



Appeals Tribunal of Chartered Accountants Australia and New Zealand (CA ANZ) Written decision dated 13 March 2020

- Case Number:** A-185
- Member:** Sifiso Zikali of Queensland
- Hearing Date:** 6 March 2020
- Tribunal:** Harold Werksman (Chair and lay member of the Tribunal)
Lyn Cox FCA
John Gibson FCA
- Tribunal Legal Adviser:** Jamesina McLeod
- Representation:** Michael Bradley for the Professional Conduct Committee (PCC)
The Member represented himself and appeared with leave by videoconference
- Decisions:**
1. The Appeals Tribunal (the **Tribunal**) determined to affirm the determination of the Disciplinary Tribunal that its decision with reasons be published with the Member's name and locality.
 2. Costs were reserved until final determination of the matter.
 3. The Tribunal made the following directions regarding the conduct of the hearing and the publication of its reasons for decision:
 - (a) its decision with reasons, mentioning the Member's name and locality, be published on the CA ANZ website (the **Published Decision**);
 - (b) a notice mentioning the Member's name and locality with a web address for the Published Decision be published in the CA ANZ digital and print magazine "Acuity"; and
 - (c) except for the content of the written decision with reasons, all written and oral evidence and submissions related to this determination are to remain confidential.

The date of effect of this decision is 6 March 2020.



1. Introduction

- (a) On 11 December 2019 the Disciplinary Tribunal determined, amongst other things:
 - (i) to suspend the Member from membership of CA ANZ on an interim basis pending further investigation and determination of a complaint received from the Member's former employer;
 - (ii) that its decision with reasons, mentioning the Member's name and locality, be published on the CA ANZ website (the **Published Decision**); and
 - (iii) a notice mentioning the Member's name and locality with a web address for the Published Decision be published in the CA ANZ digital and print magazine "Acuity".
- (b) On 1 January 2020 the Member submitted a Notification of Appeal form appealing "*Publication of personal details such as name and location*". By later correspondence dated 17 January 2020 the Member confirmed that he was only appealing the issue of publication of his details and that was also confirmed at the hearing of the appeal.

2. The issues for determination:

- (a) Should the Member's name and locality not be disclosed in any publication of the Disciplinary Tribunal decision dated 18 December 2019?
- (b) Should the Member be required to pay costs and if so, in what amount?
- (c) Was there any reason to suppress the Member's name from the Appeals Tribunal published decision?
- (d) Should any confidentiality orders be made?

3. Should the Member's name and locality not be disclosed in any publication of the Disciplinary Tribunal decision dated 18 December 2019?

3.1 Disciplinary Tribunal determination

The Disciplinary Tribunal determined that:

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

3.2 Agreed facts

The Member agreed that he did not appeal the decision of the Disciplinary Tribunal in relation to his interim suspension as set out in 1(a)(i) above.

3.3 Member submissions

- (a) The Member submitted that:
 - (i) the evidence in support of the allegations brought by his former employer was so insufficient that it amounted to an exceptional circumstance which would justify his

name not being published and also that he was entitled to the presumption of innocence which would be contradicted by publication of his interim suspension;

- (ii) he was a provisional member and accordingly his name should not be published because he was not promoting himself as a member of CA ANZ nor was he currently practising, and so there was no protective effect to be achieved; and
 - (iii) publication would have an adverse effect on his career and his ability to support his family.
- (b) In making his oral submissions, the Member admitted that he had used a corporate credit card of his employer for personal transactions. This admission was also made several times during the hearing before the Disciplinary Tribunal. The Member submitted that other employees had been doing the same thing and it was common practice and that he was repaying the outstanding amounts to his former employer.

3.4 PCC submissions

The PCC submitted that:

- (a) the decision to publish the Member's name and personal details was not a punitive measure but was done in the public interest, for the interests of CA ANZ and for transparency;
- (b) it would not be in the interests of CA ANZ to suppress publicising the interim suspension of a member unless there were exceptional circumstances as required by By-Law 40(12.3);
- (c) because the Member had not appealed the decision of the Disciplinary Tribunal to suspend him on an interim basis, it was not necessary at this stage to examine the facts upon which the Disciplinary Tribunal did so;
- (d) whilst the Member was entitled to a presumption of innocence, there were facts which had been taken into account by the Disciplinary Tribunal which were sufficiently serious to justify its decision to suspend the Member on an interim basis, which included the allegation that, over a period of six months, there were 160 unauthorised transactions made by the Member on his corporate credit card totalling more than \$7,000. The publication of the decision to impose an interim suspension on the Member says nothing about the Member's innocence or guilt, even if it has other negative impacts on the Member.

3.5 Tribunal decision and reasons

- (a) The Tribunal affirmed the determination of the Disciplinary Tribunal that its decision with reasons be published with the Member's name and locality. In doing so it had regard to By-Law 40 which states as follows:

12.3 Where the ... Appeals Tribunal ... determines that a complaint is established or imposes a sanction adverse to the Member ... 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 of the relevant Member unless the ... Appeals Tribunal ... considers that there are exceptional circumstances for not doing so. [emphasis added]

12.4 Publication ... may be in such form and publication as the ... Appeals Tribunal ... considers appropriate, including in CA ANZ's official publication, on CA ANZ's website or in any other manner that it may in its discretion direct.
- (b) The essential question therefore for the Tribunal was whether or not there were exceptional circumstances in this case which would justify a decision not to publish the name and locality of the Member in the manner directed by the Disciplinary Tribunal.

