

Determination of the Appeals Tribunal of Chartered Accountants Australia and New Zealand 20 December 2018

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| Case Number: | A-180 |
| Member: | Milan John Versic FCA of Queensland |
| Hearing Dates: | 3 September 2018 (adjournment application) 21 November 2018 17 December 2018 |
| Tribunal: | Jan West AM FCA (Chair) John Gibson FCA Anna Hebron, lay member of the Tribunal |
| Tribunal Legal Adviser: | Zoe Taylor |
| Representation: | Michael Bradley for the Professional Conduct Committee (PCC) Brett Saal for the Member |
| Case description: | <ol style="list-style-type: none">1. Member committed breaches of APES 110, <i>Code of Ethics for Professional Accountants</i> and APES 220, <i>Taxation Services</i>, in breach of By-Law 40(2.1)(h).2. Member failed to observe a proper standard of professional care, skill or competence in the course of carrying out his professional duties.3. Member committed an act, omission or default which, in the opinion of the Appeals Tribunal, brings or may bring discredit upon that Member. |
| Appeal: | Member appeal of determination and sanctions |

1. DECISIONS

1.1 DECISION ABOUT THE APPEAL

At a hearing of the Appeals Tribunal (the **Tribunal**), the Tribunal determined to:

- affirm the determination of the Disciplinary Tribunal that allegation 1(b) has been established
- set aside the determination of the Disciplinary Tribunal that allegation 1(c) was established
- affirm the determination of the Disciplinary Tribunal that allegations 2 and 3 have been established
- affirm the sanction imposed by the Disciplinary Tribunal that the Member receive a reprimand
- affirm the sanction imposed by the Disciplinary Tribunal that the Member's practice be subject to a Quality Review and the results of that Quality Review be made available to the PCC
- reduce the cost sanction imposed by the Disciplinary Tribunal that the Member be required to pay the sum of \$16,400 to \$15,500, towards the costs and expenses of the proceedings up to and including the Disciplinary Tribunal hearing.

There being no appeal of the Disciplinary Tribunal's determination of allegation 1(a), the Tribunal did not consider this finding.

1.2 DECISION ABOUT COSTS SANCTION

The Tribunal determined that the Member pay to Chartered Accountants ANZ the sum of \$22,000 towards the costs and expenses of the appeal (which included an adjournment application determined on 3 September 2018) (paragraph 10.12(l) of By-Law 40). No GST is payable.

1.3 DECISION ABOUT PUBLICATION

In accordance with paragraphs 12.3 and 12.4 of By-Law 40, the Tribunal directed that, there being no exceptional circumstances:

- its decision with full 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".

1.4 NOTIFICATION TO OTHER BODIES

The Member advised in his questionnaire response that he was a member of the following organisations / held statutory registrations administered by:

- Tax Practitioners Board
- CPA Australia
- Australian Securities and Investments Commission
- Department of Justice and Attorney-General, Queensland

and the Tribunal determined that these bodies would be notified of its decision.

2. BACKGROUND

The disciplinary action brought by the PCC arose from a complaint lodged with Chartered Accountants ANZ by another professional accounting firm (the **Other Accounting Firm**) on behalf of one of the Member's former clients (the **Former Client**) who had moved her business to the Other Accounting Firm.

The Former Client was the Member's client for a number of years. The Member previously was the financial adviser and undertook the preparation of tax returns for the Former Client and her now deceased husband, in both their personal capacities and for various entities, including a partnership and companies. The Member previously had a strong working relationship with the Former Client but she ultimately moved her business to the Other Accounting Firm. The reasons why the Former Client changed firms are the subject of both the complaint and the PCC's allegations.

3. MEMBER'S APPLICATION TO SET ASIDE DISCIPLINARY TRIBUNAL DECISION AND PCC DETERMINATION

- The Member applied to the Tribunal to have the decision of the Disciplinary Tribunal set aside on the basis that procedural fairness had not been afforded to him. The Member then referred to judicial authority in support of a claim that the entire decision of the Disciplinary Tribunal must fail if it could be proven that the decision was affected by "legal error" of any kind.
- The Member specifically submitted that procedural fairness had not been afforded to him because:
 - the Former Client had not been called by the PCC to give evidence
 - certain other people known to the Former Client had not been called by the PCC to give evidence
 - he did not have an opportunity to "face his accuser" who he considered to be the Former Client and not the PCC
 - as a result of the above, virtually all of the evidence was hearsay.
- The PCC submitted that the Member's application proceeded on a misunderstanding of what was the purpose of the Appeals Tribunal hearing, and was an application of the nature that would be made to a court in seeking judicial review of a Tribunal decision. The hearing today was a rehearing of the whole matter.
- The Tribunal refused the Member's application to have the matter set aside on procedural fairness grounds because appeals of this kind proceed by way of rehearing in accordance with By-Law 40(11.5). This Tribunal is not a court. It is not required or able to conduct something akin to "judicial review" of decisions of the Disciplinary Tribunal. In forming its determination, the Tribunal considers and weighs up the submissions and documents provided to it.
- As to the Member's argument that the evidence was affected by hearsay, the Tribunal noted that it is not bound by the laws of evidence (By-Law 40(13.2)).
- The Tribunal disagreed with the Member's submission that the Former Client was his "accuser" because the allegations were brought by the PCC based on their independent investigation of the complaint. Further, the Tribunal accepted the PCC's submission that the Member could have called the Former Client as a witness but he did not.

