

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

**IN THE MATTER OF** an appeal against a decision of the Disciplinary Tribunal of the New Zealand Institute of Chartered Accountants dated 15 March 2018

**BETWEEN** **AOLELE SU'A ALOESE**, Chartered Accountant, formerly of Auckland now of Brisbane

**Appellant**

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

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**DECISION OF APPEALS COUNCIL**

**Dated 18 March 2019**

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**Members of the Appeals Council:**

Les Taylor QC (Chairman)  
John Hagen FCA  
Gary Leech FCA

**Counsel:**

Richard Moon for the Professional Conduct Committee  
Aolele Su'a Aloese self-represented for the appellant

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## **Introduction**

1. This appeal is from a decision of the Disciplinary Tribunal dated 18 December 2018. In that decision the Disciplinary Tribunal found Ms Aloese guilty of conduct unbecoming an accountant. It ordered that Ms Aloese's certificate of public practice be cancelled and ordered that she be censured. It also ordered that the decision of the Disciplinary Tribunal be published on the Chartered Accountants' Australia and New Zealand website and in the official publication *Acuity* with mention of Ms Aloese's name and locality.

## **The appeal**

2. Although the notice of appeal is framed in wide terms, Ms Aloese confirmed in her submissions, and at the hearing of this appeal, that her appeal was confined to imposition of the penalty of censure and the order that her name and locality be published. We deal with each of those matters in turn.

## **Penalty of censure**

3. In approaching the issue of penalty, we are required to make our own assessment of the merits of Ms Aloese's appeal. If we are persuaded that the disciplinary decision is wrong we must make our own decision as to the appropriate penalty.<sup>1</sup>
4. Ms Aloese in her submissions argued that the penalty of censure was unduly harsh. She relied in particular on alleged inconsistency with a previous decision of the Disciplinary Tribunal in *Moore*.<sup>2</sup>
5. It became clear at the hearing, however, that Ms Aloese's submissions of alleged inconsistency with the decision in *Moore* proceeded on a misunderstanding on her part. In *Moore*, which also involved the failure of a member to meet her tax obligations, the Disciplinary Tribunal ordered suspension of the member's certificate of public practice for a period of one year and also ordered that Ms Moore be suspended for a period of one year. Suspension of membership is regarded as being a more severe penalty than censure of the member's conduct.
6. We have carefully considered the circumstances of Ms Aloese's conduct and in particular her very difficult personal and financial circumstances during some of the period over which the conduct occurred. We have also considered the cases referred to by Mr Moon on the issue of alleged inconsistency.

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<sup>1</sup> *Power v NZICA*, AC 2 December 2016.

<sup>2</sup> *NZICA v Moore*, Disciplinary Tribunal, 8 August 2012.

7. We are satisfied that, taking into account those circumstances and the cases referred to us, the conduct is deserving of censure for the reasons outlined by the Disciplinary Tribunal in its decision. The conduct complained of, as described in the decision of the Disciplinary Tribunal, was serious and took place over a prolonged period of time. The Disciplinary Tribunal's decision to order censure of Ms Aloese was both a proportionate and appropriate response taking into account both the nature of the conduct and the circumstances in which it arose.

### **Name suppression**

8. In approaching the issue of name suppression, we adopt the *May v May* approach. The appellant must show that the Tribunal acted on a wrong principle, failed to take into account relevant matters (or took into account irrelevant matters) or was plainly wrong.
9. Ms Aloese in her appeal pointed to her very difficult personal and financial circumstances. She submitted that publication of her name and location would likely prejudice her prospects of obtaining work as a chartered accountant. She asked that her name and locality not be published because she was concerned that prospective employers may not feel able to trust her and her employment prospects might therefore be prejudiced.
10. Ms Aloese also mentioned in her submissions before us that publication would have a detrimental effect on her family. There was no evidence before us, however, which could support an order suppressing publication based on severe prejudice to Ms Aloese's family.
11. We have carefully considered the approach of the Disciplinary Tribunal to this issue and the reasons given by it to order publication of Ms Aloese's name and locality. The Disciplinary Tribunal has clearly adopted the correct approach to this issue.
12. We fully agree with the statement by the Disciplinary Tribunal that harm to reputation which may affect subsequent employment is an inevitable consequence of publication if a professional is the subject of an adverse disciplinary finding. It could not in itself provide sufficient grounds for there to be suppression of name.
13. We agree with the decision of the Disciplinary Tribunal to order publication and see no error in principle, or other error, which could justify the Appeals Council interfering with that decision.
14. We therefore consider that the decision of the Disciplinary Tribunal in respect of publication should be upheld. We should add that, in publishing Ms Aloese's name

and locality, it would be desirable, given her shift of residence from Auckland to Brisbane, to describe her locality as "formerly of Auckland now of Brisbane".


### **Conclusion**

15. For the reasons discussed above, the appeal is dismissed.

### **Costs**

16. Ms Aloese is ordered to pay the full costs of this appeal. The Institute is ordered to compile the amount of those costs and, if there is any dispute as to amount, leave is reserved to apply to have those costs fixed.
17. We note on the issue of costs that Ms Aloese was concerned about her ability to pay the amount of the costs order by the Disciplinary Tribunal (and by the order for costs in this appeal). Ms Aloese made it clear that she would need time to pay the costs. We confirm that, should Ms Aloese require time to pay the amount of the costs orders, that is a matter which she can take up with the Institute.

Dated this 18th day of March 2019.



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