- (c) In relation to the submission made by the Member at 3.3 above to the effect that the evidence available to support the allegations was so insufficient that it constituted an exceptional circumstance, the Tribunal had regard to the evidence which was before the Disciplinary Tribunal in relation to the interim suspension. It also had regard to the concession by the Member that he used a corporate card without authority for the purpose of his own personal transactions.
- (d) During the course of his submissions, the Member said that if the fact that he had used the company credit card for his own personal expenses was sufficient to justify his interim suspension, that was not sufficient to justify publishing his name. The Tribunal does not agree. For the reasons set out below there is both a public interest and the interest of CA ANZ and its members in ensuring the transparency of its processes.
- (e) In circumstances where the Disciplinary Tribunal has found it appropriate to impose an interim suspension and that decision is not appealed, and further where the Tribunal considered there was sufficient evidence before the Disciplinary Tribunal to justify the interim suspension, the submission that there was so little evidence that it would constitute exceptional circumstances, must fail.
- (f) The Member made the point that no criminal proceedings had been brought against him. However that fact of its own is not, in the view of the Tribunal, an exceptional circumstance.
- (g) In relation to the Member's submission that he was a provisional member and so was still in training, this does not of itself constitute an exceptional circumstance. The seriousness of the alleged conduct upon which the Disciplinary Tribunal made its decision was not of the nature that would require any extensive training to appreciate nor would it be applicable only to a full member. The further submission by the Member that he was not publicising the fact that he was a provisional member and not in practice, and accordingly that there was no public interest in publicising his interim suspension, is of no substance. In the view of the Tribunal it must be in the public interest and in the interests of transparency that if a provisional member is suspended, that fact is publicised.
- (h) Although the Tribunal acknowledges that the fact of publication may have detrimental consequences on the Member, this is not an exceptional circumstance, that being the necessary consequence of any publication. The impact on the Member has to be balanced with the public interest and the interests of CA ANZ in ensuring the transparency of its processes.

4. Should the Member be required to pay costs and if so, in what amount?

- (a) The PCC did not seek a determination on costs however noted that the estimated costs to date were \$22,551.
- (b) Determination of the costs was reserved until the final hearing of the matter.

5. Should the Member's name be suppressed?

For the same reasons stated at 3.5, the Tribunal determined there were no exceptional circumstances and therefore the Member's name and locality should be disclosed in the publication of this decision.

6. Should any details be kept confidential?

(a) By-Law 40(13.12) states:

(d) The ... Appeals Tribunal ... may require, including as a condition of admission to a hearing, any person present to undertake to keep all or any part of a hearing, the evidence adduced at it or other information disclosed (including the identity of any persons present at or otherwise connected with the hearing) confidential on such terms as it determines.

(b) The Tribunal directed that, except for the content of the written decision with reasons, all written and oral evidence and submissions related to this determination are to remain confidential.



Chair
Appeals Tribunal

SCHEDULE 1: 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(9) Interim suspension of Membership

40(9.1) On application by the Professional Conduct Committee for the interim suspension of a Member, if the Disciplinary Tribunal is satisfied that it is necessary or desirable to do so, having regard to the urgency of the matter, the interests of the public, the reputation of CA ANZ, or the integrity of the profession of accountancy, the Disciplinary Tribunal may suspend the Member from Membership of CA ANZ on an interim basis pending further investigation and determination of the complaint.

40(9.2) For the period of a Member's suspension on an interim basis:

- (a) that Member's name shall be removed from the Registers on which it appears; and
- (b) that Member:
 - (i) loses the rights and privileges of Membership;
 - (ii) must surrender to CA ANZ that Member's certificate of Membership, certificate(s) of public practice and any other documents specified in By-Law 40(13.4); and
 - (iii) remains subject to the disciplinary processes and sanctions under these By-Laws (including this Section 5) as if still a Member.

40(9.3) The provisions of By-Law 40(10) apply to the procedures for a hearing on an application for interim suspension under this By-Law 40(9), except that:

- (a) the Notice of Disciplinary Action to be given in accordance with By-Law 40(10.1) must specify that the hearing is on an application by the Professional Conduct Committee for interim suspension;
- (b) the minimum 35 day time periods in By-Laws 40(10.1) and 40(10.3) are shortened to 14 days;
- (c) without prejudice to By-Law 40(13.8) , By-Laws 40(10.12)(a) to (j), and 40(10.13) (sanctions) do not apply; and
- (d) the maximum period within which the Disciplinary Tribunal is to notify its decision and give reasons in accordance with By-Law 40(10.15) is reduced to 7 days.

- 40(9.4) The provisions of By-Law 40(11) apply to the procedures for an appeal of a decision by the Disciplinary Tribunal in respect of the hearing of an application for interim suspension under this By-Law 40(9), except that:
- (a) the maximum 21 day time periods in By-Laws 40(11.1) and 40(11.2) (time for notifying appeal) are shortened to 14 days;
 - (b) the minimum 28 day time period in By-Law 40(11.6) (notice of hearing) is reduced to 14 days; and
 - (c) the maximum period within which the Appeals Tribunal is to notify its decision and give reasons in accordance with By-Law 40(11.15) is reduced to 7 days.

...

40(11) Appeals Tribunal

40(11.1) Any Member in respect of whom any determination has been made by the Disciplinary Tribunal or upon whom any sanction has been imposed by the Disciplinary Tribunal may, subject to paragraph 9.4, within 21 days after notice of the written reasons for such determination or sanction is given to that Member, give notice of appeal in the form prescribed by the Regulations to the Appeals Tribunal against any such determination or sanction or both. At the discretion of the Appeals Tribunal later notice may be accepted.

40(11.2) The Professional Conduct Committee, may, subject to paragraph 9.4, within 21 days after notice of the written reasons for the determination or sanction imposed by the Disciplinary Tribunal against a Member is given to it, give notice of appeal to the Appeals Tribunal against any such determination or sanction, or both.

...

40(11.5) Every appeal shall be by way of rehearing but, unless the Appeals Tribunal directs otherwise, it shall not allow witnesses to be recalled who gave evidence before the Disciplinary Tribunal or to introduce any new evidence.

...

40(11.10) On each appeal the Appeals Tribunal may affirm, vary or set aside any determination of the Disciplinary Tribunal and may affirm, increase, reduce or set aside any sanction imposed and may impose any additional or alternative sanction or sanctions from those permitted to the Disciplinary Tribunal by paragraphs 9.1, 10.12, 10.13, 12.3, 12.4 (as applicable) and 13.8.

