

Determination of the Disciplinary Tribunal of Chartered Accountants Australia and New Zealand 15 November 2018

Case Number:	D-1190
Member:	Phillip Sciacca CA of Queensland
Hearing Date:	8 November 2018
Tribunal:	David Fairlie (Chair) Bruce Glanville FCA Kathryn Brown CA
Representation:	Michael Bradley for the Professional Conduct Committee (PCC) The Member neither appeared nor was represented at the hearing
Case description:	<ol style="list-style-type: none">1. Criminal conviction pursuant to section 474.19(1)(A) of the <i>Criminal Code Act 1995</i> (Cth).2. Member committed an act, omission or default which, in the opinion of the Disciplinary Tribunal, brings or may bring discredit upon that Member, Chartered Accountants ANZ and the profession of accountancy.

1. DECISIONS

1.1 DECISION ABOUT THE PCC'S ALLEGATIONS WHICH ARE SET OUT IN FULL IN SCHEDULE 1

The Member did not attend the hearing of the Disciplinary Tribunal. The Member had admitted in writing the allegations. The Tribunal was satisfied the allegations had been established.

1.2 DECISION ABOUT SANCTIONS

The Tribunal considered that the appropriate sanction in these circumstances was that the Member's membership be terminated and the Member's name be removed from the Registers on which it appears and that NZICA be notified of that termination and removal.

1.3 DECISION ABOUT COSTS SANCTION

The Tribunal determined that the Member pay to Chartered Accountants ANZ the sum of \$6,148 for the full costs and expenses of the proceedings (paragraph 10.12(l) of By-Law 40). No GST is payable.

1.4 DECISION ABOUT PUBLICATION

This decision will not take effect while the Member remains entitled to appeal.

In accordance with paragraphs 12.3 and 12.4 of By-Law 40, the Tribunal directed that:

- its decision with reasons, mentioning the Member's name and locality, be published on the website of Chartered Accountants ANZ (the **Published Decision**)
- a notice mentioning the Member's name and locality with a web address for the Published Decision be published in the Chartered Accountants ANZ digital and print magazine "Acuity".

1.5 NOTIFICATION TO OTHER BODIES

The Member holds registrations and/or memberships with the following bodies, which will be notified of this decision:

- Tax Practitioners Board
- Tax Institute
- Australian Securities and Investments Commission.

2. RIGHT OF APPEAL

The Member may, within 21 days after the notification of the written decision with reasons to the Member of this Tribunal's decision, appeal in writing to the Appeals Tribunal of Chartered Accountants ANZ against the decision (paragraph 11.1 of By-Law 40).

While the Member remains entitled to appeal, or while any such appeal by the Member awaits determination by the Appeals Tribunal, the following decisions shall not take effect:

- Decision about the PCC's allegations
- Decision about sanctions

- Decision about costs sanction.

The PCC may, within 21 days after notification of the written decision with reasons to the PCC of this Tribunal's decision, appeal in writing to the Appeals Tribunal of Chartered Accountants ANZ against the decision (paragraph 11.2 of By-Law 40).

3. BACKGROUND

On 26 June 2018 a Queensland newspaper reported that the Member had pleaded guilty to three charges of accessing child pornography, sharing it by making it available to others to download using peer-to-peer software and of possession of child pornography. The Member was sentenced to one year in prison, to be released immediately on a \$1,000 three year good behaviour bond.

4. REASONS FOR DECISION

4.1 ALLEGATION 1

- The PCC submitted that a conviction on the two criminal charges pursuant to s474.19(1)(A) of the *Criminal Code Act 1995* (Cth) as set out in the Notice of Disciplinary Action and which had not been set aside on appeal, constituted a contravention of By-Law 40(2.1)(b).
- The Tribunal noted that the Member:
 - in a letter to the PCC dated 18 September 2018, provided a copy of the Order and Recognisance Under Paragraph 20(1)(b) dated 26 June 2018 (**Order and Recognisance**) which stated that the Member was:
 - charged with two federal offences relating to child pornography
 - sentenced to 12 months' imprisonment with a \$1,000 three year good behaviour bond
 - in a letter to the PCC sent 22 October 2018, admitted the allegations.
- The Tribunal considered the Order and Recognisance and the Member's admission, and determined that the allegation was established. The Member had been found guilty of criminal offences which had not been set aside on appeal, in breach of By-Law 40(2.1)(b).

4.2 ALLEGATION 2

- The PCC submitted that the conviction and the subsequent negative media reports brought discredit on the Member, Chartered Accountants ANZ and the profession of accounting.
- The Tribunal noted that the Member:
 - in a letter to the PCC dated 18 September 2018, said that:
 - he ceased practising as a Chartered Accountant on 27 June 2018 and was currently unemployed
 - prior to this incident he felt he had always been a model Chartered Accountant throughout his career and was always a respected person
 - he "begged the pardon" of Chartered Accountants ANZ for "bringing it to disrepute by his actions".
- The Tribunal considered the Order and Recognisance, the Member's admission and the press report and determined that the allegation was established.