4. ORDER OF SUBMISSIONS

- On being invited to make submissions on his grounds of appeal, the Member submitted that if the appeal was by way of rehearing, the PCC should make its submissions first. In support of this submission the Member:
 - referred to By-Law 40(11.8) which states that *“At every hearing before the Appeals Tribunal, the Professional Conduct Committee shall be responsible for the presentation of the case against the Member concerned”*
 - stated that a rehearing does not require the Member to go first and that at each of the case conference, the Disciplinary Tribunal and this Tribunal, it was for the PCC to put their case first.
- The PCC submitted and the Tribunal agreed that, while By-Law 40(11.8) required that the PCC appear and put their case before the Tribunal, it does not prescribe that submissions occur in any particular order. It is the Tribunal’s practice to hear submissions first from the party that has initiated the proceeding, and then from the “respondent”.
- On that basis the Tribunal determined that the Member should make his submissions first because the appeal was initiated by him by the filing of a Notice of Appeal. Further, the Tribunal had read and considered the transcripts of the Disciplinary Tribunal hearing and the PCC case conference, as well as all submissions and documents relied on in the Disciplinary Tribunal hearing.

5. REASONS FOR DECISIONS ON APPEAL

5.1 ALLEGATION 1(b) - Member made assertions regarding the conduct of another professional to a client which:

- i. he had no evidence were correct; and/or
- ii. he had taken insufficient care to ensure were correct; and/or
- iii. were inappropriately derogatory; and/or
- iv. were clearly intended to besmirch the reputation of another professional, and thereby did not comply with sections 110, 120 and 150 of APES 110, *Code of Ethics for Professional Accountants*

- The Tribunal affirmed the decision of the Disciplinary Tribunal that this allegation was established.
- This allegation concerned three text messages sent by the Member to the Former Client. Those text messages were provided to the Tribunal and stated:

“...I do not feel comfortable handing over your records to the criminals at [the Other Accounting Firm]. If you choose to do so, that is your decision but I feel I would be letting [the Former Client’s deceased husband] down if I did so. It sounds like they gave (sic) already arranged for you to pay a lot more tax than you need to.”

“...I cannot, however, in good conscience and in respect to [the Former Client’s deceased husband], help in handing over records to these criminals...”

“...It will be interesting to see how long it will take before [the Other Accounting Firm] start suggesting that you are better off with a self-managed super fund. Beware.”

- The Member admitted to sending the text messages and conceded that they were inappropriate. However the Member also submitted:
 - the messages were only sent to the Former Client

- the Former Client had transferred her files to the Other Accounting Firm, so the Former Client had disregarded the fact that the Member had called the Other Accounting Firm criminals
- the messages were not a wholesale open slather series of insults to the Other Accounting Firm, but were couched within the terms of the Member's experience of the Other Accounting Firm.
- The PCC submitted that the Member had failed to act with integrity, objectivity or in a professional manner, in breach of his obligations under APES 110, *Code of Ethics for Professional Accountants (APES 110)* sections 110, 120 and 150, in that:
 - the Member had no basis for calling another group of accountants criminals and it was open to the Tribunal to infer that the Member did not have a lot of regard to the significance of what he was saying
 - the Member had a particular view about the Other Accounting Firm, presumably because of his dealings with them, which impacted the Member's objectivity and his judgment and on his own admission, influenced his decision to send those communications to the Former Client
 - the Member's references to the Other Accounting Firm as criminals were indefensibly derogatory and could not be read in any way other than as an attempt to besmirch the reputation of another professional
 - members should behave courteously and with respect to fellow professionals, and should not engage in the kind of behaviour which this particular conduct exemplified and which was a very straight forward breach of that obligation.
- The Tribunal observed that the Member did not present any evidence to justify that anyone associated with the Other Accounting Firm or the firm itself had been convicted of a criminal offence. Accordingly the Tribunal was satisfied that the Member had breached section 110 of APES 110 which requires members not to knowingly be associated with information which is materially false or misleading.
- The Tribunal was satisfied that describing another firm as criminals was inappropriate and derogatory, as were the other comments made by the Member in the text messages. This amounted to a breach of section 120 of APES 110 which imposes a principle of objectivity on all members.
- The Tribunal rejected the Member's submission that there was no breach of APES 110 because the text messages were only sent to the Former Client and determined that, because the text messages were not honest or truthful and made disparaging references to the work of others, the Member had breached section 150 of APES 110.
- In addition to the submissions outlined above, the Member alleged that the use of the words "and/or" in the allegation was ambiguous. As a result of this ambiguity, the allegation should be read in a way that favoured the Member, which was that subparagraphs (i) to (iv) were to be read conjunctively.
- The PCC in response submitted that there was no difficulty in understanding what the use of the words "and/or" meant in this context. Those words meant "either one of those two things or both those two things", which is consistent with how the term is commonly used.
- The Tribunal accepted the PCC's submission and rejected the Member's allegation that "and/or" was ambiguous and that the use of those words meant the elements of the allegation should be read conjunctively. In the Tribunal's view, the allegation was satisfied if any one or more of the elements stated in the four subparagraphs was made out.