...

40(11.12) A determination of the Appeals Tribunal shall take effect as from the date it is made.

40(11.13) The Appeals Tribunal:

- (a) must give notice of its decision with reasons to the Member, the Professional Conduct Committee and to the Professional Conduct Oversight Committee within 14 days of the decision; and
- (b) may give notice of its decision with reasons to such other professional bodies and regulatory authorities as it determines.

40(12) Publication of investigations and decisions

...

40(12.3) Where the Disciplinary Tribunal or Appeals Tribunal determines that a complaint is established or imposes a sanction adverse to the Member (including suspension on an interim basis, or one with the consent of a Member or a written undertaking under paragraph 13.8) 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 of the relevant Member unless the Disciplinary Tribunal or Appeals Tribunal (as applicable) considers that there are exceptional circumstances for not doing so.

40(12.4) Publication under paragraphs 12.1 or 12.3 may be in such form and publication as the Professional Conduct Committee, Disciplinary Tribunal or Appeals Tribunal (as applicable) considers appropriate, including in CA ANZ's official publication, on CA ANZ's website or in any other manner that it may in its discretion direct.

...

40(13.12) Public and private hearings

...

- (b) Subject to paragraphs 13.12(c) and 13.12(d), and unless the Disciplinary Tribunal or Appeals Tribunal determine otherwise, each shall hold its hearings in public.
- (c) The Disciplinary Tribunal or Appeals Tribunal may determine to hear any part of a hearing in private.
- (d) The Disciplinary Tribunal or Appeals Tribunal may require, including as a condition of admission to a hearing, any person present to undertake to keep all or any part of a hearing, the evidence adduced at it or other information disclosed (including the identity of any persons present at or otherwise connected with the hearing) confidential on such terms as it determines.

SCHEDULE 2: REGULATION CR8 - DISCIPLINARY PROCEDURES

8.1 Purpose

This Regulation supplements the professional conduct and disciplinary process provisions of Section 5 of the By-Laws.

8.2 Definitions

Unless expressly defined in this Regulation, capitalised terms used in this Regulation are defined in By-Law 2 and Section 5 of the By-Laws. The definitions in By-Law 39 shall prevail to the extent of any inconsistency between this Regulation and the By-Laws or between By-Law 2 and By-Law 39.

8.3 By-Laws

Refer to Section 5 of the By-Laws for provisions relating to Professional Conduct.

8.4 Terms of Reference

- (a) For the implementation of the procedures referred to in Section 5 of the By-Laws the Board has approved the Terms of Reference for:
 - (i) the Professional Conduct Oversight Committee;
 - (ii) the Professional Conduct Committee;
 - (iii) the Disciplinary Tribunal; and
 - (iv) the Appeals Tribunal.
- (b) The Terms of Reference for each may be found [here](#).

8.5 Disclosure Events

(By-Law 40, paragraphs 3.1 and 3.2)

- (a) It is a Member's responsibility to give notice to the Professional Conduct Committee within 7 days of the occurrence of a Disclosure Event.
- (b) When required, such notice should be in writing in the [form prescribed](#).
- (c) Within 21 days of a Disclosure Event, a Member is also required to send a statement to the Professional Conduct Committee setting out the reasons why that Member considers that the Member's Membership should not be affected, including suspended (whether or not on an interim basis) or terminated and that Member's name removed from the Registers. The time period is longer for the statement than the notice to allow a Member to gather evidence, including from referees, to explain any mitigating or extenuating circumstances.

8.6 Notification Event

(By-Law 40, paragraphs 3.3 and 3.4)

- (a) It is a Member's responsibility to give notice to the Professional Conduct Committee within 7 days of the occurrence of a Notification Event.
- (b) When required, such notice should be in writing in the [form prescribed](#).

8.7 Form of complaints

(By-Law 40, paragraph 4)

- (a) Complaints made about a Member to CA ANZ should be made using, and in the manner prescribed by, the Complaint Form.
- (b) Anonymous complaints, or those made without adequately disclosing the identity of the person(s) making the complaint, will not be processed by CA ANZ.

8.8 Applications to the Professional Conduct Committee

(By-Law 40, paragraphs 5.4 and 7.2)

Applications for the consent of the Professional Conduct Committee should be made using, and in the manner prescribed by, the Consent Form.

8.9 Application to the Reviewer

(By-Law 40, paragraph 8)

- (a) An application made to CA ANZ to request the review of a Final Decision in accordance with paragraph 8 of By-Law 40 can be made by the original complainant or the relevant Member and must be made:
 - (i) within 21 days of notification of the Final Decision;
 - (ii) using and in the manner prescribed by the Final Decision Review Form; and
 - (iii) accompanied by:
 - A. payment of the Application Fee (which is AUS\$500) in a manner prescribed by the Final Decision Review Form; and
 - B. the Costs Agreement duly executed by the applicant.
- (b) Every Reviewer appointed will be an independent Australian legal practitioner.
- (c) When lodged, the Final Decision Review Form must include all matters the complainant wishes to be considered by the Reviewer.
- (d) The Application Fee is non-refundable, but the Reviewer may recommend that CA ANZ refund the Application Fee to the applicant, where the Reviewer considers this to be appropriate.

8.10 Appeals Tribunal

(By-Law 40, paragraph 11)

- (a) An appeal of a determination of the Disciplinary Tribunal may be made by the Member the subject of the determination or the Professional Conduct Committee in accordance with By-Law 40, paragraph 11.
- (b) Notice of appeal should be given using, and in the manner prescribed by, the Appeal Form and must detail all grounds of appeal.

