



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 **Ian David Paul Hamilton**, Suspended Chartered Accountant, of **Ashburton**

**DETERMINATION OF THE DISCIPLINARY TRIBUNAL OF THE NEW ZEALAND
INSTITUTE OF CHARTERED ACCOUNTANTS
15 December 2011**

Hearing: 15 December 2011

Tribunal: Mr RJO Hoare FCA (Chairman)
Ms JA Dawson FCA
Prof DJD Macdonald FCA
Mr MJ Whale FCA
Mr P Meyer (Lay member)

Legal Assessor: Mr B Corkill QC

Counsel: Mr M Reed QC for the prosecution

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 six charges. The member was advised by the Professional Conduct Committee that it was in his best interests to take independent legal advice and he decided not to do so.

The charges were as follows:

FIRST CHARGE

- (1) Between March 2010 and June 2011 the member offered accounting services to the public without a Certificate of Public Practice ("CPP") and without the consent of the Board of NZICA, and in defiance of the Disciplinary Tribunal's order on or about 14 December 2007 removing his CPP, in breach of Rule 18.2(a) of the Institute's Rules and/or the Fundamental Principle of Professional Behaviour of the Code of Ethics.

SECOND CHARGE

- (2) In relation to his clients Client A, Client B and Client C he failed to complete and/or complete in a timely manner professional work which he had been engaged to perform, in breach of the Fundamental Principle of Quality Performance and/or Rule 10 of the Code of Ethics.

THIRD CHARGE

- (3) The member withdrew professional fees and/or disbursements from client monies which he received on behalf of Client A, when he did not have her written authority to do so, in breach of paragraph 50 of PS-2 Client Monies 2008 (being the standard in force at all material times) and/or Rule 11 of the Code of Ethics.

FOURTH CHARGE

- (4) The member failed to issue annual statements to Client A detailing his application of client monies held on her behalf and any interest earned thereupon, in breach of paragraph 61 of PS-2 Client Monies 2008 (being the standard in force at all material times) and/or Rule 11 of the Code of Ethics.

FIFTH CHARGE

- (5) The member failed to invoice his clients Client A, Client B and Client C and/or invoice them on a timely basis for work performed, in breach of Rule 10 and/or paragraph 147 of the Code of Ethics.

SIXTH CHARGE

- (6) In relation to his clients Client A, Client B and Client C, the member has continued to hold their client records in circumstances where it was unreasonable and/or unprofessional to do so, in breach of Fundamental Principle of Quality Performance and/or Professional Behaviour of the Code of Ethics.

DECISION

The member appeared before the Tribunal on 14 December 2007 on various charges supported by 11 particulars as detailed in the Tribunal's decision published on the Institute's website. At that time his Certificate of Public Practice (CPP) was cancelled in the expectation that he was entering into arrangements with another practitioner to initially supervise and eventually acquire his practice. These arrangements however were ultimately not consummated and came to an end in March 2010 following which the member resumed his practice.

On 22 April 2010 the member tendered his resignation from the Institute which was not accepted because on 19 April 2010 the Institute had received a further complaint.

At an ex-parte hearing on 28 June 2011 the Tribunal granted an interim suspension application which the member applied to have revoked. A hearing was scheduled for 25 July 2011 to hear this revocation application but that meeting was aborted due to weather disrupting travel.

The member now faces six charges to which he pleaded guilty.

The first charge was practicing subsequent to March 2010 without a CPP as a result of which the member has been outside the scope of Practice Review.

A second charge relates to withholding records from clients and the Tribunal notes that the member has now given a written and binding undertaking to return all client records.

The remaining four charges relate to the handling of client monies under PS-2 and failure to complete work and/or issue invoices in a timely manner.

In the member's submissions he raised the issue of "double jeopardy" asserting that the nature of the charges at this hearing and the December 2007 hearing were substantially the same. The Tribunal finds that for this argument to succeed those charges would need to relate to the same transactions. The Tribunal finds, in relation to the similar charges the transactions and the clients were not the same; also some of the matters giving rise to the charges occurred after those that were the subject of the December 2007 hearing.