- 5.2 ALLEGATION 1(c) - Member failed to prepare financial statements for a client and/or consider financial statements already prepared and as a result:**
- i. failed to properly prepare company tax returns taking into account the content of such financial statements, and thereby did not comply with sections 4.1 and 6.1 of APES 220, Taxation Services;**
 - ii. failed to prepare working papers to appropriately document the work performed and the basis on which, and the method by which, any calculations, determinations or estimates used in the provision of the Taxation Service have been made, and thereby did not comply with section 11.1 of APES 220, Taxation Services.**
- The Tribunal set aside the decision of the Disciplinary Tribunal that this allegation had been established.
 - The Member made detailed submissions about the use of the words “and/or” in the allegation. The thrust of those submissions was:
 - there was inherent and instant ambiguity in the use of “and/or”
 - the framing of the allegation by the PCC unfairly discriminated against the Member and denied him natural justice in the form of procedural fairness, in that it enabled the PCC and the Tribunal to “cherry pick” the interpretation of the allegation that best suited its purpose
 - the Tribunal was obliged to construe the allegation in the way that most favoured the Member which was that the elements were conjunctive. Construed in this way, the Tribunal had to be satisfied that the Member had both failed to prepare financial statements and failed to consider the financial statements already prepared before it could be satisfied that the allegation was established.
 - The Tribunal determined that the appropriate interpretation of “and/or” is that it means one or more of, and rejected the Member’s submission that the allegation was ambiguous.
 - Turning to the factual bases of allegation 1(c), the Member submitted that:
 - he could not prepare financial statements because the Former Client had not provided him with the relevant information and documents
 - the Disciplinary Tribunal had not identified the date by which the Member ought to have prepared the financial statements
 - it was impracticable to obtain exact evidence as to when the Former Client had instructed him to file the returns
 - the Former Client had instructed him to file the tax returns without the financial statements having been prepared and the Member had done so, in accordance with APES 220, *Taxation Services* (**APES 220**) paragraph 4.1.
 - The PCC submitted that:
 - as an accountant, the Member was obliged to prepare and lodge the tax returns on the basis of accurate information. If the Member did not have accurate information available to him then the appropriate course was to refuse to lodge the returns and to take the necessary steps to obtain that information
 - it was negligent to prepare and lodge the returns without the relevant financial statements and in breach of sections 4.1 and 6.1 of APES 220
 - it was unacceptable that the Member sought to shift blame on the Former Client for his own professional obligations
 - the only documents provided by the Member which resembled working papers were two pages that appeared to be a “back of an envelope” exercise.

- It was clear to the Tribunal from the wording of the allegation, and confirmed by the PCC during the hearing, that allegation 1(c) was made on the basis that where a tax return is prepared without financial statements having been prepared, or without considering financial statements already prepared, the accountant will have breached APES 220. However, it is not a requirement that financial statements be prepared or referred to in order to prepare a tax return. Whilst the Tribunal received written and oral submissions at the hearing that the Member's working papers were deficient, the PCC did not prove that those deficiencies were a result of the fact that the Member did not prepare or consider the financial statements. On this basis the allegation was not established.
- The Tribunal observed that it is possible that allegation 1(c)(ii) could have been established if not limited by the words "failed to prepare financial statements for a client and/or consider financial statements already prepared...". However the Tribunal is obligated to determine the allegation as set out in the Notice of Disciplinary Action.

5.3 ALLEGATION 2 - Member failed to observe a proper standard of professional care, skill or competence in the course of carrying out his professional duties:

- a) in that the Member failed to perform work for a client on a timely basis, and thereby did not comply with sections 130.1(b) and 130.4 of APES 110, Code of Ethics for Professional Accountants; and/or**
- b) by the conduct referred to in allegation 1.**

- The Tribunal affirmed the decision of the Disciplinary Tribunal that this allegation was established.
- The events which preceded the lodgement of the Former Client's tax returns by the Member were summarised in his letter to Chartered Accountants ANZ dated 3 February 2017. The letter stated that "... [the Former Client] *provided me with the balance of her 2015 records in March 2016. I confirmed with her that the tax returns were not due until 15 May 2016. As I had a substantial workload at that time, I told her I would try to complete everything by the due date. If not, she should not be concerned as I would arrange for an extension with the ATO. The first sign that there was something wrong was when I received an ethical letter from [the Other Accounting Firm] ... received by my office on Tuesday 28 June 2016" ... "I left a message for [the Former Client] to ring me but she didn't get back to me until Friday 1 July 2016. By this time, I was in Melbourne at a training seminar...*".
- The Member submitted that he applied for an extension to the lodgement date and that it was inconsistent for the Tribunal to have found both that he ought not to have completed the tax returns when he did, and that he ought not to have prepared the returns based upon estimates.
- The Member revisited his "and/or" argument and submitted that the ambiguity which resulted from the use of the words "and/or" should be resolved in favour of the Member. For the reasons stated previously, the Tribunal rejected this submission.
- The PCC submitted that:
 - if there was a finding of breach of By-Law 40(2.1)(h) then that would also constitute a breach of By-Law 40(2.1)(a)
 - despite knowing that the returns were late, the Member did not contact the Former Client until after he received an ethical letter from the Other Accounting Firm. On the Member's evidence, the Member did not keep the Former Client informed as to the status of the preparation of her tax returns
 - when considering the whole of the Member's conduct in relation to how he dealt with the tax returns, the Tribunal should find that he failed to comply with the general standard of skill, care and competence. That conduct included the

preparation of tax returns based on estimates, but also the sending of text messages to the Former Client disparaging a fellow professional

- the Member filed tax returns with incomplete information, on what he says were his client's instructions.
- The Tribunal in making its determination considered APES 110 section 130.1(b) which requires members to be diligent in the provision of professional services, and APES 110 section 130.4 which clarifies that diligence involves a responsibility to act "carefully and thoroughly and on a timely basis".
- The Tribunal accepted the PCC's submission that timeliness required the tax returns to be lodged by 15 May 2016. The evidence before the Tribunal suggested that the tax returns were not lodged until 8 July 2016 and the Tribunal accepted that the tax returns were lodged late.
- The Member's submission that he had applied for an extension was, in the Tribunal's view, inconclusive and unreliable. The Member did not provide any explanation for not filing the tax returns on the due date to meet the Former Client's expectations, other than a general reference to being busy.