8.11 Guidelines for the imposition of sanctions

(By-Law 40, paragraph 13.6)

- (a) When the Professional Conduct Committee, Disciplinary Tribunal or Appeals Tribunal determines that it is appropriate to sanction a Member, in deciding what sanction(s) to impose and without limiting the matters it may consider, it may consider the following matters:
- (i) the seriousness of the conduct;
 - (ii) whether the conduct has occurred before and, if so, the nature, extent and frequency of the conduct;
 - (iii) the Member's responsibility and accountability for the conduct in the context of that Member's Practice Entity, including without limitation:
 - A. whether the conduct was systemic;
 - B. whether the Practice Entity's leadership were aware of or complicit in the conduct;
 - C. whether it forms part of a pattern of conduct; and
 - D. the Member's role, position and seniority in the Practice Entity;
 - (iv) whether the Member has failed to comply with any undertaking or agreement to remedy the conduct;
 - (v) any aggravating or mitigating factors raised which are relevant to the conduct in question;
 - (vi) the personal circumstances of the Member to the extent they are raised and relevant to the conduct;
 - (vii) any character and/or other references provided in writing in support of the good standing of the Member;
 - (viii) the maintenance of public confidence in the profession;
 - (ix) the maintenance of proper standards of professional conduct;
 - (x) deterrence; and
 - (xi) any other circumstances relevant to the practice of the Member and the profession.
- (b) The Professional Conduct Committee, the Disciplinary Tribunal and the Appeals Tribunal must balance the interests of the Member against the public interest, the reputation of CA ANZ, and the need to support the integrity of the profession of accounting and those of CA ANZ in determining what are appropriate and sufficient sanctions.

8.12 Costs awards

(By-Law 40, paragraph 13.7)

When the Professional Conduct Committee, Disciplinary Tribunal or Appeals Tribunal determines whether or not to require a Member to pay Costs under Section 5 of the By-Laws, and the amount of such Costs a Member is required to pay, without limiting the matters it may take into account, it must take into account the following:

- (a) whether and to what extent the complaint against the Member is found to have merit and whether or not there is ultimately a finding in favour of the Member;
- (b) the substance or seriousness of the complaint;

- (c) the conduct of the Member in relation to the investigation and disciplinary process, including whether the Member was open, honest and timely in the Member's dealings with the Professional Conduct Committee, Disciplinary Tribunal or Appeals Tribunal in relation to the complaint and whether the Member complied with the provisions of Section 5 of the By-Laws and any applicable Regulations during the conduct of the disciplinary process;
- (d) the extent to which the final sanctions determined differ from those that the Professional Conduct Committee or Disciplinary Tribunal gave the Member the opportunity to agree by consent;
- (e) whether to do so is reasonable in the circumstances;
- (f) the amount of the Costs incurred by CA ANZ in the conduct of the investigation and proceedings;
- (g) whether and to what extent the Member has previously been required to pay Costs to CA ANZ in respect of the complaint, its investigation, hearing and determination; and
- (h) whether the amount is reasonable in the circumstances.

8.13 Former Professional Conduct By-Laws

(By-Law 42)

A copy of the Former Professional Conduct By-Laws may be found [here](#).

8.14 Confidentiality Obligations

- (a) Members must comply with the requirements set out in subparagraphs (b) – (e) below to ensure that any complaints made, investigations, reviews and disciplinary hearings carried out pursuant to Section 5 of the By-Laws are confidential;
- (b) Subject to subparagraph (c) below:
 - (i) all information, correspondence and other documentation sent and/or received by CA ANZ in connection with a complaint, its investigation and outcome, any review of that outcome (including the Reviewer's report, recommendation and/or any directions) and any disciplinary hearing (including disciplinary decisions) is confidential (Confidential Information);
 - (ii) Members must:
 - A. keep the Confidential Information confidential;
 - B. securely store and not disclose or permit disclosure of the Confidential Information;
 - C. comply with CA ANZ's directions regarding the Confidential Information;
 - D. do all other things prudent or desirable to safeguard the confidentiality of the Confidential Information; and
 - E. not publish or make a public announcement or statement in relation to the Confidential Information;
 - (iii) this clause does not apply to:
 - A. information that is already in the public domain (unless it is in the public domain because of a breach of this Regulation); or
 - B. details of complaints, investigations and/or decisions that CA ANZ has published or made available to the public in accordance with the By-Laws and Regulations;

- (c) The obligations contained in subparagraph (b) above do not prevent the disclosure of Confidential Information:
- (i) that is required to be disclosed to comply with applicable law;
 - (ii) to the Member's advisers and/or representatives (including business partners and staff of those advisers and/or representatives) for the provision of advice in relation to the complaint, its investigation, any review and any disciplinary hearings;
 - (iii) to the Member's current employer and business partners, including staff of the Member and/or that employer, to assist with responding to the complaint and any disciplinary hearings and/or to comply with any disclosure obligations;
 - (iv) to the Member's insurer or the insurer of the Member's current and/or former employer, to comply with any disclosure obligations;
 - (iv) if required, and with the consent of CA ANZ, for the purpose of the complaint, investigation and any disciplinary hearings pursuant to Section 5 of the By-Laws;
- (d) Any disclosure of Confidential Information pursuant to subparagraphs (c)(ii) – (iv) above can only be made by Members if the person to whom disclosure is made is subject to the same confidentiality obligations as Members set out in this paragraph 8.14.

Commentary

The obligations set out above are in addition to the obligations of confidentiality contained in APES 110, Code of Ethics for Professional Accountants. More details about managing your confidentiality obligations are available as part of the complaint process and on request.

