

**INSTITUTE OF CHARTERED ACCOUNTANTS OF NEW ZEALAND
NOTICE OF DECISION OF THE DISCIPLINARY TRIBUNAL**

(Member guilty of misconduct in a professional capacity and breaching the Rules and/or Code of Ethics of the Institute)

At a hearing of the Disciplinary Tribunal of the Institute of Chartered Accountants of New Zealand held in public on 3 and 4 July 2006, at which the member was in attendance and represented by counsel, **LEON PAUL HENDREN** of Christchurch pleaded guilty to the following charges (1) and (4) and admitted the following particulars 1.1 (a), (b), (c), (d), 1.2 (a), (b), (c), (d) and 2.1 and the Tribunal found particular 2.2 proven. Charges (2), (3) and (5) were withdrawn by the prosecution.

Charges:

THAT in terms of the Institute of Chartered Accountants of New Zealand Act 1996 and the Rules made thereunder, and in particular Rule 21.30 Leon Hendren is guilty of:

- (1) Misconduct in a professional capacity; and/or
- (2) (withdrawn)
- (3) (withdrawn)
- (4) Breaching the Rules and/or Code of Ethics of the Institute; and/or
- (5) (withdrawn)

Particulars:

IN THAT:

Being a member of the Institute of Chartered Accountants of New Zealand and in relation to a complaint the member:

- 1.1 Was professionally associated with an invitation to invest money to the public and/or prospective investors when he knew or after reasonable enquiry ought to have known that the invitation did not give a full and fair statement in relation to:
 - (a) The nature of the rights that were to be purchased by Partnership A from Company B; and/or
 - (b) The right to claim depreciation in accordance with the Income Tax Act 1994; and/or
 - (c) The true value of the rights that were being transferred and/or the purchase price to be paid by Partnership A; and/or
 - (d) The estimated future results for Partnership A for the years ended 31 March 1998 to 31 March 2007.

(Code of Ethics 1995 – FP 1; and/or FP 2; and/or FP 5; and/or FP 7; and/or EP 8.4; and/or EP 22; and/or EP 29; and/or EP 31)

- 1.2 Made representations or caused representations to be made to one or more prospective investors in Partnership A which failed to present the information fully and/or honestly and/or professionally so that such representations would be understood in the proper context in relation to:

- (a) The nature of the rights that were to be purchased by Partnership A from Company B; and/or
- (b) The right to claim depreciation in accordance with the Income Tax Act 1994; and/or
- (c) The true value of the rights that were being transferred and/or the purchase price to be paid by Partnership A; and/or
- (d) The estimated future results for Partnership A for the years ended 31 March 1998 to 31 March 2007.

(Code of Ethics 1995 – FP 1; and/or FP 2; and/or FP 5; and/or FP 7; and/or EP 22; and/or EP 29; and/or EP 31)

AND the member:

- 2.1 Failed to disclose to the prospective investors that he would directly or indirectly receive a financial benefit from the said scheme or arrangement; and/or

(Code of Ethics 1995 – FP 1; and/or FP 5)

- 2.2 Made conflicting statements to the Professional Conduct Committee and the Inland Revenue Department as to the basis for determining the purchase price and/or valuation of the rights to be transferred.

(Code of Ethics 1995 – FP 1; and/or FP 5; and/or EP 29)

Reasons

The member has admitted all the particulars 1.1 (a), (b), (c), (d), 1.2 (a), (b), (c), (d) and 2.1 with the exception of particular 2.2 and pleaded guilty to charges (1) and (4) with charges (2), (3) and (5) being withdrawn by the prosecution. In relation to particular 2.2, although he submitted that the conflicts could be reconciled the Tribunal found this particular proved but not of great significance.

The Tribunal acknowledges the environment in which the member operated with an entrepreneurial firm, a charismatic boss and a natural desire to please his employer and a reliance on the ACTONZ precedence. The Tribunal also acknowledges that other parties were also participants but are not before the Tribunal but it is no defence to ethical breaches that his employer was not bound by such a code.

The Code of Ethics requires among other things fundamental principles of integrity, objectivity, independence and freedom of conflicts of interest. The Tribunal asked if he had a genuine belief as to: the business opportunity, the validity of the critical IP and the tax treatment to follow. Despite the submissions on his behalf the Tribunal doubt that he did, but for a professional that belief must be reasonable as well as genuine. Here we have IP acquired for nothing and resold for \$7.5 million, a sum not supported by realistic or soundly researched projections. But most telling the member did not disclose his economic interest as a vendor of the \$7.5 million.

ORDERS OF THE TRIBUNAL

- (a) Pursuant to Rule 21.31 (a) of the Rules of the Institute of Chartered Accountants of New Zealand, the Disciplinary Tribunal ordered that the name of **LEON PAUL HENDREN** be removed from the Institute's Register of Members.

- (b) Pursuant to Rule 21.33 of the Rules of the Institute of Chartered Accountants of New Zealand, the Disciplinary Tribunal ordered that **LEON PAUL HENDREN** pay to the Institute the sum of \$17,196.85 (inclusive of GST) in respect of the costs and expenses of the hearing before the Disciplinary Tribunal and the investigation by the Professional Conduct Committee.
- (c) Pursuant to Rule 21.52 (b) of the Rules of the Institute of Chartered Accountants of New Zealand, the Disciplinary Tribunal ordered that the briefs of evidence and the financial details of the complainants be suppressed.

In accordance with Rule 21.35 of the Rules of the Institute of Chartered Accountants of New Zealand, the Disciplinary Tribunal directed that the decision of the Tribunal be published in the Chartered Accountants Journal, the New Zealand Gazette and the Christchurch Press with mention of the member's name and locality.

RIGHT OF APPEAL

Pursuant to Rule 21.41 of the Rules of the Institute of Chartered Accountants of New Zealand which were in force at the time of the original notice of complaint, the member may, not later than 14 days after the notification of this Tribunal to the member of the 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 shall take effect while the member remains entitled to appeal or while any such appeal by the member awaits determination by the Appeals Council.

R J O Hoare
Tribunal Chairman

10 July 2006