

**NEW ZEALAND INSTITUTE OF CHARTERED ACCOUNTANTS ACT 1996**

**IN THE MATTER** of the New Zealand Institute of Chartered Accountants Act 1996 and the Rules made thereunder

**AND**

**IN THE MATTER** of **Vaughan Wain Bayer**, Chartered Accountant, of **Auckland**

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**DETERMINATION OF THE DISCIPLINARY TRIBUNAL OF THE NEW ZEALAND  
INSTITUTE OF CHARTERED ACCOUNTANTS  
26 April 2019**

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**Hearing:** 26 March 2019

**Location:** The offices of Chartered Accountants Australia and New Zealand, Level 1, Carlaw Park Complex, 12-16 Nicholls Lane, Parnell, Auckland, New Zealand

**Tribunal:** Mr MJ Whale FCA (Chairman)  
Ms Andree Atkinson FCA  
Mr DJH Barker FCA  
Ms B Gibson (Lay member)

**Legal Assessor:** Mr Matthew Casey QC

**Counsel:** Mr Richard Moon for the prosecution

**Tribunal Secretariat:** Janene Hick  
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At a hearing of the Disciplinary Tribunal held in public at which the Member was in attendance and not represented by counsel, the Member admitted all the particulars and pleaded guilty to the three charges.

The charges and particulars as laid were as follows:

## **CHARGES**

**THAT** in terms of the New Zealand Institute of Chartered Accountants Act 1996 and the Rules made thereunder, and in particular Rule 13.39 the Member is guilty of:

- 1) Conduct unbecoming an accountant; and/or – **not guilty**
- 2) Negligence or incompetence in a professional capacity and that this is of such a degree and/or so frequent so as to bring the profession into disrepute; and/or – **not guilty**
- 3) Breaching the Institute's Rules and/or Code of Ethics,

## **PARTICULARS**

### **IN THAT**

Being a Chartered Accountant in business, and in relation to a complaint the Member:

1. Failed to prepare and/or file the 2017 income tax return for XYZ Limited in a timely manner, in breach of the Fundamental Principle of Professional Competence and Due Care of the Code of Ethics; and/or
2. Engaged a tax agent, ABC Limited to undertake work for XYZ Limited, without the authorisation of the Complainant, in breach of the Fundamental Principle of Professional Competence and Due Care and/or Professional Behaviour of the Code of Ethics; and/or
3. Acted in an unprofessional manner in dealing with the Complainant about XYZ Limited, in that the Member:
  - a. Threatened the Complainant with defamation action when he asked the Member for updates regarding the progress of the tax return and/or made enquiries into the appointment of ABC Limited; and/or
  - b. Sent unprofessional and/or inflammatory text messages to the Complainant claiming that he had destroyed ABC Limited's business;

In breach of the Fundamental Principle of Professional Behaviour section 150 of the Code of Ethics.

## **DECISION**

The evidence from the Complainant and the Professional Conduct Committee's ("PCC") Bundle of Documents were admitted by consent.

The Tribunal is satisfied that the Particulars have been made out by the evidence before it.

The PCC framed the charges in the alternative and in descending order of seriousness. The Tribunal is required to assess where the conduct sits in the spectrum of seriousness as specified in the charges.

The Tribunal finds that the Member's conduct involved a considerable and unnecessary delay in filing the required taxation returns and that aspects of the Member's communications were unprofessional. However, the Tribunal also noted that the conduct was a single occurrence and coincided with the breakdown of a personal relationship, and that during much of the relevant period the Member suffered from the debilitating effects of an illness.

The Tribunal finds that the Member's conduct does not meet the threshold of conduct unbecoming an accountant. Neither does the conduct amount to negligence or incompetence in a professional capacity of such a degree as to bring the profession into disrepute.

Accordingly, the Tribunal finds the Member guilty of the lesser charge of breaching the Institute's Rules and/or Code of Ethics.

## **PENALTY**

The conduct by which the Member has fallen short in performing his professional obligations is at the low end of the scale of seriousness.

The Member has apologised to the Complainant and accepts responsibility for his failings. The Member is not currently providing accounting services. The Member is engaged in the management of two businesses.

The Member's conduct is sufficiently serious to warrant disciplinary sanction, which the Member accepts. The PCC has submitted that a censure should be imposed.

The Tribunal accepts that in these circumstances censure is the appropriate penalty. In reaching that view, it has also taken into account the following:

- The factors to be considered when determining an appropriate penalty identified in *Roberts v Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354.
- The Member's remorse and unblemished record to date.
- The character reference provided by a person who is also acting as a mentor to the Member, and another character reference.

**Pursuant to Rule 13.40(k) of the Rules of the New Zealand Institute of Chartered Accountants the Disciplinary Tribunal orders that the Member be censured.**

## **COSTS**

The PCC seeks full costs of \$12,145.

The Tribunal's general approach is that the starting point is 100% of costs, noting that the Institute already bears the cost of abandoned investigations and costs up to the Professional Conduct Committee's decision to hold a Final Determination.

Although the Tribunal found the Member not guilty of the two more serious Charges, it does not consider that any discount should be given as in its view, the PCC's preparation for the hearing and the hearing time would not have been any greater.

There are no mitigating factors of which the Tribunal is aware such as excessive or unnecessary expenses incurred or demonstrated evidence of hardship (inability to pay).

**Pursuant to Rule 13.42 of the Rules of the New Zealand Institute of Chartered Accountants the Disciplinary Tribunal orders that the Member pay to the Institute the sum of \$12,000.00 in respect of the costs and expenses of the hearing before the Disciplinary Tribunal and the investigation by the Professional Conduct Committee. No GST is payable.**

#### **PUBLICATION AND SUPPRESSION ORDERS**

The Tribunal sees no reason to depart from the default publication provision set out in the Rules. The Member's conduct was client facing, unlike the conduct in the Tribunal's decision *Member W* (15 October 2018) (that conduct related to the Member's engagement with the Institute).

**In accordance with Rule 13.44 of the Rules of the New Zealand Institute of Chartered Accountants the decision of the Disciplinary Tribunal shall be published on Chartered Accountants Australia and New Zealand's website and in the official publication *Acuity* with mention of the Member's name and locality.**

**Pursuant to Rule 13.62(b) of the Rules of the New Zealand Institute of Chartered Accountants the Disciplinary Tribunal orders that all details relating to the Member's health and personal circumstances be suppressed.**

#### **RIGHT OF APPEAL**

Pursuant to Rule 13.47 of the Rules of the New Zealand Institute of Chartered Accountants which were in force at the time of the original notice of complaint, the parties may, not later than 14 days after the notification to the parties of this Tribunal's 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 and the suppression orders shall take effect while the parties remain entitled to appeal, or while any such appeal by the parties awaits determination by the Appeals Council.



MJ Whale FCA  
**Chairman**  
**Disciplinary Tribunal**