SCHEDULE 3: DISCIPLINARY TRIBUNAL DECISION



Disciplinary Tribunal of Chartered Accountants Australia and New Zealand (CA ANZ)

Written decision dated 18 December 2019

- Case Number:** D-1216
- Member:** Sifiso Zikali of Queensland
- Hearing Date:** 11 December 2019
- Tribunal:** Ross Gavin FCA (Chair)
Linda Hadfield FCA
Jenni Millbank, lay member of the Tribunal
- Tribunal Legal Adviser:** Jamesina McLeod
- Representation:** Michael Bradley for the Professional Conduct Committee (PCC)
The Member appeared via teleconference
- Decisions:**
1. The Tribunal determined:
 - (a) to suspend the Member from membership of CA ANZ on an interim basis pending further investigation and determination of the complaint;
 - (b) the period of interim suspension to be the earlier of:
 - (i) six months after the full and final resolution of any civil or potential future criminal proceedings against the Member; or
 - (ii) further investigation and determination of the complaint arising from the matters referred to in allegations 1 to 4 in the Notice of Disciplinary Action.
 2. Costs were reserved until final determination of this matter.
 3. The Tribunal made the following directions regarding the conduct of the hearing and the publication of its reasons for decision:
 - (a) its decision with reasons, mentioning the Member's name and locality, be published on the CA ANZ website (the **Published Decision**);
 - (b) a notice mentioning the Member's name and locality with a web address for the Published Decision be published in the CA ANZ digital and print magazine "Acuity";
 - (c) except for the content of the Disciplinary Tribunal written decision with reasons, all written and oral evidence and

submissions related to this determination are to remain confidential.

- (d) The decision regarding confidentiality takes effect immediately; ie 11 December 2019.

With the exception of the appealed decision regarding publication, the date of effect of this decision is 2 January 2020 (By-Law 40(10.18)).

The date of effect of the decision regarding publication is 6 March 2020 (By-Law 40(11.12)).



1. Introduction

- (a) The Member holds a provisional membership of CA ANZ.
- (b) On 20 November 2018 CA ANZ received a complaint from the Member's former employer which alleged unauthorised use of a company credit card (the **Complaint**).
- (c) After commencing its investigation of the Complaint, the PCC decided to refer the Member to the Tribunal "*without convening a Case Conference, to seek an interim suspension until the outcome of the legal case has been concluded*".
- (d) The PCC made an application to the Tribunal for interim suspension on the following basis:
 - (i) the Member was an Accounts Payable Officer at GroundProbe Pty Ltd (GroundProbe), from November 2013 until 27 July 2018;
 - (ii) 160 unauthorised transactions dated between 4 January 2018 and 9 June 2018 were identified, totalling \$7,084.00, on the company credit card issued to the Member;
 - (iii) the transactions were unauthorised because they were personal in nature in direct breach of the GroundProbe Company Credit Card Policy and the Contract of Employment, as signed by the Member; and
 - (iv) the unauthorised transactions were either removed or not uploaded in the GroundProbe company expense management system administered by the Member, and were thus unable to be detected in audits.
- (e) As at the date of this hearing civil proceedings in debt recovery had been commenced by the former employer against the Member but the hearing of that claim had not yet occurred.
- (f) Some time in late 2018 a criminal complaint had been made by the former employer against the Member. As at the date of the hearing no criminal charges had been laid against the Member and it was unclear whether any criminal proceedings were likely to occur.

2. The issues for determination

- (a) Was it necessary or desirable to suspend the Member from membership of CA ANZ on an interim basis, having regard to the urgency of the matter, the interests of the public, the reputation of CA ANZ, or the integrity of the profession of accountancy? (By-Law 40(9.1))
- (b) If the answer to (a) was yes, for what period should the Member be interim suspended?
- (c) Should the Member be required to pay costs and if so, in what amount?
- (d) Should any confidentiality orders be made?

3. Should the Member's membership be suspended on an interim basis?

3.1 Agreed facts

The PCC and the Member agreed that an amount is owed by the Member to the former employer for some personal expenses incurred by him on the company credit card.

3.2 PCC submissions

The PCC submitted that:

- (a) the allegations are serious and, if proved, reflect dishonest conduct and misappropriation of funds which could constitute breaches of three By-Laws;
- (b) if the allegations were ultimately substantiated the Member's membership would likely be terminated;
- (c) interim suspension is a protective measure that is not punitive and not intended as a sanction;
- (d) it was necessary and desirable with reference to all four objectives of By-Law 40(9.1).

3.3 Member submissions

The Member objected to the PCC's application and submitted that:

- (a) his use of the company credit card did not involve any dishonesty;
- (b) his use of the company credit card was consistent with accepted practice within the organisation;
- (c) he intended to repay the personal amounts but was unable to do so in the circumstances of the termination of his employment;
- (d) he has been repaying a monthly amount towards a total owed to the former employer in respect of the relevant amounts and other debts owed to the company;
- (e) he has been endeavouring to settle the civil proceedings;
- (f) he had "fallen out with" a more senior executive of his employer and this resulted in both his resignation and the Complaint.

3.4 Evidence

In making their submissions, the PCC and the Member referred to the following evidence:

- (a) correspondence between the former employer and the Member;
- (b) a forensic accountants' report commissioned by the former employer;
- (c) the Member's oral evidence of his current employment circumstances and the current status of the civil proceedings.

3.5 Tribunal decision and reasons

- (a) The Tribunal considered the factors it must take into account when determining an application for interim suspension. Those factors are set out in By-Law 40(9.1) which states:

On application by the Professional Conduct Committee for the interim suspension of a Member, if the Disciplinary Tribunal is satisfied that it is necessary or desirable to do so, having regard to the urgency of the matter, the interests of the public, the reputation of

CA ANZ, or the integrity of the profession of accountancy, the Disciplinary Tribunal may suspend the Member from Membership of CA ANZ on an interim basis pending further investigation and determination of the complaint. [emphasis added]

- (b) The Tribunal noted that the Member is entitled to a presumption of innocence and it is not the Tribunal's role to consider, or to turn its mind to, whether the Member committed the alleged conduct or if the alleged conduct was improper.
- (c) The Tribunal was satisfied, having regard to the factors of By-Law 40(9.1), that it was both necessary and desirable to suspend the Member on an interim basis because:
 - (i) civil proceedings are on foot which could damage the reputation of CA ANZ if they lead to a finding adverse to the Member concerning his professional conduct;
 - (ii) there is a risk to the integrity of the profession of accountancy while serious allegations of dishonesty against a Member are pending determination;
 - (iii) it is in the interests of the public that the Member is not able to hold himself out as a member of CA ANZ in relation to future employment as an accountant until the serious allegations are finally determined.

