

Determination of the Disciplinary Tribunal of Chartered Accountants Australia and New Zealand 21 December 2017

Case Number:	D-1176
Member:	Leigh Graeme Sloan CA of Victoria
Hearing Date:	14 December 2017
Tribunal:	David Fairlie (Chair) Bruce Glanville FCA Simon Wallace-Smith FCA
Tribunal Legal Adviser:	Lauren Stewart
Representation:	Michael Bradley for the Professional Conduct Committee (PCC) The Member neither appeared nor was represented at the hearing
Case description:	Member suspended on an interim basis

The interim suspension of the membership of Mr Leigh Sloan has expired and he has been reinstated to full membership of Chartered Accountants ANZ from 17 October 2018.

1. ADJOURNMENT APPLICATION

- The Tribunal considered an application for adjournment made by the Member. In support of the adjournment application, the Tribunal considered the Member's email to the Tribunal Secretary dated 7 December 2017, in which the Member submitted that he needed more time to obtain documents from his previous employer. In his subsequent email to the Tribunal Secretary dated 12 December 2017 the Member also said that he may need to subpoena these documents as they would not be provided voluntarily. The Member requested an adjournment until late January 2018.
- On 13 December 2017 the Member forwarded a further email to the Tribunal Secretary stating that he would not be attending the Disciplinary Tribunal hearing scheduled for the following day because of a pre-standing commitment.
- The PCC opposed the adjournment application and submitted that the Member had been provided with adequate time and notice. Specifically, the PCC submitted that:
 - on 8 May 2017 the complaint was notified to the Member
 - on 18 May 2017 the Member responded in detail to the notice of the complaint
 - on 20 June 2017 the Member was asked to provide a copy of the criminal charges and, at that time, was put on notice of the possibility of an interim suspension application
 - on 26 September 2017 the Member was informed that the PCC would be meeting on 18 October 2017, and that at this time the PCC may determine that it would be appropriate to seek an interim suspension of his membership and that he should provide any documents supporting his case by 10 October 2017
 - on 26 October 2017 the Member was informed that the PCC would be seeking an interim suspension of his membership.
- The PCC had provided the Member with all the documents in its possession in relation to the matter.
- The Tribunal noted that while the Member had submitted that he needed to obtain further documents to put before the Tribunal, he had not provided any details of what those documents were or how they would assist the Tribunal in determining the PCC's application for interim suspension.
- The Tribunal determined that it was not appropriate to grant the adjournment having regard to the urgency of the matter, the interests of the public, the reputation of CA ANZ, and the integrity of the profession of accounting.

2. DECISIONS

2.1 DECISION ABOUT THE PCC'S APPLICATION WHICH IS SET OUT IN FULL IN SCHEDULE 1

At a hearing of the Disciplinary Tribunal, not attended by the Member, the Tribunal:

- was satisfied that the Member was on notice that the hearing was to be held on 14 December 2017 and further, that the Member was on notice that a decision could be made at the hearing
- determined that the Member be suspended from membership of Chartered Accountants ANZ on an interim basis for the earlier of:
 - (a) three months after the full and final resolution of all criminal proceedings against the Member; or

- (b) further investigation and determination by the PCC of the complaints arising from the charges set out at paragraphs 1 - 3 of the PCC's amended application for interim suspension.

For the period of interim suspension:

- the Member's name will be removed from the Registers on which it appears
- the Member loses the rights and privileges of membership
- the Member must surrender his certificate of membership, any certificate of public practice and any other accreditation, specialisation or other certificate or award held by the Member
- the Member will remain subject to disciplinary processes and sanctions as if still a member.

2.2 DECISION ABOUT COSTS

Costs to be reserved until the final determination of the complaint against the Member.

2.3 DECISION ABOUT PUBLICATION

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

In accordance with paragraphs 12.3 and 12.4 of By-Law 40, 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".

2.4 NOTIFICATION TO OTHER BODIES

The Tribunal was not advised of registrations or memberships that the Member holds and, as a consequence, no bodies will be notified of this decision.

3. RIGHT 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 Appeals Tribunal of Chartered Accountants ANZ against the decision (paragraphs 9.4 and 11.1 of By-Law 40).

While the Member remains entitled to appeal, or while any such appeal by the Member awaits determination by the Appeals Tribunal, the decision about the PCC's application for interim suspension will not take effect.

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 Appeals Tribunal of Chartered Accountants ANZ against the decision (paragraphs 9.4 and 11.2 of By-Law 40).

