

Determination of the Disciplinary Tribunal of Chartered Accountants Australia and New Zealand 15 October 2019

Case Number:	D-1205
Member:	Ronald Desmond Williams CA of Queensland
Hearing Date:	26 September 2019
Tribunal:	David Fairlie (Chair and lay member of Tribunal) Linda Hadfield FCA Kathryn Brown CA
Representation:	Michael Bradley for the Professional Conduct Committee (PCC) The Member neither appeared nor was represented
Case description:	<ol style="list-style-type: none">1. Member committed a breach of Regulation CR2 – <i>Certificates of Public Practice</i>, in breach of By-Law 40(2.1)(h).2. Member failed to comply with reasonable and lawful directions of an officer or organ of CA ANZ.

1. CONTACT WITH THE MEMBER

The Member did not attend the hearing of the Disciplinary Tribunal.

On 9 July 2019 by letter sent by email to his address recorded on the General Register the PCC informed the Member that he had been referred to the Disciplinary Tribunal for hearing and that, if the Disciplinary Tribunal decided that he had breached the By-Laws, the PCC would request that the Tribunal terminate the Member's membership.

The Member was subsequently served with the Notice of Disciplinary Action and notified of the hearing date and time under cover of letter dated 15 August 2019 also sent by email and prepaid Express Post to his addresses recorded on the General Register. The Member was subsequently contacted on behalf of the PCC and by the Tribunal Secretary on 5, 13, 24 and 25 September 2019 by email, voicemail and prepaid Express Post. The Member did not respond to those communications.

The Tribunal was satisfied that the Member had notice of the hearing and that the Tribunal would be considering the matters contained in the Notice of Disciplinary Action and, if established, whether to impose a sanction on the Member on 26 September 2019, and accordingly determined the hearing should proceed in the absence of the Member.

2. DECISIONS

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

At a hearing of the Disciplinary Tribunal not attended by the Member, the Tribunal found the PCC had established the allegations.

2.2 DECISION ABOUT SANCTIONS

The Tribunal considered that the appropriate sanctions in these circumstances were that:

- the Member's membership be suspended for a period of three years and that the Member's name be removed from the Registers on which it appears
- the Member be fined an amount of \$10,000.

2.3 DECISION ABOUT COSTS SANCTION

The Tribunal determined that the Member pay to Chartered Accountants ANZ the sum of \$9,564 for the full costs and expenses of the proceedings (By-Law 40(10.12)(k)). No GST is payable.

2.4 DECISION ABOUT PUBLICATION

In accordance with By-Laws 40(12.3) and 40(12.4), 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".

2.5 NOTIFICATION TO OTHER BODIES

In accordance with By-Law 40(10.16), the Tribunal determined to notify its decision to the Tax Practitioners Board.

3. 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 (By-Law 40(11.1)).

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 (By-Law 40(11.2)).

The date of effect of this decision is the day immediately after the expiry of the period during which an appeal may be notified, if no appeal has been notified within that period (By-Law 40(10.18)).

4. BACKGROUND

- In June 2018 the Member completed mandatory annual reporting which, when reviewed, alerted Chartered Accountants ANZ to the fact that he was offering accounting services to the public for reward and as such required a Certificate of Public Practice (**CPP**). Thereafter Chartered Accountants ANZ contacted the Member on multiple occasions to inform the Member that he was required to hold a CPP but the Member did not obtain a CPP. In February 2019 the Member had enrolled in the eLearning component of the Public Practice Program (**PPP**), which was a prerequisite to his obtaining a PPP, but did not complete the course.
- The matter was referred to the PCC on 4 March 2019 and the PCC, after investigating the matter, referred the Member to the Disciplinary Tribunal alleging that he had breached:
 - By-Law 40(2.1)(h) by not complying with his obligations under Regulation CR2 - *Certificates of Public Practice (Regulation CR 2)*
 - By-Law 40(2.1)(i) by not responding to Chartered Accountants ANZ and not complying with the direction of the PCC to attend a Case Conference.

