

Determination of the Disciplinary Tribunal of Chartered Accountants Australia and New Zealand 24 May 2017

Case Number:	D-1162
Member:	Randall Lucas CA of Victoria
Hearing Date:	24 May 2017
Tribunal:	David Fairlie (Chair) David Gibbs FCA Richard Rassi FCA
Representation:	Michael Bradley for the Professional Conduct Committee (PCC) The Member neither appeared nor was represented at the hearing
Case description:	<ol style="list-style-type: none">1. Member failed to complete the Liability Capping Questionnaire.2. Member failed to hold Professional Indemnity Insurance whilst holding a Certificate of Public Practice.3. Member failed to comply with reasonable and lawful directions in correspondence from Chartered Accountants ANZ.

1. DECISIONS

1.1 DECISION ABOUT THE PCC'S ALLEGATIONS WHICH ARE SET OUT IN FULL IN SCHEDULE 1

The Member in his questionnaire response dated 17 May 2017 admitted all allegations and informed Chartered Accountants ANZ that he would not attend the hearing.

At a hearing of the Disciplinary Tribunal not attended by the Member, the Tribunal was satisfied that allegations 1(a), 1(b) and 2 were established.

1.2 DECISION ABOUT SANCTIONS

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

- the Member's Certificate of Public Practice (**CPP**) be cancelled forthwith
- the Member be severely reprimanded
- the Member be fined in the sum of \$5,000.

1.3 DECISION ABOUT COSTS SANCTION

The Tribunal determined that the Member pay to Chartered Accountants ANZ the sum of \$4,467 for the full costs and expenses of the proceedings (paragraph 10.12(l) of By-Law 40). No GST is payable.

1.4 DECISION ABOUT PUBLICATION

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

The Tribunal will publish its decision, mentioning the Member's name and locality, on the website and in the journal of Chartered Accountants ANZ (paragraphs 12.3 and 12.4 of By-Law 40).

1.5 NOTIFICATION TO OTHER BODIES

The Tribunal was not informed of any registrations and/or memberships with any other professional or statutory bodies that are held by the Member.

2. 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 (paragraph 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 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 (paragraph 11.2 of By-Law 40).

3. REASONS FOR DECISION

3.1 ALLEGATION 1(a)

- The Member admitted allegation 1(a).
- The Tribunal considered the material submitted by the PCC evidencing that the Member failed to complete and return the Liability Capping Questionnaire sent to him on 3 December 2015 within the required fourteen days, or at all.
- The Tribunal:
 - considered the facts set out in the written material, which included the Member's admission
 - accepted the PCC's submissionsand determined that the allegation was established.

3.2 ALLEGATION 1(b)

- The Member admitted allegation 1(b).
- The Tribunal considered the material submitted by the PCC evidencing that the Member:
 - obtained a CPP on 13 February 2015 whilst an employee of a public accountancy firm
 - left the employment of the public accountancy firm on 1 December 2015 and was not subsequently employed in another public accountancy firm
 - still holds a CPP.
- As a consequence, from 1 December 2015 the Member has been the holder of a CPP without also holding mandatory professional indemnity insurance.
- The Tribunal:
 - considered the facts set out in the written material, which included the Member's admission
 - accepted the PCC's submissionsand determined that the allegation was established.

3.3 ALLEGATION 2

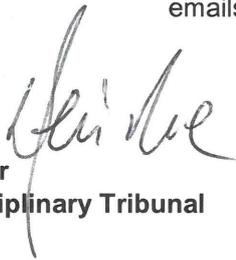
- The Member admitted allegation 2.
- The Tribunal considered the material submitted by the PCC which indicated that the Member had failed to respond to correspondence from Chartered Accountants ANZ sent to him between 4 April 2016 and 14 March 2017 concerning his obligation to complete the annual Liability Capping Questionnaire and his professional indemnity insurance arrangements.

- The Tribunal:
 - considered the facts set out in the written material, which included the Member's admission
 - accepted the PCC's submissions
 and determined that the allegation was established.