The Professional Conduct Committee (PCC) sought an order that the member refund to Client A the sum of \$4,746.98 being tax refunds which he took in part payment of his fees without the client's written authority and without rendering an invoice until some time later. The member submitted that he had verbal approval and/or that this practise of retaining tax refunds for fees was known to and/or condoned by his client as it had been occurring for several years.

Client monies obligations under PS-2 must be followed without exception and the Tribunal orders that the sum of \$4,746.98 be refunded to the complainant. The member is of course free to seek payment of his invoice for the work done.

The PCC also sought to have the member waive outstanding fees of \$25,518.76 being the unpaid balance owing from invoices totalling \$30,037.50. There was some evidence suggesting that these fees were so old as to be statute barred and unrecoverable (being in respect of work up to March 2003). In any event the Tribunal heard no evidence which enabled them to determine whether or not the \$30,037.50 was an appropriate fee for the work done. Accordingly, the Tribunal declined to make such an order.

The member advised that he now operates his practice without mention of his Institute membership and has sought to resign.

In 2007 the member faced charges of a lack of acceptable performance in his practice. Despite an extended period of supervision, his practice since then still exhibits similar shortcomings. The breaches of the Rules and Code of Ethics to which he has pleaded guilty, taken together, are serious and tend to bring the profession into disrepute. Accordingly, the Tribunal orders that the member's name be removed from the Institute's register of members.

The PCC sought full recovery of the costs of this hearing as well as the earlier interim suspension application (but excluding costs associated with the aborted revocation hearing) - these totalled \$18,758. The member made submissions and provided evidence in relation to his financial circumstances. Having regard to these submissions the Tribunal orders costs of \$12,000.

The PCC sought publication of this decision in the Ashburton Guardian and Christchurch Press as well as the Journal and the Institute's website. The member submitted that he has been subjected to publication before, his practice is low profile, and he has not taken on any new clients for years. The member also submitted that his family would be adversely affected, especially in a small town by any such publicity. The Tribunal is satisfied in the circumstances that publication in the Journal and on the website is sufficient.

PENALTY

Pursuant to Rule 21.31 (a) of the Rules of the New Zealand Institute of Chartered Accountants the Disciplinary Tribunal ordered that the name of **Ian David Paul Hamilton** be removed from the Institute's register of members.

Pursuant to Rule 21.31 (j) of the Rules of the New Zealand Institute of Chartered Accountants the Disciplinary Tribunal ordered that **Ian David Paul Hamilton** refund \$4,746.98 to the complainant.

COSTS

Pursuant to Rule 21.33 of the Rules of the New Zealand Institute of Chartered Accountants the Disciplinary Tribunal ordered that **Ian David Paul Hamilton** pay to the Institute the sum of \$12,000 in respect of the costs and expenses of the hearing before the Disciplinary Tribunal and the investigation by the Professional Conduct Committee.

SUPPRESSION ORDERS

Pursuant to Rule 21.52 (b) of the Rules of the New Zealand Institute of Chartered Accountants the Disciplinary Tribunal ordered the suppression of information as to the member's financial circumstances and the identity of the clients and complainants.

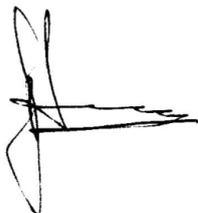
PUBLICATION

In accordance with Rule 21.35 of the Rules of the New Zealand Institute of Chartered Accountants the decision of the Disciplinary Tribunal shall be published on the Institute's website and in the Chartered Accountants Journal with mention of the member's name and locality.

RIGHT OF APPEAL

Pursuant to Rule 21.41 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 member may, not later than 14 days after the notification of this Tribunal to the member of the 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 shall take effect while the member remains entitled to appeal, or while any such appeal by the member awaits determination by the Appeals Council.



R J O Hoare
Chairman
Disciplinary Tribunal