

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

At a meeting of the Professional Conduct Committee (“the Committee”) of the New Zealand Institute of Chartered Accountants (“NZICA”) held in private on 23 November 2020 in respect of **Fergus Donald Cleaver** (“the Member”), a Chartered Accountant of Auckland, the Committee considered the following matter:

1. Whether the Member had brought discredit to and/or impaired the good reputation of the profession by being found guilty of a charge under s 189(2) of the Crimes Act 1961 of injuring with reckless disregard.

[Fundamental Principle of Professional Behaviour and/or R115.1 of the Code of Ethics (2019)<sup>1</sup>]

The Committee was deeply concerned with the matters raised in the complaint in that the Member had been found guilty of a charge of injuring with reckless disregard which involved an altercation between the Member and his ex-wife.

The Committee noted that the Auckland District Court, after finding the Member guilty of the respective charge, had discharged him without conviction. In reaching his decision, Judge Field considered a number of mitigating factors including the numerous counselling programmes the Member had enrolled in and potential impact on the Member’s career that a conviction would have. The Solicitor-General sought leave to appeal the District Court’s decision to discharge the Member without conviction, which was granted by the Court of Appeal. However, the Court of Appeal dismissed the appeal determining that the decision of the District Court Judge was not out of all proportion to the gravity of the offending.

In considering the potential breaches of the Code of Ethics, the Committee noted that under the Code, members are required to adhere to the Fundamental Principle of Professional Behaviour to comply with relevant laws and regulations, and to avoid any conduct which the member knows or should know might discredit the profession. Conduct that might discredit the profession includes conduct that a reasonable and informed third party would be likely to conclude adversely affects the good reputation of the profession. The Committee considered that by being found guilty of the criminal offence of injuring with reckless disregard, despite the conduct in question occurring in the Member’s personal life as opposed to in a professional setting, the Member’s conduct fell far below the standards expected of a Chartered Accountant.

While the Committee acknowledged that the Member appeared to have accepted that his conduct fell far below the required standard, had expressed remorse to the victim, and had apologised to the Committee for having to appear before it under the circumstances, in its view, the violent nature of the Member’s offending and subsequent media coverage of it brought discredit to the profession.

**PENALTY**

Having regard to the information before it, including the nature of the conduct in question, the Committee considered that the matter met the threshold to warrant referral to the Disciplinary Tribunal. However, it determined that in this instance, it would be appropriate to deal with the matter by way of consent order under Rule 13.15(d) with the following terms:

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<sup>1</sup> And, as applicable, the equivalent provisions of the Code of Ethics (2017).

1. that the Member be severely reprimanded in accordance with 13.15(d)(v);
2. that the Member pay costs to NZICA in the sum of \$1,400 in contribution towards the Committee's investigation and case conference hearing in accordance with Rule 13.15(d)(vii), and;
3. that the Member appoint a mentor, at his own cost, for a period of 18 months, to ensure that the Member maintains his professional obligations, in accordance with Rule 13.15(d)(x).

In determining to offer the consent order, the Committee had regard to the fact that the Member had taken a number of steps towards rehabilitation and ensuring he met his continuing professional obligations. These included enrolling in counselling programs (which the Committee expects the Member to continue), and the appointment of a suitable mentor to ensure that he and his firm's professional obligations continue to be met.

Regarding costs, the Committee noted it was appropriate for members to pay a contribution towards the Committee's costs, as otherwise such costs are borne by wider membership.

#### **PUBLICATION**

The Committee also determined that it was in the public interest that notice of its decision and orders made be published in CA ANZ's *Acuity* magazine and on its website with reference to the Member's name and location.

In this instance, the Committee was of the view that the matters raised met the standard of special circumstances required to publish the Member's name and location. The Committee considered that it was appropriate to outline to the wider membership and the public that violent acts in any form, whether in a professional or personal setting, are not accepted by the profession.

#### **MEMBER'S OPPORTUNITY TO CONSIDER THE ORDER**

The terms of the consent order were provided to the Member in writing on 27 January 2021 and he was given 15 days to consider them and take legal advice. In the event that the Member did not accept the consent order, the complaint would be referred to the Disciplinary Tribunal. The Member exercised his right to consider the proposed terms and take legal advice. He subsequently confirmed his agreement to the Committee's orders within the require timeframe.

Rob Pascoe FCA  
**Chairman**  
**Professional Conduct Committee**