5.4 ALLEGATION 3 - By the Member's conduct referred to in allegations 1 and 2, he has committed an act, omission or default which brings, or may bring, discredit upon the Member, Chartered Accountants ANZ and/or the profession of accountancy

- The Tribunal affirmed the decision of the Disciplinary Tribunal that this allegation was established.
- The Member submitted that:
 - it appeared to be a situation of double jeopardy and that he was being punished twice for the one offence. The Member submitted that both allegations 1(b) and 3 should fail and in the alternative, only one should be found against him
 - there was no evidence that his actions brought or may have brought discredit upon Chartered Accountants ANZ or the profession of accountancy. The text messages were issued to one person, who disregarded them.
- As with the previous allegations, the Member revisited his "and/or" argument and submitted that the ambiguity which resulted from the use of the words "and/or" should be resolved in favour of the Member. For the reasons stated previously, the Tribunal rejected this submission.
- The PCC submitted that:
 - discredit would comfortably flow through to both Chartered Accountants ANZ and the profession generally from the Member's admitted conduct, being the sending of the text messages
 - the Member's submission that he only sent the text messages to the Former Client and that any discredit caused by those messages was as a result of the Former Client onforwarding them, was an abdication of responsibility for the Member's own actions.
- The Tribunal accepted the Member's submission that no evidence was presented that there was wide-spread dissemination in the public arena of the texts.
- The Member admitted sending the messages and acknowledged his use of the word "criminal" was inappropriate. In the Tribunal's view the disparaging content of those messages brings discredit to the Member.

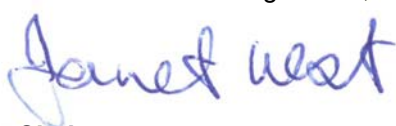
5.5 SANCTIONS

- The Tribunal affirmed the decision of the Disciplinary Tribunal that:
 - the Member receive a reprimand
 - the Member's practice be subject to a Quality Review, with the results of that Quality Review to be made available to the PCC.
- The PCC and the Member both submitted that a reprimand would be an appropriate sanction. Where submissions differed was in respect of whether or not a Quality Review was an appropriate sanction.
- The Member submitted that:
 - to punish him twice for the same offence would go against the principle of "double jeopardy" and therefore there should be just one penalty imposed
 - the sending of the text messages was an isolated incident and not systemic
 - the private nature of the initial communication and its subsequent limited distribution were mitigating factors
 - he had been a member of Chartered Accountants ANZ for 25 years and been in practice as an accountant for over 30 years with an unblemished record
 - he had already suffered for his actions by losing the Former Client's business.
- The PCC submitted that a Quality Review, with the results of that Quality Review to be made available to the PCC, was an appropriate sanction because:
 - the concept of double jeopardy did not arise in this context. It is not the case that the Tribunals allocate a specific sanction to each finding of breach, sanctions are assessed with reference to the Member's conduct as a whole
 - all members that hold a certificate of public practice are required to undergo a Quality Review from time to time in accordance with Regulation CR2.22, *Quality Control*. The requirement to undergo a Quality Review could be characterised as an acknowledgement that, in light of the breaches that were established, it was time to review the systems, procedures and quality controls of the Member's practice to seek a reasonable assurance regarding those matters and to ensure that there are no systemic or endemic problems with the Member's practice.
- The Tribunal, in determining to affirm the sanctions imposed by the Disciplinary Tribunal, considered:
 - the guidelines in Regulation CR8.11, *Guidelines for the imposition of sanctions*
 - the seriousness of the allegations established
 - that there were no mitigating factors relevant to the conduct
 - that the Member had expressed no remorse
 - that the Member did not plan and execute the provision of professional services to his client in order to meet the lodgement timetable
 - that, despite the Member being reappointed by the Former Client in late 2014, the Member did not prepare and lodge the tax returns until contacted by the Former Client after the lodgement due date of 15 May 2016
 - that performing a Quality Review of the Member's practice would maintain public confidence in the profession and also ensure maintenance of proper standards of professional conduct by the Member.

Having regard to the points made above, the Tribunal considered that the sanctions of a reprimand and a Quality Review were appropriate with regard to the breaches of the By-Laws that were established.

6. REASONS FOR DECISION ON COSTS SANCTION

- The Tribunal determined:
 - to reduce the cost sanction imposed by the Disciplinary Tribunal from \$16,400 to \$15,500
 - that the Member be required to pay \$22,000 towards the costs and expenses of the appeal.
- The Member submitted that:
 - he was successful in having the Disciplinary Tribunal's determination of allegation 1(c) set aside and it was a serious allegation
 - there were originally five allegations: 1(a), 1(b), 1(c), 2 and 3. Of those, allegation 1(b) was not contested and the Member was successful in defending 1(a) and 1(c). The Member submitted that allegations 1(b) and 3 involved the same conduct. On these bases, the Member submitted he had been successful in defending half of the allegations
 - he disputed the reasonableness of the fees claimed in the absence of more detailed information.
- The PCC submitted that the Member should pay the sum of \$16,400 as awarded by the Disciplinary Tribunal, and the full costs of this hearing in the sum of \$28,284, because:
 - the costs had been incurred by Chartered Accountants ANZ arising from the appeal brought by the Member. The PCC noted that no internal costs were included
 - the Member had raised a number of irrelevant submissions which resulted in the hearing held 21 November 2018 lasting more than seven hours requiring an adjournment.
- The decision of the Tribunal was to reduce the costs payable by the Member in respect of both this hearing and the hearing before the Disciplinary Tribunal in light of the fact that two of the allegations were found not to be established. However the Tribunal's view was that the Member should bear the majority of the costs of both hearings because:
 - the sanctions imposed were consistent with those offered by the PCC following the case conference, which the Member refused and instead elected to have the matter brought before the Disciplinary Tribunal
 - the sanctions imposed were consistent with those imposed by the Disciplinary Tribunal
 - the Member made substantial oral submissions on matters that did not answer the allegations made against him and resulted in additional costs being incurred
 - the costs were reasonable and reflected the length of the hearing which was significant, including two adjournments.