4. For what period should the Member be interim suspended?

4.1 PCC submissions

The PCC sought an interim suspension for the earlier time period of:

- (a) six months after the full and final resolution of all civil and/or criminal proceedings against the Member; or
- (b) further investigation and determination of the complaint arising from the matters referred to in allegations 1 to 4 in the Notice of Disciplinary Action.

4.2 Member submissions

The Member submitted that an interim suspension of his membership would be harmful to his professional reputation if no findings of improper conduct were made out.

4.3 Tribunal decision and reasons

The Tribunal determined that the period of interim suspension should end on the earlier of:

- (a) six months after the full and final resolution of any civil or potential future criminal proceedings against the Member; or
- (b) further investigation and determination of the complaint arising from the matters referred to in allegations 1 to 4 in the Notice of Disciplinary Action.

5. Should the Member be required to pay costs and if so, in what amount?

- (a) The PCC did not seek a determination on costs however noted that the estimated costs to date were \$10,985.
- (b) Determination of the costs was reserved until the final hearing of the matter.

6. Should any details be kept confidential?

- (a) By-Law 40(13.12) states:
- (d) The Disciplinary Tribunal ... may require, including as a condition of admission to a hearing, any person present to undertake to keep all or any part of a hearing, the evidence adduced at it or other information disclosed (including the identity of any persons present at or otherwise connected with the hearing) confidential on such terms as it determines.
- (b) The Tribunal directed that, except for the content of the Disciplinary Tribunal written decision with reasons, all written and oral evidence and submissions related to this determination are to remain confidential.

7. Rights of appeal

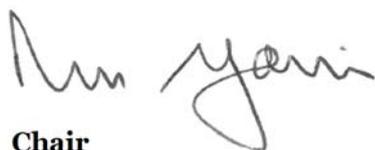
The Member may, within 14 days after the notification of the written decision with reasons to the Member of this Tribunal's decision, appeal in writing to the CA ANZ Appeals Tribunal against the decision (By-Laws 40(9.4)(a) and (11.1)).

The PCC may, within 14 days after notification of the written decision with reasons to the PCC of this Tribunal's decision, appeal in writing to the CA ANZ Appeals Tribunal against the decision (By-Laws 40(9.4)(a) and (11.2)).

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

- (a) interim suspension
- (b) publication
- (c) notification.

The Tribunal's decision as to confidentiality took effect immediately.



**Chair
Disciplinary Tribunal**

SCHEDULE 1: THE PCC'S NOTICE OF DISCIPLINARY ACTION

The Professional Conduct Committee seeks a determination that the Member's membership of Chartered Accountants Australia and New Zealand (Chartered Accountants ANZ) be suspended on an interim basis.

It is alleged that while a member of Chartered Accountants ANZ:

1. the Member was an Accounts Payable Officer at GroundProbe Pty Ltd (GroundProbe), from November 2013 until 27 July 2018;
2. 160 unauthorised transactions dated between 4 January 2018 and 9 June 2018 were identified, totalling \$7,084.00, on the company credit card issued to the Member;
3. the transactions were unauthorised because they were personal in nature in direct breach of the GroundProbe Company Credit Card Policy and the Contract of Employment, as signed by the Member; and
4. the unauthorised transactions were either removed or not uploaded in the GroundProbe company expense management system administered by the Member, and were thus unable to be detected in audits.

The Professional Conduct Committee is seeking the interim suspension on the basis that it is necessary or desirable having regard to the criteria in By-Law 40(9.1), being the urgency of the matter, interests of the public, reputation of Chartered Accountants ANZ or the integrity of the profession of accountancy, which are likely to be satisfied by reason of the Member's alleged conduct.

The Professional Conduct Committee is seeking that the interim suspension apply for the earlier time period of:

- (a) six months after the full and final resolution of all civil and/or criminal proceedings against the Member; or
- (b) further investigation and determination of the complaint arising from the matters referred to in paragraphs 1-4 above.

SCHEDULE 2: RELEVANT BY-LAWS

Section 5 - Professional Conduct

...

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(9) Interim suspension of Membership

40(9.1) On application by the Professional Conduct Committee for the interim suspension of a Member, if the Disciplinary Tribunal is satisfied that it is necessary or desirable to do so, having regard to the urgency of the matter, the interests of the public, the reputation of CA ANZ, or the integrity of the profession of accountancy, the Disciplinary Tribunal may suspend the Member from Membership of CA ANZ on an interim basis pending further investigation and determination of the complaint.

40(9.2) For the period of a Member's suspension on an interim basis:

- (a) that Member's name shall be removed from the Registers on which it appears; and
- (b) that Member:
 - (i) loses the rights and privileges of Membership;
 - (ii) must surrender to CA ANZ that Member's certificate of Membership, certificate(s) of public practice and any other documents specified in By-Law 40(13.4); and
 - (iii) remains subject to the disciplinary processes and sanctions under these By-Laws (including this Section 5) as if still a Member.

40(9.3) The provisions of By-Law 40(10) apply to the procedures for a hearing on an application for interim suspension under this By-Law 40(9), except that:

- (a) the Notice of Disciplinary Action to be given in accordance with By-Law 40(10.1) must specify that the hearing is on an application by the Professional Conduct Committee for interim suspension;
- (b) the minimum 35 day time periods in By-Laws 40(10.1) and 40(10.3) are shortened to 14 days;
- (c) without prejudice to By-Law 40(13.8) , By-Laws 40(10.12)(a) to (j), and 40(10.13) (sanctions) do not apply; and

- (d) the maximum period within which the Disciplinary Tribunal is to notify its decision and give reasons in accordance with By-Law 40(10.15) is reduced to 7 days.