5. REASONS FOR DECISION

5.1 ALLEGATION 1

- The PCC submitted that the Member:
 - had not held a CPP since at least June 2017
 - had been notified by Chartered Accountants ANZ that he was obliged to obtain a CPP and had afforded him an extended period of time to obtain one
 - had indicated that he would take the necessary steps to complete the required eLearning component of the PPP prior to applying for the mandatory CPP but did not do so over an extended period and at the date of the hearing had still not completed the eLearning component of the PPP.

- The Tribunal found the allegation had been established because:
 - the Member himself had admitted that he did not hold a CPP
 - there was no evidence that the Member had completed the eLearning component of the PPP or that he had applied for a CPP
 - the Member was required to hold a CPP as he was providing services as a Principal of a Practice Entity, as set out in Regulation CR2.6(b)
 and that this constituted a breach of Regulation CR2, in breach of By-Law 40(2.1)(h).

5.2 ALLEGATION 2

- The PCC referred the Tribunal to:
 - the correspondence from Chartered Accountants ANZ on 4 and 24 April and 14 May 2019 concerning the requirement for the Member to complete the PPP and apply for a CPP which he had not responded to
 - the letter from the PCC dated 31 May 2019 requiring the Member to attend a Case Conference which the Member did not attend.
- The Tribunal determined that the allegation had been established because:
 - the correspondence contained reasonable and lawful directions made by officers or organs of Chartered Accountants ANZ
 - the Member failed to comply with these directions by not responding to the correspondence and by failing to attend the Case Conference, despite him being provided ample opportunity to do so
 and these events constituted a breach of By-Law 40(2.1)(i).

6. REASONS FOR SANCTIONS

- The PCC submitted that the Member should be terminated from membership because:
 - holding a CPP is an essential mandatory condition for members operating in public practice. It is also in the public interest that chartered accountants be required to hold a CPP and Chartered Accountants ANZ provides training and monitoring programs for CPP holders
 - the Member had failed to respond to correspondence from Chartered Accountants ANZ and directions from the PCC in any meaningful way
 - although he had been made aware over a year previously that his failure to hold a CPP was in breach of the relevant Regulation, the Member had continued to act in breach of that requirement which demonstrated that he had no serious intention of complying.

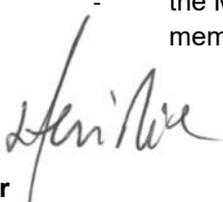
The PCC further submitted that it is important that Members comply with the regulatory and disciplinary processes of Chartered Accountants ANZ lest the “whole system” be brought into disrepute.

- The Tribunal determined that the appropriate sanctions were to suspend the Member from membership for a period of three years and to impose a fine of \$10,000. The Tribunal was of the view that:
 - the power of termination should be reserved for the most serious of cases where the Tribunal is satisfied that it is in the public interest in the circumstances to impose the ultimate sanction

- whilst the allegations against the Member, which had been established, involved serious breaches, the Tribunal was not satisfied they amounted to circumstances which justified termination
- suspension for a lengthy period of time was the appropriate sanction together with a significant fine to reflect the Tribunal's concern that the Member had failed to comply with his obligations under Regulation CR2, had failed to respond to correspondence over a lengthy period of time and failed to attend the Case Conference, without any justification for not doing so.

7. REASONS FOR COSTS SANCTION

- The PCC submitted that, having regard to the principles in Regulation CR 8, *Disciplinary Procedures*, the full costs of the proceedings in the sum of \$9,564 should be borne by the Member because:
 - the matter was serious
 - the Member's conduct had been objectively disgraceful in terms of his failure to engage
 - the expense and trouble he had put Chartered Accountants ANZ and the PCC to, through his own conduct.
- The Tribunal determined that it was appropriate for the Member to pay the full costs of the proceedings because:
 - the Member was notified of his obligations over a year ago and he had failed to comply
 - the proceedings before the Tribunal were as a direct result of the Member's failure to comply with his obligations. Had the Member completed the requisite training and applied for a CPP when he was first alerted to his obligations, it is likely that there would have been no need for these disciplinary proceedings to have been commenced
 - the Member should bear the full costs resulting from his conduct, and not the membership as a whole.