**Chair
Appeals Tribunal**

SCHEDULE A - DECISION OF THE DISCIPLINARY TRIBUNAL



CHARTERED ACCOUNTANTS™
AUSTRALIA • NEW ZEALAND

Determination of the Disciplinary Tribunal of Chartered Accountants Australia and New Zealand 27 February 2018

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| Case Number: | D-1175 |
| Member: | Milan John Versic FCA of Queensland |
| Hearing Date: | 7 February 2018 |
| Tribunal: | Ross Gavin FCA (Chair) Bruce Glanville FCA Ross Illingworth, non accountant member of the Tribunal |
| Tribunal Legal Adviser: | Lauren Stewart |
| Representation: | Michael Bradley for the Professional Conduct Committee (PCC) Brett Saal for the Member |
| Case description: | <ol style="list-style-type: none">1. Member committed breaches of APES 110, <i>Code of Ethics for Professional Accountants</i> and APES 220, <i>Taxation Services</i>, in breach of By-Law 40(2.1)(h).2. Member failed to observe a proper standard of professional care, skill or competence in the course of carrying out his professional duties.3. Member committed an act, omission or default which, in the opinion of the Disciplinary Tribunal, brings, or may bring, discredit upon that Member. |

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1. DECISIONS

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

At a hearing of the Disciplinary Tribunal, attended by the Member by way of teleconference:

- the Tribunal found the PCC did not establish allegation 1(a)
- the Tribunal found the PCC did establish allegations 1(b), 1(c), 2 and 3.

1.2 DECISION ABOUT SANCTIONS

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

- the Member receive a reprimand
- the Member's practice be subject to a Quality Review and the results of that Quality Review be made available to the PCC.

1.3 DECISION ABOUT COSTS SANCTION

The Tribunal determined that the Member pay to Chartered Accountants ANZ the sum of \$16,400 towards the 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.

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".

1.5 NOTIFICATION TO OTHER BODIES

The Member holds registrations and/or memberships with the following bodies, which will be notified of this decision:

- Tax Practitioners Board
- CPA Australia
- Australian Securities and Investments Commission
- Department of Justice and Attorney-General, Queensland.

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

The disciplinary action arose from a complaint lodged with Chartered Accountants ANZ by another professional accounting firm (the **Other Accounting Firm**) on behalf of one of the Member's former clients (the **Former Client**) who had moved her business to the Other Accounting Firm.

The Former Client was the Member's client for a number of years. The Member previously undertook the preparation of tax returns for the Former Client and her now deceased husband, in both their personal capacities and for various entities, including a partnership and companies. The Member had previously had a strong working relationship with the Former Client.

3.1 PRELIMINARY ISSUE REGARDING THE IDENTITY OF THE "COMPLAINANT"

The Member was concerned that it was not clear whether or not the Other Accounting Firm had the Former Client's authority to submit the initial complaint. Further, the Member was unsure of whether or not the Former Client had been contacted by Chartered Accountants ANZ to confirm that the Other Accounting Firm was authorised to provide the complaint on her behalf. The Member asserted that it was not appropriate for the PCC to proceed on a "hearsay" complaint without confirming that authority existed. The Member noted there was rivalry between his accounting firm and the Other Accounting Firm in terms of business dealings, particularly client retention and acquisition.

The PCC submitted that the contents of the original complaint and the identity of the complainant were not relevant. The allegations before the Tribunal were those brought by the PCC as set out in the Notice of Disciplinary Action. The PCC submitted that they had provided documentary evidence to the Tribunal in support of their allegations and as such it was not necessary to call the Former Client as a witness.

The Tribunal, having reviewed the material provided, accepted the PCC's position.

3.2 ALLEGATION 1(a)

- The PCC submitted that:
 - the Member failed to follow the Former Client's instructions in relation to the cessation of his retainer and therefore did not comply with section 150.1 of APES 110
 - the Member was notified by the Other Accounting Firm that they had received instructions to take over the Former Client's tax affairs. On several occasions, requests had to be made by or on behalf of the Former Client for the Former Client's affairs to be transferred to the Other Accounting Firm before the Member provided the relevant files to the Other Accounting Firm
 - the requests were straightforward, yet it took at least nine weeks for the Member to satisfy the Other Accounting Firm's request
 - in summary:

- section 150.1 of APES 110 relates to the principle of professional behaviour and prohibits actions or omissions that a reasonable and informed third-party, weighing all the specific facts and circumstances available to a member at that time, would be likely to conclude adversely affects the good reputation of the profession
 - the public and the profession are entitled to expect absolute compliance with this obligation which unquestionably includes acting on instructions
 - this obligation meant the Member should have acted on the instructions of his Former Client without delay.
- The Member submitted that:
 - he had a long-standing (20 year) relationship with the Former Client and her late husband. In all his years of dealing with the Former Client she had never communicated via text messages. Their communication had always been undertaken with face-to-face meetings and/or telephone calls
 - on receiving an ethical clearance letter regarding the Former Client's taxation affairs, he spoke to the Former Client who subsequently verbally rescinded the initial request for the Other Accounting Firm to undertake her taxation affairs
 - he prepared the Former Client's tax returns, met with the Former Client and the tax returns were then submitted to the Australian Taxation Office (**ATO**). The Former Client appeared to be satisfied at this stage
 - several weeks later, the Member was surprised, given his recent conversation with the Former Client, to receive a second ethical clearance letter, again from the Other Accounting Firm, regarding the Former Client's taxation affairs
 - the contents of the ethical letter were contrary to his understanding of the Former Client's recently expressed wishes to him
 - consequently, he attempted on several occasions to meet or speak with the Former Client to confirm her instructions
 - however, after several attempts to meet face-to-face, he received written text messages from a mobile phone purported to be from the Former Client. He suspected the correspondence may not have represented his Former Client's wishes and may have been generated by a third party/family member. He had genuine concerns that this may have represented "elder abuse"
 - despite his repeated attempts, the Member was unable to obtain direct verbal instructions from the Former Client and so, notwithstanding his concerns of elder abuse, he delivered the requested files to the registered office address
 - section 150.1 of APES 110 did not prescribe any time frame by which the Member was bound to respond to the instructions of his Former Client. Considering the specific facts and circumstances available to the Member at that time namely, the change in the Former Client's instructions since the Member had last spoken to her, the longstanding professional relationship and the Member's concerns regarding elder abuse, the time it took to deliver the Former Client's files was appropriate and consequently, the allegation could not be upheld.
- The Tribunal was of the view that, whilst no timetable is prescribed by APES 110 section 150.1, a reasonable time should apply for the response for ethical clearance. The Tribunal accepted that:
 - the original ethical clearance request had been rescinded by the Former Client at a meeting in early July 2016

