUNCIL**

**Dated 27 August 2015**

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**Members of the Appeals Council:**

Les Taylor QC (Chairman)  
Paul Armstrong FCA  
John Hagen FCA

**Counsel:**

Richard Moon for the Professional Conduct Committee

**Appeals Council Secretariat:**

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1. Mrs Robertson has lodged a limited appeal from a decision of the Disciplinary Tribunal dated 24 February 2015 ordering that her name be removed from the Institute's Register of Members, ordering costs in the sum of \$16,000 and ordering publication of the decision including Mrs Robertson's name and location on the Institute's website, in the Institute's official publication *Acuity* and in the Otago Daily Times.
2. Mrs Robertson accepts that she has been found guilty of the charges and accepts the penalty of removing her name from the Institute's Register of Members. The appeal is limited to:
  - (a) the costs order of \$16,000; and
  - (b) the order that the decision with Mrs Robertson's name and occupation be published in the Otago Daily Times.
3. By agreement this appeal is being dealt with on the basis of written submissions filed by the parties.

*Approach to the appeal*

4. We accept the submission of counsel for the respondent that, when considering an appeal from an exercise of the Disciplinary Tribunal's discretion as to costs and publication, the correct approach is as set out in *NZICA v Juhno Lee*, 19<sup>th</sup> July 2013. The onus is on the appellant to show that the Tribunal has acted on a wrong principle, has failed to take account of some relevant matter, has taken into account an irrelevant matter or the decision made is plainly wrong.

*Appeal as to costs*

5. The Tribunal in its decision noted that, where charges against a member have been established, the normal starting point in this jurisdiction is to award 100% of costs incurred in prosecuting the charges. That, however, is subject to the Tribunal's practice note which outlines circumstances in which costs may be reduced or not ordered. One of the grounds for ordering less than the full amount of costs incurred is demonstrated evidence of hardship by the member resulting in a significant inability to pay.
6. The costs payable on a 100% basis were \$32,243. In its decision, however, the Tribunal recorded that it was satisfied that Mrs Robertson had a significant inability to pay and awarded costs of \$16,000.

7. Mrs Robertson in her written submissions pointed out that, in addition to the \$16,000 ordered to be paid by the Tribunal, she owed \$23,625.54 which she was ordered to pay by the Appeals Council in respect of costs on a previous appeal (relating to name suppression pending an appeal to the Court of Appeal in related criminal proceedings) which she could only pay at \$10 per week for the rest of her life.<sup>1</sup>
8. It is clear that, as found by the Disciplinary Tribunal, Mrs Robertson has a significant inability to pay a substantial award of costs. She is 56 years of age, has no current employment and despite many applications has had no success in finding employment. Inland Revenue has removed her as a tax agent and she has been unable to obtain work as a self-employed accountant.
9. However, Mrs Robertson has a joint family home which is valued at \$335,000 with a \$65,000 mortgage. That is a substantial equity. Mrs Robertson says that her husband would not agree to an addition to the mortgage and that no bank would lend money without a regular income. That, however, is not a position which will necessarily prevail indefinitely.
10. Mrs Robertson has pointed out that her husband is ill, her health has not been good and she has two daughters, one 15, who need both financial and emotional support.
11. Although we accept that Mrs Robertson may currently be unable to pay a substantial sum we see that as a matter which can properly be dealt with by the Institute in enforcing any order as to costs. The substantial equity in the home, which is more than sufficient to pay the costs ordered by the Tribunal (and the costs awarded by the Appeals Council) suggests that the 50% reduction in costs ordered by the Tribunal is reasonable.
12. We see no reason to interfere with the decision. We are not satisfied that the Tribunal has failed to take into account relevant considerations or that it has acted on a wrong principle or taken into account irrelevant considerations.
13. On our review of the decision and the transcript of the hearing the health problems identified by Mrs Robertson were before the Tribunal. Although the withdrawal of the agent status by the IRD had not occurred at that time and Mrs Robertson had received some income in the period up to 31<sup>st</sup> January 2015, she had by the time of the decision lost her then employment.

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<sup>1</sup> We note that the actual order for costs made by the Appeals Council was for \$23,654.53.

14. Mrs Robertson had disclosed to the Tribunal that she had credit card debts "and a mortgage" although it does not appear that the amount of the significant equity in the home was before the Tribunal. Mrs Robertson had, however, told the Tribunal that her husband would not agree to a further mortgage and that the bank would not in any event lend money because she had no regular income. Although there has been some further deterioration in Mrs Robertson's financial position since the decision of the Tribunal, we consider that the substantial equity in the home outweighs the need for any further reduction in the amount of the costs award made by the Tribunal.
15. We therefore dismiss the appeal as to costs.

*Publication*

16. In its written decision the Tribunal noted that "your convictions and offending have already been published in the media but with no mention of you being a member of the Institute." The Tribunal therefore ordered publication on the Institute's website, in the official publication *Acuity* and in the Otago Daily Times.
17. Mrs Robertson in her submissions in support of the appeal regarding publishing of her name in the Otago Daily Times stated as her only ground that "the Chairman stated in the hearing that the article published in December, did not say my occupation and so it should be republished." In indicating the Tribunal's decision as to publication at the hearing the Chairman said that the publicity did not contain any reference to Mrs Robertson being "an accountant". In its written decision, however, the Tribunal made it clear that the reason for publication in the Otago Daily Times was because the publicity made no mention of Mrs Robertson being "a member of the Institute". This seems to have led to a misunderstanding by Mrs Robertson as to the reason for the decision to order publication by the Institute of the Tribunal's decision and the name and occupation of Mrs Robertson in the Otago Daily Times.
18. The concern of the Tribunal, as expressed in the decision, is that the significant publicity which Mrs Robertson received (following the decision of the Court of Appeal rejecting her appeal from the decision of the High Court not to order name suppression in the criminal proceedings) did not refer to the fact that Mrs Robertson was a member of the Institute.
19. Given the significant publicity which followed the Court of Appeal decision on name suppression we think it is important that the public be informed that the Institute, through its disciplinary processes, has taken appropriate steps to remove Mrs Robertson as member of the Institute. The principles of transparency and

accountability of the disciplinary process are important factors which justify publication of the fact that the Institute has taken the necessary disciplinary steps arising from the misconduct of one of its members. There is also an element of public protection in circumstances where Mrs Robertson had been providing accountancy services to private clients in the Dunedin area.

20. We agree with the decision of the Disciplinary Tribunal to order publication in the Otago Daily Times. We do not consider that the ground put forward by Mrs Robertson justifies interference with the exercise of the discretion by the Disciplinary Tribunal. It appears to be based on a misconception.

#### **Decision**

21. For the above reasons the appeal is dismissed. If the PCC wishes to pursue an order for costs it may do so within 10 days of the date of this decision. Should such an application be made Mrs Robertson should have a further 10 days to respond.

Dated this 27th day of August 2015.



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L J Taylor QC  
**Chairman**  
**Appeals Council**