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)(h) in that the Member has committed a breach of paragraph 2.6 of CA ANZ Regulation CR2 by failing to hold a Certificate of Public Practice whilst providing services as either a:
 - a) public accountant, including for reward; or
 - b) Principal of a Practice Entity which includes a public accountant.
2. By-Law 40(2.1)(i), in that the Member has failed to comply with reasonable and lawful directions of an officer or organ of CA ANZ acting within the powers conferred by the By-Laws and which relates to a matter concerning the good order and management of CA ANZ in circumstances where the Member:
 - a) failed to respond to correspondence sent to him by CA ANZ on 4 and 24 April and 14 May 2019, concerning the requirement for the Member to complete the CA ANZ Public Practice Program (PPP) and apply for a Certificate of Public Practice (CPP); and
 - b) failed to comply with the direction by the Professional Conduct Committee, notified to him by letter dated 31 May 2019, to attend the Case Conference on 21 June 2019.

SCHEDULE 2 - RELEVANT BY-LAWS

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:

...

- (h) has committed any breach of the Supplemental Charter, these By-Laws or the Regulations, any pronouncements issued by the Accounting Professional and Ethical Standards Board, Australian Accounting Standards Board and Auditing and Assurance Standards Board (or their successor entities) including the Code of Ethics, or any applicable pronouncements, instruments, technical or professional standards or guidance issued by any similar body whether in Australia or in a foreign jurisdiction;
- (i) has failed to comply with any reasonable and lawful direction of any officer or organ of CA ANZ acting within the powers conferred by CA ANZ's Supplemental Charter, these By-Laws or the Regulations and which relates to a matter concerning the good order and management of CA ANZ;

...

40(10) Disciplinary Tribunal

40(10.12) If the Disciplinary Tribunal determines that the complaint contained in the Notice of Disciplinary Action or any part thereof is established it may, subject to By-Law 40(9.3)(c), and having given the Member a reasonable opportunity of being heard on the question of sanctions, impose any one or more of the sanctions in the table below identified as applicable to that class of Member:-

...

- (b) suspend the Member from membership of CA ANZ for a period not exceeding 5 years and remove the Member's name from the Registers on which it appears

...

- (f) fine that Member an amount not exceeding \$50,000

...

- (k) require the Member to pay to CA ANZ all or any portion of the Costs incurred by or on behalf of CA ANZ (including by or on behalf of the Professional Conduct Committee) in investigating and dealing with the original complaint and the matters the subject of the Notice of Disciplinary Action as the Disciplinary Tribunal determines

...

40(10.16) The Disciplinary Tribunal may notify interested parties including other professional bodies, regulatory authorities, the Member's current and/or former employers, partners, clients of the Member or the Member's Practice Entity who are or may be affected by the Member's conduct to which the disciplinary action relates, of so much of a decision (including a decision to suspend on an interim basis), the reasons for it and/or the sanctions imposed, as it thinks fit. The Disciplinary Tribunal will not do so until the day following the last date on which an appeal may be notified in accordance with By-Law 40(11.1). If an appeal is notified in accordance with By-Laws 40(11.1) or 40(11.2), the Disciplinary Tribunal will not make such a notification until that appeal is heard or otherwise determined.

...

40(10.18) A determination of the Disciplinary Tribunal shall take effect from the day immediately after the expiry of the period during which an appeal may be notified, if no appeal has been notified within that period.

...

40(12.3) Where the Disciplinary Tribunal or Appeals Tribunal determines that a complaint is established, imposes a sanction adverse to the Member (including one with the consent of a Member or a written undertaking under By-Law 40(13.8)) or decides to suspend a Member on an interim basis, it must direct that a notice be published by CA ANZ of its decision and the sanctions imposed (if any). Any such publication must disclose the name and location of the relevant Member unless the Disciplinary Tribunal or Appeals Tribunal (as applicable) considers that there are exceptional circumstances for not doing so.

...

SCHEDULE 3 – RELEVANT REGULATIONS

CR2.6 Members Required to Hold a CPP

A Chartered Accountant who

- (a) is a public accountant, as defined in Section [2(z)] of the Supplemental Royal Charter;
or
- (b) is a Principal of a Practice Entity which includes a public accountant(s) as defined in Section [2(z)] of the Supplemental Royal Charter

must apply for and hold a CPP.