4. REASONS FOR SANCTIONS

- The PCC submitted that the Member should receive a serious sanction and it would be appropriate that:
 - the Member be reprimanded
 - the Member's Certificate of Public Practice be cancelled
 - the Member pay the full costs of the proceedings
 because:
 - operating without professional indemnity insurance is a serious breach of the By-Laws that puts at risk the public and Chartered Accountants ANZ
 - failure to respond to numerous communications from Chartered Accountants ANZ is a serious matter
 - although the Member had said in May 2016 that he would apply to cancel his CPP the following week, and in January 2017 advised that he was considering cancelling his CPP, he had not done so.
- The Member in his emails to the Tribunal Secretary dated 17 May 2017 submitted that:
 - he did not practice, set up a practice or solicit fees for services in any form during the relevant period
 - at no stage since leaving the accounting firm had he had any thoughts of pursuing a public practice role whatsoever.
- The Tribunal determined that the Member's Certificate of Public Practice be cancelled, that he be severely reprimanded, that the Member be fined in the amount of \$5,000 and that he be required to pay costs for the following reasons:
 - the Member's failure to comply with the requirements of a CPP holder and his failure to understand the importance of his obligations under the By-Laws and Regulations were serious matters
 - holding a CPP without professional indemnity insurance exposes the public to financial risk if a claim is made against an uninsured member and has the potential to undermine Chartered Accountants ANZ's approved liability capping scheme pursuant to the Professional Standards legislation
 - the material in the casefile evidenced that the Member was made aware by officers of Chartered Accountants ANZ of the relevant requirements for the holders of CPPs on a number of occasions, from at least December 2015
 - the Member was required to hold professional indemnity insurance whilst holding a CPP, even if he did not practise
 - the Member had said that he would apply to cancel his CPP but did not do so and these proceedings could have been avoided had the Member elected to cancel his CPP as he indicated he would in May 2016

- the Member's attitude towards compliance with his obligations, as a holder of a CPP and as a Member of Chartered Accountants ANZ, and to the complaint and this hearing, in the Tribunal's view was dismissive and uncooperative, in particular the Member's failure to respond for lengthy periods of time and the tone in his emails to the Tribunal Secretary sent on 17 May 2017.



**Chair
Disciplinary Tribunal**

SCHEDULE 1 - THE PCC'S ALLEGATIONS

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)(h), in that whilst holding a certificate of public practice the Member failed to:
 - a) complete and return CA ANZ's annual questionnaire about his Professional Indemnity Insurance arrangements for 2015 (**Liability Capping Questionnaire**) and thereby failed to provide to CA ANZ:
 - i. such information and documents about or in evidence of the Member's and/or his practice's professional indemnity insurance as requested;
 - ii. notification of any circumstance notified to the Member's insurer;
 - iii. such information and documents about claims made against the Member and/or his practice as requested,in breach of Regulation CR2A - Professional Indemnity Insurance, paragraph 2A.6(c) (previously paragraph PI.4(c)); and
 - b) have, or ensure that his practice has, a contract of professional indemnity insurance which is valid and binding and meets at least the minimum requirements set out in Regulation CR2A - Professional Indemnity Insurance, in breach of paragraph 2.19 of Regulation CR2 – Certificates of Public Practice (previously paragraph 713 of Regulation CR2).
2. By-law 40(2.1)(i), in that the Member has failed to comply with a reasonable and lawful direction 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 4 April, 27 May, and 24 November 2016 and 18 and 24 January and 14 March 2017 concerning the completion of the Member's Liability Capping Questionnaire and his Professional Indemnity Insurance arrangements.

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.

...

2 Disciplinary action

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:

...

- (h) has committed any breach of the Supplemental Charter, these By-Laws or the Regulations, any pronouncements issued by the Accounting Professional and Ethical Standards Board, Australian Accounting Standards Board and Auditing and Assurance Standards Board (or their successor entities) including the Code of Ethics, or any applicable pronouncements, instruments, technical or professional standards or guidance issued by any similar body whether in Australia or in a foreign jurisdiction;
- (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;