- the Former Client's tax returns were subsequently prepared and lodged with the ATO and that the Former Client paid the Member's invoice in respect of those returns
- the unexpected second ethical letter dated 26 July 2016 was of concern to the Member and as such, the Member sought to contact his Former Client to confirm the new instructions.

Given the long standing client relationship and intimate knowledge of his Former Client, the unexpected use of text messages to communicate and the Member's concerns over elder abuse, the Tribunal concluded that, in the particular circumstance of this matter, the time taken by the Member to provide the files was reasonable and as such, the allegation was not established.

3.3 ALLEGATION 1(b)

- The PCC submitted that:
 - there had been "bad blood" between the Member and the Other Accounting Firm in which he had had an earlier financial interest
 - the Member in text messages to his Former Client had referred to the Other Accounting Firm as "criminals" on two occasions. Further, he later warned his Former Client to "Beware" of the Other Accounting Firm if they made recommendations with regard to self-managed superannuation funds
 - the contents of these communications had no proper basis and were intended to damage the reputation of another professional
 - the Member's actions were reckless and his judgment was affected by bias due to a history of association with the previous owners of the firm
 - in summary, the Member made assertions regarding the conduct of another professional to his Former Client in respect of which he had no evidence as to the accuracy of the assertions, in respect of which he had taken insufficient care to ensure that they were correct, which were inappropriately derogatory and/or which were clearly intended to besmirch the reputation of another professional and, in doing so, failed to comply with sections 110, 120 and 150 of APES 110.
- The Member:
 - conceded that the use of the word "criminals" was inappropriate
 - implored the Tribunal to note his unsatisfactory dealings and history with the Other Accounting Firm and its previous owners
 - submitted that, notwithstanding his concession, the damage was limited as the correspondence was only provided to his Former Client via text. As the Former Client moved her business to the Other Accounting Firm in any event, the other professional suffered no loss of reputation or damage.
- The Tribunal accepted the Member's error of judgement in the use of the word "criminals" to describe another professional firm. However, regardless of the Member's remorse, the allegation was established on the facts. The Tribunal acknowledged the tumultuous relationship the Member had with the previous owners including alleged non-performance of payments under a practice sale agreement. The Tribunal found, however, that in making the reckless comments to his Former Client the Member had not taken sufficient care to ensure he was not making materially false or misleading statements.

3.4 ALLEGATION 1(c)

- The PCC submitted that:
 - the Member had prepared the 2015 tax returns for the Former Client and her entities without the benefit of the information from the relevant financial statements for the entities from 2014 or 2015. The 2014 financial statements had been prepared but could not be located and the 2015 financial statements had yet to be prepared
 - without the information that would have been available in those financial statements, the income tax return was inaccurate as it included estimates and no established starting point (which would have been provided by the 2014 financial statements)
 - the Member acknowledged that he didn't have the financial statements of 2014 but he proceeded to complete the returns regardless
 - the Member was required to prepare working papers which appropriately documented the work performed and the basis on which any calculation was determined or any estimate was made. The working papers that had been prepared by the Member were inadequate and represented a "back of the envelope" exercise
 - the Other Accounting Firm prepared amended 2015 tax returns which differed materially to that prepared and lodged by the Member. Following these new tax returns being prepared, a letter was sent to the Member which was signed by the Former Client listing a number of errors
 - notwithstanding the instructions of the Former Client as to the lodgement of the tax returns based on estimates, the Member should not have lodged those income tax returns as they were based on incomplete information. APES 220 section 6.1 required that the Member should have resisted lodgement of incomplete tax returns as the use of estimates was not warranted in the circumstances
 - in summary the Member's conduct in preparing and lodging the initial 2015 tax returns without the relevant financial statements and therefore based on estimates, showed that the Member had been negligent and was in clear breach of sections 4.1 and 6.1 of APES 220.
- The Member submitted that:
 - the Former Client had been informed the tax returns could be lodged based on estimates and could be amended (if necessary) in due course when the Former Client obtained a copy of the 2014 financial statements. The Member asserted this was common practice. The Former Client provided her instructions to the Member to proceed on this basis as the tax returns at that stage were late, which was causing her considerable stress
 - the information required for preparation of the 2015 tax returns was not complex. The bulk of it related to investments in managed funds which was already available
 - the 2014 financial statements could not be located by the Member who, at no cost to the Former Client, attended her premises to assist her in searching through her records. The Member noted the Former Client's records were normally meticulous and the Member was surprised that the relevant documents could not be located
 - the Other Accounting Firm (who had previously acted for the Former Client) had prepared the 2014 financial statements and did not make those financial statements available to him
 - working papers existed and were provided to the Tribunal as evidence

- in summary, the Member maintained the position that he, in his view, properly prepared the tax returns using all the information supplied to him by the Former Client. He only lodged the tax returns after he was instructed to do so by the Former Client after he had provided the Former Client with her options, namely whether the Member should:
 - file the tax returns at the time and if necessary at a later date file amended tax returns, or
 - wait until she obtained the 2014 financial statements.
- The Tribunal determined that, notwithstanding the instructions of the Former Client, in the circumstances it was not appropriate to lodge the income tax returns based on the estimates made by the Member. The explanation the Member provided regarding why he did not have the exact data was not persuasive in the circumstances. The working papers that had been prepared in the compilation of the income tax returns did not appropriately document the work he performed and the method by which any calculations, determinations or estimates were used in the preparation of the tax returns for his Former Client. The Tribunal was not satisfied the working papers provided an adequate trail of information to support the basis of the compilation of the tax returns.

