

**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 **David John Low**, Chartered Accountant, of **Wellington**

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**DETERMINATION OF THE DISCIPLINARY TRIBUNAL OF THE NEW ZEALAND  
INSTITUTE OF CHARTERED ACCOUNTANTS  
18 December 2018**

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**Hearing:** 21 November 2018

**Location:** The offices of Chartered Accountants Australia and New Zealand, Level 7, Chartered Accountants House, 50-64 Customhouse Quay, Wellington, New Zealand

**Tribunal:** Mr MJ Whale FCA (Chairman)  
Mrs A Atkinson FCA  
Mr DJH Barker FCA  
Prof DJD Macdonald FCA  
Dr RS Janes (Lay member)

**Legal Assessor:** Mr Matthew Casey QC

**Counsel:** Mr Richard Moon for the prosecution

**Tribunal Secretariat:** Janene Hick  
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At a hearing of the Disciplinary Tribunal held in public at which the Member was not in attendance and not represented by counsel by correspondence the Member admitted the particulars and pleaded guilty to the charges.

The charges and particulars are as follows:

## **CHARGES**

**THAT** in terms of the New Zealand Institute of Chartered Accountants Act 1996 and the Rules made thereunder, and in particular Rule 13.39 the Member is guilty of:

- 1) Conduct unbecoming an accountant; and/or
- 2) Negligence or incompetence in a professional capacity and that this is of such a degree and/or so frequent so as to bring the profession into disrepute; and/or
- 3) Breaching the Institute's Rules and/or Code of Ethics,

## **PARTICULARS**

### **IN THAT**

Being a Chartered Accountant in public practice, and in relation to a complaint, the Member:

1. Accepted appointment as auditor and/or performed statutory assurance engagements<sup>1</sup> when the Member:
  - a. did not hold a Certificate of Public Practice in breach by Rule 10.3(b)(ii) of the Rules and/or the Fundamental Principle of Professional Behaviour (paragraphs 110.5(e) and/or 150.1 of the Code of Ethics (2014)<sup>2</sup> (the "Code"); and
  - b. was not a qualified auditor under the Financial Reporting Act (2013) as required by enactments applicable to the entities being audited<sup>3</sup> in breach of the Fundamental Principles of Professional Competence and Due Care (paragraphs 100.5(c) and/or 130.1 and/or 130.3 of the Code) and/or Professional Behaviour (paragraphs 100.5(e) and/or 150.1 of the Code); and/or
2. Failed to implement and/or apply and/or document his compliance with his firm's documented quality control policy on monitoring assurance engagements as required by PS-1 and/or PES 3 (Amended), in breach of the Fundamental Principle of Professional Competence and Due Care (paragraphs 100.5(c) and/or 130.1 and/or 130.3 and/or 130.4 of the Code); and/or
3. Failed to ensure that assurance engagements the Member performed of ABC for the year ended 31 March 2017 and/or XYZ for the year ended 30 June 2016 were completed in

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<sup>1</sup> Including in respect of DEF and/or ABC and/or MNO Ltd and/or HJK Limited and/or WWW Limited and/or XYZ and/or MMM Limited and/or LLL Limited.

<sup>2</sup> And, as applicable, the equivalent provisions of the Code of Ethics (2017).

<sup>3</sup>Being sections 107(6)(b) of the Gambling Act 2003 and/or 207(1) of the Companies Act 1993 and/or 42C(2) of the Charities Act 2005.

accordance with the relevant technical and professional standards, in that the Member did not:

- a. undertake and/or document appropriate audit procedures and/or obtain and/or document sufficient appropriate audit evidence to draw reasonable conclusions on which he based his auditor's opinions, as required by ISA (NZ) 200 and/or ISA (NZ) 500 and/or ISA (NZ) 230 and/or ISA (NZ) 240 and/or ISA (NZ) 315 and/or ISA (NZ) 570; and/or
- b. satisfy himself that sufficient appropriate audit evidence had been obtained, as required by ISA (NZ) 220; and/or
- c. express his audit opinions in the correct terms and/or in accordance with the applicable reporting framework, as required by ISA (NZ) 700; and/or
- d. in respect of ABC:
  - i. evaluate and/or document his evaluation of its independent expert's valuation, as required by ISA (NZ) 500 and/or ISA (NZ) 620; and/or
  - ii. issue a modified opinion as required by ISA (NZ) 705 in respect of ABC's failure to depreciate a building owned by the entity as required by PBE standards and/or disclose that it had revalued its buildings as required by PBE standards; and/or
- e. in respect of XYZ, ensure a signed copy of his audit report was retained on his audit file, as required by ISA (NZ) 500 and/or ISA (NZ) 230 and/or ISA (NZ) 700,

in breach of the Fundamental Principle of Professional Competence and Due Care (paragraphs 100.5(c) and/or 130.1 and/or 130.3 of the Code<sup>4</sup>); and/or

