

# Determination of the Disciplinary Tribunal of Chartered Accountants Australia and New Zealand 16 May 2019

<b>Case Number:</b>	D-1196
<b>Member:</b>	Malcolm John Orman CA of Queensland
<b>Hearing Date:</b>	1 May 2019
<b>Tribunal:</b>	David Fairlie (Chair and lay member of Tribunal) Bob Grice AO FCA Bruce Glanville FCA
<b>Representation:</b>	Michael Bradley for the Professional Conduct Committee (PCC) The Member neither appeared nor was represented at the hearing
<b>Case description:</b>	Member failed to comply with reasonable and lawful directions of an officer or organ of CA ANZ acting within the powers conferred by CA ANZ's Supplemental Charter, the By-Laws or the Regulations and which relates to a matter concerning the good order and management of CA ANZ.

## 1. CONTACT WITH MEMBER

The Member did not attend the hearing of the Disciplinary Tribunal. The Member was served with the Notice of Disciplinary Action, and notified of the hearing date and time, under cover of letter dated 27 March 2019 sent by email and prepaid Express Post to the addresses recorded on the General Register. On 29 April 2019 the Tribunal Secretary attempted to contact the Member on the three telephone numbers listed on the General Register. The call to the Member's office was answered and the Tribunal Secretary was advised that the Member was working from home that day but would return to the office on 30 April 2019. On 30 April 2019 the Tribunal Secretary sent a follow up letter by email to the Member. The Member did not respond to those calls or the letter.

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 that day, and accordingly determined the hearing should proceed in the absence of the Member.

## 2. DECISIONS

### 2.1 DECISION ABOUT THE PCC'S ALLEGATION WHICH IS 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 allegation.

### 2.2 DECISION ABOUT SANCTIONS

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

- cancel the Member's Certificate of Public Practice
- fine the Member the amount of \$5,000.

### 2.3 DECISION ABOUT COSTS SANCTION

The Tribunal determined that the Member pay to Chartered Accountants ANZ the sum of \$9,422 for the full costs and expenses of the proceedings (By-Law 40(10.12)(I)). No GST is payable.

### 2.4 DECISION ABOUT PUBLICATION

This decision will not take effect while the Member remains entitled to appeal.

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

The Member is a member of / holds statutory registrations administered by the following bodies, which will be notified of this decision:

- Tax Practitioners Board
- Department of Justice and Attorney-General, Queensland.

## 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)).

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

- Decision about the PCC's allegations
- Decision about sanctions
- Decision about costs sanction.

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)).

## 4. BACKGROUND

- In October 2016 Chartered Accountants ANZ became aware that the Member did not hold a Certificate of Public Practice (**CPP**), contrary to the provisions of Regulation CR2 - Certificates of Public Practice. After being contacted by Chartered Accountants ANZ, the Member submitted a CPP application.
- On 30 November 2016 the Member was issued with a CPP on the condition that he complete the Chartered Accountants ANZ Public Practice Program (**PPP**) within six months.
- On 10 July 2017, after the six month period had expired, the Member requested an extension within which to start and complete the PPP. On 14 July 2017 Chartered Accountants ANZ granted an extension to 30 September 2017.
- The Member had not commenced or completed the PPP by 30 September 2017, or subsequently.
- Since 3 August 2018, the Member has failed to respond to communication from Chartered Accountants ANZ with respect to completing the PPP and in relation to these disciplinary proceedings arising from his failure to complete the PPP.

## 5. PRELIMINARY REMARKS

- The Tribunal noted that the Member had been granted his CPP before he had been required to complete the requisite training. The Tribunal did not consider this was a desirable practice. The Tribunal was informed by the PCC at the hearing that this practice had ceased.
- The Tribunal also noted that the allegation in the Notice of Disciplinary Action was only that the Member had failed to comply with reasonable and lawful directions from Chartered Accountants ANZ and not that he was the holder of a CPP without having completed the PPP. The Tribunal considered that it would have been appropriate for the

Notice of Disciplinary Action to have included a specific allegation in relation to the Member's failure to complete the PPP.

## **6. REASONS FOR DECISION ON BREACH OF THE BY-LAWS**

The Tribunal determined that the allegation was established. The evidence from the PCC before the Tribunal confirmed the Member's failure to respond to reasonable and lawful directions from Chartered Accountants ANZ since August 2018, and that this constituted a breach of By-Law 40(2.1)(i).

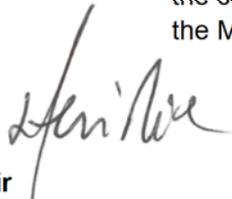
## **7. REASONS FOR SANCTIONS**

- The PCC submitted that cancellation of the Member's CPP and a fine of \$5,000 were appropriate sanctions because:
  - completion of the PPP is an essential condition to the granting of a CPP and it would be untenable for a member to be allowed to continue to hold a CPP where the member failed to comply with that condition
  - a punitive sanction was appropriate in this instance because the Member had no excuse for simply ignoring the repeated requests and directions from Chartered Accountants ANZ in circumstances where he apparently continued to be in practice. The Member's failure to respond demonstrated his contempt for his obligations to Chartered Accountants ANZ
  - it was important that a strong signal be sent to members that regardless of the circumstances, ignoring the reasonable directions of Chartered Accountants ANZ was not acceptable and that this was all the more so when the matter related to public practice.
- The Tribunal determined that the appropriate sanctions were cancellation of the Member's CPP and a fine of \$5,000 because:
  - it was wholly inappropriate for the Member to hold a CPP without having completed the PPP
  - it was important that the public have confidence that holders of CPPs are appropriately qualified
  - a fine was appropriate because of the Member's apparent complete disregard for reasonable and lawful directions given by Chartered Accountants ANZ.
- The Tribunal also considered whether termination of the Member's membership was the appropriate sanction given the Member's flagrant disregard of his obligations to respond to communications from Chartered Accountants ANZ and his failure to complete the PPP. However because the allegation in the Notice of Disciplinary Action did not directly refer to the Member holding a CPP without having completed the PPP, it came to the view that it should not impose that more severe sanction in this instance.
- The Tribunal was satisfied, having found that the matters raised in the Notice of Disciplinary Action were established, that the By-Laws entitled it to terminate the Member's CPP.

## **8. REASONS FOR COSTS SANCTION**

- The PCC submitted that the full costs of \$9,422 should be borne by the Member because this was a serious matter and the Tribunal hearing was necessitated only because of the Member's persistent failure to deal with the matter or to respond appropriately or at all to Chartered Accountants ANZ.

- The Tribunal determined that the Member should pay the full costs of \$9,422 because:
  - the Member's conduct the subject of the Notice of Disciplinary Action was of a serious nature
  - his lack of cooperation throughout and his failure to attend the PCC Case Conference on 21 February 2019, resulted in Chartered Accountants ANZ expending a considerable amount of wasted time and effort
  - the costs were properly incurred and it was reasonable that those costs be paid by the Member and not the membership body as a whole.



**Chair  
Disciplinary Tribunal**

## **SCHEDULE 1 - THE PCC'S ALLEGATION**

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)(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. In particular, the Member failed to respond to correspondence sent to him by CA ANZ on 3 and 22 August, 9 October and 6 November 2018 concerning the requirement for the Member to complete the CA ANZ Public Practitioners Program.

## **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:

...

- (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;

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