40(9.4) The provisions of By-Law 40(11) apply to the procedures for an appeal of a decision by the Disciplinary Tribunal in respect of the hearing of an application for interim suspension under this By-Law 40(9), except that:

- (a) the maximum 21 day time periods in By-Laws 40(11.1) and 40(11.2) (time for notifying appeal) are shortened to 14 days;
- (b) the minimum 28 day time period in By-Law 40(11.6) (notice of hearing) is reduced to 14 days; and
- (c) the maximum period within which the Appeals Tribunal is to notify its decision and give reasons in accordance with By-Law 40(11.15) is reduced to 7 days.

...

40(10) Disciplinary Tribunal

...

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 paragraph 11.1. If an appeal is notified in accordance with paragraphs 11.1 or 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(11) Appeals Tribunal

40(11.1) Any Member in respect of whom any determination has been made by the Disciplinary Tribunal or upon whom any sanction has been imposed by the Disciplinary Tribunal may, subject to By-Law 40(9.4), within 21 days after notice of the written reasons for such determination or sanction is given to that Member, give notice of appeal in the form prescribed by the Regulations to the Appeals Tribunal against any such determination or sanction or both. At the discretion of the Appeals Tribunal later notice may be accepted.

40(11.2) The Professional Conduct Committee, may, subject to By-Law 40(9.4), within 21 days after notice of the written reasons for the determination or sanction imposed by the Disciplinary Tribunal against a Member is given to it, give notice of appeal in the form prescribed by the Regulations to the Appeals Tribunal against any such determination or sanction or both. At the discretion of the Appeals Tribunal later notice may be accepted.

40(12) Publication of investigations and decisions

...

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.

40(12.4) Publication under By-Laws 40(12.1) or 40(12.3) may be in such form and publication as the Professional Conduct Committee, Disciplinary Tribunal or Appeals Tribunal (as applicable) considers appropriate, including in CA ANZ's official publication, on CA ANZ's website or in any other manner that it may in its discretion direct.

...

SCHEDULE 3: REGULATION CR8 - DISCIPLINARY PROCEDURES

Issued 8 October 2019

8.1 Purpose

This Regulation supplements the professional conduct and disciplinary process provisions of Section 5 of the By-Laws.

8.2 Definitions

Unless expressly defined in this Regulation, capitalised terms used in this Regulation are defined in By-Law 2 and Section 5 of the By-Laws. The definitions in By-Law 39 shall prevail to the extent of any inconsistency between this Regulation and the By-Laws or between By-Law 2 and By-Law 39.

8.3 By-Laws

Refer to Section 5 of the By-Laws for provisions relating to Professional Conduct.

8.4 Charter

- (a) For the implementation of the procedures referred to in Section 5 of the By-Laws the Board has approved Charters for:
 - (i) the Professional Conduct Oversight Committee;
 - (ii) the Professional Conduct Committee;
 - (iii) the Disciplinary Tribunal; and
 - (iv) the Appeals Tribunal.
- (b) The Charter for each may be found [here](#).

8.5 Disclosure Events (By-Laws 40(3.1) and 40(3.2))

- (a) It is a Member's responsibility to give notice to the Professional Conduct Committee within 7 days of the occurrence of a Disclosure Event.
- (b) When required, such notice should be in writing in the [form prescribed](#).
- (c) Within 21 days of a Disclosure Event, a Member is also required to send a statement to the Professional Conduct Committee setting out the reasons why that Member considers that the Member's membership should not be affected, including suspended (whether or not on an interim basis) or terminated and that Member's name removed from the Registers. The time period is longer for the statement than the notice to allow a Member to gather evidence, including from referees, to explain any mitigating or extenuating circumstances.

8.6 Notification Event (By-Laws 40(3.3) and 40(3.4))

- (a) It is a Member's responsibility to give notice to the Professional Conduct Committee within 7 days of the occurrence of a Notification Event.
- (b) When required, such notice should be in writing in the [form prescribed](#).

8.7 Form of complaints (By-Law 40(4.1(a)))

- (a) Complaints made about a Member to CA ANZ pursuant to By-Law 40(4.1)(a) should be made using, and in the manner prescribed by, the [Complaint Form](#).

- (b) Anonymous complaints, or those made without adequately disclosing the identity of the person(s) making the complaint, will not be processed by CA ANZ.

8.8 Applications to the Professional Conduct Committee for legal representation (By-Laws 40(5.4) and 40(7.2))

Applications for the consent of the Professional Conduct Committee for legal representation should be made using, and in the manner prescribed by, the [Consent Form](#).

8.9 Application to the Reviewer (By-Law 40(8))

- (a) An application made to CA ANZ to request the review of a Final Decision in accordance with By-Law 40(8.2) can be made by the original complainant or the relevant Member and must be made:
 - (i) within 21 days of notification of the Final Decision;
 - (ii) using and in the manner prescribed by the [Final Decision Review Form](#); and
 - (iii) accompanied by:
 - A. payment of the Application Fee (which is AU\$500) in a manner prescribed by the Final Decision Review Form; and
 - B. the [Costs Agreement](#) duly executed by the applicant.
- (b) Every Reviewer appointed will be an independent Australian legal practitioner.
- (c) When lodged, the Final Decision Review Form must include all matters the complainant wishes to be considered by the Reviewer.
- (d) The Application Fee is non-refundable, but the Reviewer may recommend that CA ANZ refund the Application Fee to the applicant, where the Reviewer considers this to be appropriate.

8.10 Appeals Tribunal (By-Law 40(11))

- (a) An appeal of a determination of the Disciplinary Tribunal may be made by the Member the subject of the determination or the Professional Conduct Committee in accordance with By-Law 40(11.1).
- (b) Notice of appeal should be given using, and in the manner prescribed by, the [Appeal Form](#) and must detail all grounds of appeal.
- (c) Pursuant to By-Law 40(11.4) the Appeals Tribunal has a discretion to require the Member to pay to CA ANZ such amount as it determines as security against the anticipated Costs which CA ANZ may incur in the conduct and hearing of the appeal.