4. Failed to maintain his professional competence to ensure that he remained up to date with all current standards applicable to assurance engagements in breach of the Fundamental Principle of Professional Competence and Due Care (paragraphs 100.5(c) and/or 130.1 and/or 130.3 of the Code).

## **BACKGROUND**

This case is an example of the increasingly common situation of a long-serving practitioner failing to appreciate the significance of legislative changes in their work area and failing to keep abreast of changes to professional standards.

The Particulars cover two types of conduct:

- The undertaking by the Member of audits when he was not qualified to do so; and
- Lack of quality control and professional competence.

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<sup>4</sup> And, as applicable, the equivalent provisions of the PES-1 (Revised).

The Financial Reporting Act 2013 (“*FRA*”) introduced a new statutory regime for the qualification of auditors who perform assurance engagements under various statutory provisions (“*statutory assurance engagements*”). This regime came into effect on 1 July 2015.

Statutory assurance engagements include, amongst others, all audits and certain other assurance engagements of companies, entities holding a gambling licence, real estate agents’ trust accounts and any registered charities with annual expenditure over \$500,000.

For accounting periods commencing on or after 1 July 2015 (1 April 2015 in the case of registered charities and those holding certain gambling licences), statutory assurance engagements are required to be performed by a “qualified auditor”. In the case of a member of the Institute, that person must be a Chartered Accountant and recognised by the Institute, in accordance with its Rules, as being eligible to act as an auditor in respect of the entities concerned. The Institute has established certain minimum requirements for the granting of such status. Having a Certificate of Public Practice, which was all that was required before the regime came into force, is now not enough.

It is an offence for an unqualified auditor to carry out statutory assurance engagements, or to hold themselves out as a qualified auditor.

Some entities which appoint an auditor who is not a qualified auditor will be in breach of the legislation governing the activities of that entity.

## **DECISION**

The Tribunal finds that the Particulars, which the Member has admitted, are made out by the evidence before it. It follows that Charge 3, to which the Member pleaded guilty, is proved.

The Member performed at least eight statutory assurance engagements which he was not qualified to perform. That put not only himself but his clients in breach of legislation. The Member was unable to provide the Institute with evidence that he had established any system of quality control, as required by Professional Engagement Standard (“*PES*”) 3. And in the case of two audits, the evidence was that there was a complete absence of any working papers that would confirm any audit procedures had been carried out.

The Tribunal finds that the Particulars support Charge 2, to which the Member has also pleaded guilty. The Member’s failure to recognise he was not qualified to perform the statutory assurance engagements and to perform audits in compliance with the relevant standards, and the nature of the shortcomings, demonstrate a lack of care and skill, and conduct which falls well below the standard expected of any auditor. In the Tribunal’s view, the conduct established is of such a degree and so frequent as to bring the profession into disrepute. The public expect auditors to maintain professional competence and remain up to date with standards, and also to perform audits in a professional manner.

The Tribunal also finds that the Particulars 1 and 4 support Charge 1 (to which the Member has also pleaded guilty).

The test for conduct unbecoming an accountant is whether the conduct was an acceptable discharge of a member’s professional obligations according to the standards applied by competent, ethical and responsible practitioners. The threshold is inevitably one of degree. The Tribunal agrees with the PCC’s investigator, Mr Selwyn-Smith, that it is highly unprofessional for a member

to put himself, and potentially his clients, in breach of legislation. It is clear from the minutes of the Member's Final Determination before the PCC, which he attended, that he has taken very few steps to keep up to date with changes to the regulatory regime and technical standards in the audit area.

## **PENALTY**

The Professional Conduct Committee ("PCC") sought that the Member be censured and that he be banned from undertaking audits for a period of 10 years. The audit failures (such as no evidence of any audit procedures being undertaken) were fundamental. It also noted that the Member had advised the Institute that he did not intend to renew his membership and would not in the future be carrying out work in any area in which he would need to be a CA. Those two matters in concert would justify a restriction being imposed.