4. REASONS FOR DECISION ON INTERIM SUSPENSION

- The matters which the Tribunal must take into account in determining an application for interim suspension are set out at By-Law 40(9.1) which states:

"...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 accounting, the

Disciplinary Tribunal may suspend the Member from Membership of CA ANZ on an interim basis pending further investigation and determination of the complaint.”

- The PCC submitted that:
 - three serious criminal charges had been brought against the Member involving dishonestly obtaining financial advantage in an amount of in excess of \$1 million from his employer and the theft of cash. The maximum sentences for these charges were significant periods of imprisonment
 - the Member had been committed for trial in relation to each of these charges
 - the fact that the Member had entered into a financial settlement of the civil proceedings which his former employer had instituted against him, whilst not an admission of his guilt, was a relevant consideration
 - an interim suspension is not a sanction but a protective measure.
- The Member had submitted in his earlier emails to the PCC and to the Tribunal Secretary that:
 - he was not guilty of the criminal charges and that he was entitled to the presumption of innocence
 - the financial settlement of the civil proceedings commenced by his former employer was not an admission of guilt but rather a matter of commercial expediency.
- The Tribunal accepted the Member’s presumption of innocence and acknowledged that it was not the Tribunal’s role to consider or, to turn its mind to, whether the Member was guilty of the alleged offences.
- The Tribunal was satisfied that each of the elements of By-Law 40(9.1) were made out and, considering the seriousness of the offences that the Member was charged with, determined that it was “necessary and desirable” to suspend the Member on an interim basis because:
 - the Member had been charged (and committed for trial) with serious offences which could result in significant criminal penalties
 - in such circumstances the Member should not be holding himself out to members of the public as a Chartered Accountant as the public was entitled to be protected from the risk that a person who practises as a Chartered Accountant will not cause them financial harm
 - the criminal proceedings may result in adverse publicity to, and put at risk the reputation of, Chartered Accountants ANZ and the profession of accountancy.



**Chair
Disciplinary Tribunal**

SCHEDULE 1 - THE PCC'S APPLICATION

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, on 1 December 2016, while a member of Chartered Accountants ANZ, the following three charges were brought by Victoria Police against the Member pursuant to the *Crimes Act 1958* (VIC), that he:

1. *"between 09/02/2015 and 09/10/2015 dishonestly obtained for himself a financial advantage namely credit to the value of \$1,164,835.77 in his Bank of Melbourne bank account, by deception namely by the unauthorised transfer of the said \$1,164,835.77 from redacted business account into his own personal account";*
2. *"at Hawthorn East on 26/05/2015 steal cash being property belonging to redacted and valued at \$7,060.00";* and
3. *"at Hawthorn East on 30/06/2015 did steal cash being property belonging to redacted and valued at \$20,084.00".*

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

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

- (a) three months after the full and final resolution of all criminal proceedings against the Member; or
- (b) further investigation and determination of the complaints arising from the charges set out at paragraphs 1 - 3 above.

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(6) Interim or Final Decision

40(6.1) During an investigation, the Professional Conduct Committee may decide to:

...

- (e) refer the complaint directly to the Disciplinary Tribunal (without convening a Case Conference) where it is satisfied that:

...

- (viii) the matter is sufficiently serious that the Disciplinary Tribunal may suspend the Member on an interim basis;

...

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 accounting, 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 that Member's certificate of Membership, certificate(s) of public practice and any other documents specified in paragraph 13.4 to CA ANZ; and
 - (iii) save as provided in paragraph 4.3(e), 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 paragraph 10 apply to the procedures for a hearing on an application for interim suspension under this paragraph 9, except that:

- (a) the Notice of Disciplinary Action to be given in accordance with paragraph 10.1 must specify that the hearing is on an application by the Professional Conduct Committee for interim suspension;

- (b) the minimum 28 day time periods in paragraphs 10.1 and 10.3 are shortened to 14 days;
- (c) without prejudice to paragraph 13.8, paragraphs 10.12(a) to 10.12(k), and 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 paragraph 10.15 is reduced to 7 days.

40(9.4) The provisions of paragraph 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 paragraph 9, except that:

- (a) the maximum 21 day time periods in paragraphs 11.1 and 11.2 (time for notifying appeal) are shortened to 14 days;
- (b) the minimum 21 day time period in paragraph 11.4 (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 paragraph 11.13 is reduced to 7 days.

40(9.5) The provisions of paragraph 9 do not apply to Non-Member Practice Entities.

...

40(13.4) Termination and suspension

If the name of a Member is removed from any Registers on termination or suspension (including suspension on an interim basis) in accordance with this Section 5, the Member's certificate of Membership, any certificate of public practice and any other accreditation, specialisation or other certificate or award then held by the Member is cancelled with immediate effect and must be delivered up by the former Member to CA ANZ.