3.5 ALLEGATION 2

- The PCC submitted that:
 - the Member failed to observe a proper standard of professional care, skill or competence as the Member failed to perform work on a timely basis and therefore didn't comply with sections 130.1(b) and 130.4 of APES 110 (allegation 2(a)), as:
 - the Member met with the Former Client in March 2016 at which time she provided financial information to enable the Member to prepare tax returns for 2015
 - the deadline for submission of the 2015 tax returns was 15 May 2016 and they were "well overdue" when lodged on 8 July 2016
 - as the Former Client's tax agent, the responsibility to lodge on time was the Member's but it appeared that the Member did not finalise the preparation of the returns until early July when contacted by his Former Client who was concerned that they were already overdue
 - it was not the Former Client's responsibility to raise concerns about meeting deadlines
 - further, taking into account the circumstances of allegation 1, there was a failure by the Member to observe a proper standard of professional care, skill or competence in carrying out his professional duties (allegation 2(b))
 - a "global view" of the Member's conduct should be taken into account when considering if the Member had observed a proper standard of professional care, skill and competence.
- The Member submitted that:
 - the tax returns could not be lodged by the due date because all the financial information he needed was not available
 - in his experience, tax returns could be lodged with the ATO based on estimates that could be corrected by subsequent amendment
 - he informed the Former Client a lodgement extension could be requested from the ATO and this was likely to be granted

- if the Former Client had concerns about the late lodgement, she could have raised those concerns with him earlier than she did
- the Former Client, concerned that the returns had not been submitted by the due date, instructed the Member to prepare the income tax returns and lodge them despite this lack of financial information.
- The Tribunal determined the Member had not acted diligently in applying his technical and professional standards to the Former Client's affairs, nor carefully and thoroughly on a timely basis (and as such failed to comply with APES 110 sections 130.1 and 130.4). The Tribunal considered that the Member had not acted carefully, thoroughly or in a timely basis as he appeared not to have attended to the preparation of the Former Client's tax returns until the Former Client had raised concerns over the failure to meet the lodgement deadline. It was only when the Former Client raised her concerns about the late lodgement of the tax return that the Member attended to her file. The Member was aware the Former Client liked to have her returns lodged by the due date and noted she had a history of keeping meticulous records. The Tribunal determined the Member had failed in his duty to observe the proper standard of professional care, skill and competence as:
 - he had failed to meet the deadline for preparation and lodgement of income tax returns in circumstances where this was clearly of heightened concern to the Former Client and caused the Former Client unnecessary stress
 - the conduct referred to in allegation 1(c) was established and such conduct was contrary to the Member's professional obligations.

3.6 ALLEGATION 3

- The PCC submitted that:
 - importantly, to establish a breach of the obligation under By-Law 40(2.1)(k) to not bring discredit upon "*him, [Chartered Accountants] ANZ and/or the profession of accountancy*" it is not necessary for the Member's conduct to bring discredit upon all of these bodies as they are alternatives
 - if the Tribunal found that the conduct as alleged in allegations 1 and 2 occurred then it followed that the Member's conduct inevitably brings discredit upon himself, his membership body and the profession as the established breaches represented the "high-end of inappropriateness"
 - the Member's actions "bordered on harassment" of his Former Client
 - when determining whether there has been a breach of By-Law 40(2.1)(k), the Tribunal should consider the interests that the By-Law is drafted to protect. The interests of the reputation of Chartered Accountants ANZ and the profession itself should be looked at from the perspective of the public, clients and fellow professionals, and from that perspective those interests clearly have not been considered or properly observed by the Member.
- The Member submitted that:
 - there was no evidence that Chartered Accountants ANZ and/or the profession of accountancy had been discredited, nor had evidence of discredit been provided by the other professional who had been described by the Member as "criminal"
 - there had been no evidence of loss or detriment to any of the parties involved in these proceedings
 - the only body that may have been discredited was the Member himself, not Chartered Accountants ANZ nor the profession of accountancy

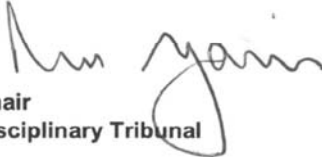
- he had been cautious and apprehensive in an attempt to protect the Former Client, as the Former Client's latest instructions were contrary to her previous instructions and her conduct was uncharacteristic of her usual behaviour
- in preparing the tax returns he did the best he could with the financial information available to him.
- The Tribunal determined the allegation had been established as the references to another professional as a "criminal" and the manner in which the Member had acted had brought discredit upon himself.