5. REASONS FOR SANCTIONS

- The PCC submitted that:
 - the only appropriate outcome was that the Member's membership be terminated
 - the reputation of Chartered Accountants ANZ would be detrimentally impacted if the Member was not removed from membership, given the gravity of the offences.
- The Tribunal noted that the Member, in a letter to the PCC sent 22 October 2018, had accepted the PCC's recommendation that his membership be terminated.
- The Tribunal agreed that the only appropriate sanction was the termination of the Member's membership having regard to the seriousness of the offence and his acceptance that this action be taken.

6. REASONS FOR COSTS SANCTION

- The PCC submitted that:
 - the Member should pay the full costs of the proceedings in the amount of \$6,148. This amount was less than the amount set out in the interim costs schedule which had been provided to him. The reduced amount was due to his admission of the matters set out in the Notice of Disciplinary Action
 - the costs incurred are reasonable. If the Member does not pay the costs then the costs are borne by the membership body
 - it is appropriate that the process be handled carefully and diligently and it was appropriate for the PCC to engage legal support in this case and incur that expense.
- The Tribunal noted that the Member:
 - in a letter to the PCC sent 22 October 2018 advised that:
 - he was currently unemployed and due to his age was unlikely to find employment
 - he had accepted the PCC's case against him, admitted the allegations and offered no defence so there was no need for the matter to be brought to the Tribunal or for lawyers to be involved
 - in a letter to the Tribunal sent 26 October 2018 advised that costs should be limited by reason of his admission at a relatively early stage to the allegations and that the Tribunal need not spend much time on the matter.
- The Tribunal found that the Member should pay full costs in the amount of \$6,148 as itemised in the final costs schedule. Further, it accepted the submissions of the PCC that termination of membership is an outcome that can only be determined by the Tribunal and it can only do that if properly satisfied that it is the appropriate outcome. The Tribunal need to be satisfied that the charges are made out, whether or not the member admits to them, and the Tribunal need to be satisfied that the sanction is appropriate, whether or not the member agrees to that sanction.


Chair
Disciplinary Tribunal

SCHEDULE 1 - THE PCC'S ALLEGATIONS

It is alleged that while a member of Chartered Accountants Australia and New Zealand (**CA ANZ**) the Member is liable to disciplinary action in accordance with:

1. By-law 40(2.1)(b), in that on 26 June 2018 the Member was convicted of two criminal offences pursuant to section 474.19(1)(a) of the *Criminal Code Act 1995* (Cth), which have not been set aside on appeal, being:
 - a) one count of use of a carriage service to access child pornography material; and
 - b) one count of use of a carriage service to transmit, make available, publish, distribute, advertise or promote child pornography material.
2. By-Law 40(2.1)(k), in that the acts, omissions and defaults as set out in paragraph 1 above bring, or may bring, discredit on you, CA ANZ and/or the profession of accountancy.

SCHEDULE 2 - RELEVANT BY-LAWS

Resignation

19. Any Member may resign his or her Membership by sending his or her resignation in writing together with all moneys owing by him or her to CA ANZ, whether for subscription, fee or other amount, to the Chief Executive Officer:
- (a) Provided that no resignation shall take effect unless and until it has been accepted by the Board. The Board may decline to accept the resignation of a Member who is the subject of disciplinary action or professional conduct proceedings by either CA ANZ or NZICA or whose conduct, in the opinion of the Board, by virtue of matters brought to the attention of CA ANZ, may become the subject of professional conduct proceedings.

...

40. Except as provided by By-Law 41, the By-Laws in this Section 5, including the following paragraphs of this By-Law 40, do not apply to Members who are also members of NZICA in respect of disciplinary matters over which NZICA has jurisdiction and which relate to the practice of the profession of accountancy by NZICA's members in New Zealand. Nothing in this By-Law 40 excludes from the operation of this Section 5, conduct of a Member:
- (a) who was, but is no longer, a member of NZICA; or
- (b) who has subsequently also become a member of NZICA.

Except as provided by By-Law 41, no Member shall be sanctioned under both this Section 5 and NZICA Rule 13 in respect of the same conduct.

...

40(2) Disciplinary action

- 40(2.1) A Member is liable to disciplinary sanctions under these By-Laws if (whether before or after the date of adoption of this By-Law) that Member:

...

- (b) has, before any court of law in any jurisdiction in Australia or elsewhere pleaded guilty to, or been found guilty of, any criminal offence which has not been set aside on appeal;

...

- (k) has committed any act, omission or default which, in the opinion of the Professional Conduct Committee, Disciplinary Tribunal or Appeals Tribunal brings, or may bring, discredit upon that Member, CA ANZ or the profession of accountancy; or