The Tribunal was referred to its decisions in *Middleton* (15 March 2018) and *Freeman* (31 May 2018) where similar penalties were imposed for the type of conduct to be sanctioned here. As the Member's conduct pre-dated those decisions, the Tribunal considers that the penalty imposed here should be broadly in line with the penalties imposed in those decisions that relate to conduct similar to the Member's.

There was some discussion as to the purpose of a ban, given that effluxion of time in itself will not address professional competence issues. The PCC submitted that where a member towards the end of their career has made it clear that they propose to resign or to cease public practice, it is more appropriate to "lock that in" by imposing a ban than requiring the member to improve their technical expertise in assurance engagements. The Tribunal in reaching its decision has also had regard to the legal assessor's direction that the timing of any ban it may decide to impose should reflect more the nature of the conduct and the seriousness of the Charges than what the member has said about his or her intention in the future.

In reaching its decision on penalty, the Tribunal has taken into account that this is the first time the Member appears to have been the subject of the Institute's disciplinary process in over 30 years of membership.

Having regard to all the circumstances, the Tribunal considers that a censure and an order that the Member does not conduct any audit engagements for a period of five years is the proportionate response to the conduct and Charges. That penalty appropriately protects the public and should deter others, facilitates the Tribunal's role in maintaining compliance with and enforcing professional standards, reflects the seriousness of the misconduct and is the least restrictive penalty in the circumstances.

**Pursuant to Rule 13.40 (k) and (n) of the Rules of the New Zealand Institute of Chartered Accountants the Disciplinary Tribunal orders that:**

- **The Member be censured; and**
- **The Member is not to undertake audit engagements for a period of five years.**

## **COSTS**

The Professional Conduct Committee seeks full costs of \$14,058.

The Tribunal's general approach is that the starting point is 100% of costs, noting that the Institute already bears the cost of abandoned investigations and costs up to the Professional Conduct Committee's decision to hold a Final Determination.

There is no evidence before the Tribunal of any mitigating factors such as excessive or unnecessary expenses incurred or demonstrated evidence of hardship (inability to pay). While the Member has advised the Tribunal about his only source of income, no information has been

provided about his assets or liabilities. The Tribunal considers that it is fair and reasonable in the circumstances that the Member pay most of the costs sought.

**Pursuant to Rule 13.42 of the Rules of the New Zealand Institute of Chartered Accountants the Disciplinary Tribunal orders that the Member pay to the Institute the sum of \$12,000 in respect of the costs and expenses of the hearing before the Disciplinary Tribunal, the investigation by the Professional Conduct Committee. No GST is payable.**

#### **SUPPRESSION ORDER**

**Pursuant to Rule 13.62 of the Rules of the New Zealand Institute of Chartered Accountants the, Tribunal orders that the names of the Member's clients or former clients referred to in these proceedings be suppressed.**

#### **PUBLICATION**

**In accordance with Rule 13.44 of the Rules of the New Zealand Institute of Chartered Accountants the decision of the Disciplinary Tribunal shall be published on Chartered Accountants Australia and New Zealand's website and in the official publication *Acuity* with mention of the Member's name and locality.**

The Tribunal also considers that it is appropriate that the Institute provides this decision to the clients for which the Member performed an audit as an unqualified person, with an accompanying letter. The reason (apart from a higher public interest factor) is that those entities have been put in breach of their statutory obligations by having an audit completed by an unqualified person and they should be made aware of this.

**Pursuant to Rule 13.44(b)(ii) of the Rules of the New Zealand Institute of Chartered Accountants, the Tribunal orders that the Institute provides this Determination, together with a suitably worded covering letter in a form to be approved by the Chairman of the Tribunal, to the Member's former clients for which he performed statutory assurance engagements whilst not qualified to do so.**

#### **RIGHT OF APPEAL**

Pursuant to Rule 13.47 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 parties may, not later than 14 days after the notification to the parties of this Tribunal's exercise of its powers, appeal in writing to the Appeals Council of the Institute against the decision.

The suppression orders shall take effect immediately. No decision including the direction as to publicity shall take effect while the parties remain entitled to appeal, or while any such appeal by the parties awaits determination by the Appeals Council.



**MJ Whale FCA  
Chairman  
Disciplinary Tribunal**