8.11 Guidelines for the imposition of sanctions (By-Law 40(13.6))

- (a) When the Professional Conduct Committee, Disciplinary Tribunal or Appeals Tribunal determines that it is appropriate to sanction a Member, in deciding what sanction(s) to impose and without limiting the matters it may consider, it may consider the following matters:
 - (i) the seriousness of the conduct;
 - (ii) whether the conduct has occurred before and, if so, the nature, extent and frequency of the conduct;

- (iii) the Member's responsibility and accountability for the conduct in the context of that Member's Practice Entity, including without limitation:
 - A. whether the conduct was systemic;
 - B. whether the Practice Entity's leadership were aware of or complicit in the conduct;
 - C. whether it forms part of a pattern of conduct; and
 - D. the Member's role, position and seniority in the Practice Entity;
 - (iv) whether the Member has failed to comply with any undertaking or agreement to remedy the conduct;
 - (v) any aggravating or mitigating factors raised which are relevant to the conduct in question;
 - (vi) the personal circumstances of the Member to the extent they are raised and relevant to the conduct;
 - (vii) any character and/or other references provided in writing in support of the good standing of the Member;
 - (viii) the maintenance of public confidence in the profession;
 - (ix) the maintenance of proper standards of professional conduct;
 - (x) deterrence; and
 - (xi) any other circumstances relevant to the practice of the Member and the profession.
- (b) The Professional Conduct Committee, the Disciplinary Tribunal and the Appeals Tribunal must balance the interests of the Member against the public interest, the reputation of CA ANZ, and the need to support the integrity of the profession of accounting and those of CA ANZ in determining what are appropriate and sufficient sanctions.

8.12 Costs awards (By-Law 40(13.7))

When the Professional Conduct Committee, Disciplinary Tribunal or Appeals Tribunal determines whether or not to require a Member to pay Costs under Section 5 of the By-Laws, and the amount of such Costs a Member is required to pay, it must require the Member to pay all of the Costs claimed by CA ANZ unless it determines that, having regard to the following matters, it is appropriate that the Member be required to pay only part or none of the claimed Costs:

- (a) whether and to what extent the complaint against the Member is found to have merit and whether or not there is ultimately a finding in favour of the Member;
- (b) the substance or seriousness of the complaint;
- (c) the conduct of the Member in relation to the investigation and disciplinary process, including whether the Member was open, honest and timely in the Member's dealings with the Professional Conduct Committee, Disciplinary Tribunal or Appeals Tribunal in relation to the complaint and whether the Member complied with the provisions of Section 5 of the By-Laws and any applicable Regulations during the conduct of the disciplinary process;
- (d) the extent to which the final sanctions determined differ from those that the Professional Conduct Committee or Disciplinary Tribunal gave the Member the opportunity to agree by consent;

- (e) whether to do so is reasonable in the circumstances;
- (f) the amount of the Costs incurred by CA ANZ in the conduct of the investigation and proceedings;
- (g) whether and to what extent the Member has previously been required to pay Costs to CA ANZ in respect of the complaint, its investigation, hearing and determination; and
- (h) whether the amount is reasonable in the circumstances.

8.13 Former Professional Conduct By-Laws (By-Law 42)

- (a) A copy of the By-Laws as at 28 July 2016 may be found [here](#).
- (b) A copy of the By-Laws as at 26 November 2014 may be found [here](#).

8.14 Confidentiality Obligations

- (a) Members must comply with the requirements set out in subparagraphs (b) – (d) below to ensure that any complaints made, investigations, reviews and disciplinary hearings carried out pursuant to Section 5 of the By-Laws are confidential;
- (b) Subject to subparagraph (c) below:
 - (i) all information, correspondence and other documentation sent and/or received by CA ANZ or disclosed or made available to you in connection with a complaint, its investigation and outcome, any review of that outcome (including the Reviewer's report, recommendation and/or any directions) and any disciplinary hearing (including disciplinary decisions) is confidential (Confidential Information);
 - (ii) Members must:
 - A. keep the Confidential Information confidential;
 - B. securely store and not disclose or permit disclosure of the Confidential Information;
 - C. comply with CA ANZ's directions regarding the Confidential Information;
 - D. do all other things prudent or desirable to safeguard the confidentiality of the Confidential Information; and
 - E. not publish or make a public announcement or statement in relation to the Confidential Information;
 - (iii) this clause does not apply to:
 - A. information that is already in the public domain (unless it is in the public domain because of a breach of this Regulation); or
 - B. details of complaints, investigations and/or decisions that CA ANZ has published or made available to the public in accordance with the By-Laws and Regulations;
- (c) The obligations contained in subparagraph (b) above do not prevent the disclosure of Confidential Information:
 - (i) that is required to be disclosed to comply with applicable law;

- (ii) to the Member's advisers and/or representatives (including business partners and staff of those advisers and/or representatives) for the provision of advice in relation to the complaint, its investigation, any review and any disciplinary hearings;
 - (iii) to the Member's current employer and business partners, including staff of the Member and/or that employer, to assist with responding to the complaint and any disciplinary hearings and/or to comply with any disclosure obligations;
 - (iv) to the Member's insurer or the insurer of the Member's current and/or former employer, to comply with any disclosure obligations; or
 - (v) if required, and with the consent of CA ANZ, for the purpose of the complaint, investigation and any disciplinary hearings pursuant to Section 5 of the By-Laws.
- (d) Any disclosure of Confidential Information pursuant to subparagraphs (c)(ii) – (v) above can only be made by Members if the person to whom disclosure is made is subject to the same confidentiality obligations as Members set out in this paragraph 8.14.

Commentary

The obligations set out above are in addition to the obligations of confidentiality contained in APES 110, Code of Ethics for Professional Accountants. More details about managing your confidentiality obligations are available as part of the complaint process and on request.