

**BEFORE THE NEW ZEALAND INSTITUTE OF CHARTERED ACCOUNTANTS
APPEALS COUNCIL**

IN THE MATTER OF an appeal against the decision of the Disciplinary Tribunal of the New Zealand Institute of Chartered Accountants dated 14 May 2015

BETWEEN **BRENT O'HAGAN**, Chartered Accountant of Te Kuiti

Appellant

AND **THE PROFESSIONAL CONDUCT COMMITTEE OF THE NEW
ZEALAND INSTITUTE OF CHARTERED ACCOUNTANTS**

DECISION OF APPEALS COUNCIL AS TO COSTS

Dated 1 December 2015

Members of the Appeals Council:

Les Taylor QC (Chairman)
Paul Armstrong FCA
John Hagen FCA

Counsel:

Richard Moon for the Professional Conduct Committee

Appeals Council Secretariat:

Janene Hick
Email: janene.hick.nzica@charteredaccountantsanz.com



1. The Professional Conduct Committee (**PCC**) seeks an order for costs against Mr O'Hagan following our decision of 8 September 2015 allowing Mr O'Hagan's appeal in part but dismissing his appeal as to costs and publication. The costs incurred were \$13,194.26 (exclusive of GST).
2. The PCC submits that, although Mr O'Hagan was partially successful in his appeal, the appeal failed on the two primary grounds stated in the notice of appeal. The PCC argues that a modest costs award should be made (reflecting Mr O'Hagan's current financial position) in order to promote consistency and accountability in the use of the Institute's disciplinary process.
3. Mr O'Hagan says that there should be no costs award. He says that attempts by him were made to settle the appeal. He also says that the two primary grounds of appeal which were dismissed involved very little of the hearing time with most of the time during the hearing being taken up with arguments for and against the suspension/resignation issue upon which he succeeded. He also confirms that he is in no position to pay any costs that may be awarded.
4. Although Mr O'Hagan did succeed in part on his appeal the ground upon which he succeeded was not included in his notice of appeal. He failed in respect of the two primary grounds of appeal. Those grounds of appeal were from the exercise of a discretion which, in the normal course, is difficult to succeed upon on appeal because of the limited circumstances in which the Appeals Council will interfere with the exercise of a discretion.
5. We do not think that Mr O'Hagan's attempts to settle the appeal assist. An appeal is not a negotiating tool. Mr O'Hagan chose to proceed with the appeal in circumstances where the prospects of succeeding on the stated grounds were not strong.
6. We also note that the ground upon which Mr O'Hagan did succeed involved something of an indulgence. That ground of appeal was not stated in the notice of appeal and the basis for it arose primarily as a result of Mr O'Hagan's non-attendance, by telephone, at the hearing before the Disciplinary Tribunal.
7. As indicated in our decision on the appeal, however, Mr O'Hagan is bankrupt. His income is very modest. We accept that he has no ability to pay an award of costs at present. Given his age and circumstances it seems unlikely that there will be any significant change in his financial position in future.

8. Were it not for his financial circumstances the Appeals Council would not have seen Mr O'Hagan's partial success on appeal as a basis for not making an order for costs in respect of the grounds of appeal which were dismissed. However, having regard to Mr O'Hagan's inability to pay an order for costs, we have decided that, in the particular circumstances of this case, no order for costs **will** be made.

Dated this 1st day of December 2015.



L J Taylor QC
Chairman
Appeals Council