4. REASONS FOR SANCTIONS

- The PCC submitted that an appropriate sanction was a reprimand and for the Member's practice to be subject to a Quality Review because:
 - the Member's conduct in the allegations that had been established were the more serious failures
 - a reprimand represented the most lenient sanction available to be imposed by the Tribunal
 - a Quality Review is not a punitive measure. It is to ensure there are no systemic or endemic issues existing in the Member's practice and to ensure the Member's conduct that was the subject of these allegations is not repeated.
- The Member submitted that:
 - not all of the allegations had been established
 - the comments he made which were the subject of allegation 1(b) were confined to the Former Client. He had offered to apologise to the Former Client and to the other professional about whom the comment had been made
 - allegation 1(c) was a minor matter as income tax returns had been filed and, despite the amendments that had been made to returns prepared and lodged by him, there had been no subsequent penalties or fines imposed by the ATO
 - allegation 2 was not a major breach as there had been no prejudice to the Former Client
 - in regard to allegation 3, there had been no discredit brought upon Chartered Accountants ANZ or the profession of accountancy
 - the proposal from the PCC for a Quality Review was not appropriate as the issues that are the subject of the allegations were not systematic in his practice and his actions involved only one client
 - he had a 25 year history as a member of Chartered Accountants ANZ with an unblemished record and that he had participated in Chartered Accountants ANZ activities in the region in which he practices.
- The Tribunal took into account the Member's 25 year unblemished record but could not ignore the inappropriate derogatory comments that besmirched the reputation of another professional and the failure to properly prepare adequate working papers and considered that:
 - a reprimand was appropriate
 - a Quality Review of the Member's practice (which regardless would be undertaken in due course) was appropriate to be undertaken as a matter of priority given that allegation 1(c) had been established and due to the Tribunal's concerns over the quality of the working papers.

5. REASONS FOR COSTS SANCTION

- The PCC submitted that:
 - a proposal had been made in writing by the PCC following a case conference in August 2017 which was not accepted by the Member. The PCC's offer was for the Member to receive a reprimand, a Quality Review of his practice, PCC's costs and that the Member's name be published in the decisions of the PCC
 - as the Member had not accepted the PCC's post-case conference offer, he should bear the full costs of this Tribunal which were \$20,491.
- The Member submitted that as only four of the five allegations had been established it was not appropriate for all of the costs to be imposed upon him.
- The Tribunal accepted the Member's submission and determined that costs in the amount of \$16,400 be borne by the Member, which represents approximately 80% of the costs sought by the PCC.


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 the Member has committed a breach of:
 - i. APES 110, *Code of Ethics for Professional Accountants*, sections 110, 120 and/or 150; and
 - ii. APES 220, *Taxation Services*, sections 4.1, 6.1 and 11.1,by his conduct as set out below:
 - a) the Member failed to follow a client's instructions in relation to the cessation of his retainer by the client, and thereby did not comply with section 150.1 of APES 110, *Code of Ethics for Professional Accountants*;
 - b) the Member made assertions regarding the conduct of another professional to a client which:
 - i. he had no evidence were correct; and/or
 - ii. he had taken insufficient care to ensure were correct; and/or
 - iii. were inappropriately derogatory; and/or
 - iv. were clearly intended to besmirch the reputation of another professional,and thereby did not comply with sections 110, 120 and 150 of APES 110, *Code of Ethics for Professional Accountants*;
 - c) the Member failed to prepare financial statements for a client and/or consider financial statements already prepared and as a result:
 - i. failed to properly prepare company tax returns taking into account the content of such financial statements, and thereby did not comply with sections 4.1 and 6.1 of APES 220, *Taxation Services*;
 - ii. failed to prepare working papers to appropriately document the work performed and the basis on which, and the method by which, any calculations, determinations or estimates used in the provision of the Taxation Service have been made, and thereby did not comply with section 11.1 of APES 220, *Taxation Services*.
2. By-law 40(2.1)(a), in that the Member failed to observe a proper standard of professional care, skill or competence in the course of carrying out his professional duties:
 - a) in that the Member failed to perform work for a client on a timely basis, and thereby did not comply with sections 130.1(b) and 130.4 of APES 110, *Code of Ethics for Professional Accountants*; and/or
 - b) by the conduct referred to in paragraph 1 above.
3. By-Law 40(2.1)(k), in that, by the Member's conduct referred to in paragraphs 1 and 2 above, he has committed an act, omission or default which brings, or may bring, discredit upon the Member, CA ANZ and/or the profession of accountancy.

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:

- (a) has failed to observe a proper standard of professional care, skill, competence or diligence in the course of carrying out that Member's professional duties and obligations;

...

- (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;

...

- (k) has committed any act, omission or default which, in the opinion of the Professional Conduct Committee, Disciplinary Tribunal or Appeals Tribunal brings, or may bring, discredit upon that Member, CA ANZ or the profession of accountancy; or

...

SCHEDULE 3 - EXCERPTS FROM APES STANDARDS

APES 110, *Code of Ethics for Professional Accountants*

SECTION 110

Integrity

110.1 The principle of integrity imposes an obligation on all Members to be straightforward and honest in all professional and business relationships. Integrity also implies fair dealing and truthfulness.

110.2 A Member shall not knowingly be associated with reports, returns, communications or other information where the Member believes that the information:

- (a) Contains a materially false or misleading statement;
- (b) Contains statements or information furnished recklessly; or
- (c) Omits or obscures information required to be included where such omission or obscurity would be misleading.

When a Member becomes aware that the Member has been associated with such information, the Member shall take steps to be disassociated from that information.

110.3 A Member will be deemed not to be in breach of paragraph 110.2 if the Member provides a modified report in respect of a matter contained in paragraph 110.2.

SECTION 120

Objectivity

120.1 The principle of objectivity imposes an obligation on all Members not to compromise their professional or business judgment because of bias, conflict of interest or the undue influence of others.

120.2 A Member may be exposed to situations that may impair objectivity. It is impracticable to define and prescribe all such situations. A Member shall not perform a Professional Service if a circumstance or relationship biases or unduly influences the Member's professional judgment with respect to that service.

SECTION 130

Professional Competence and Due Care

130.1 The principle of professional competence and due care imposes the following obligations on all Members:

...

- (b) To act diligently in accordance with applicable technical and professional standards when providing Professional Services.

...

130.4 Diligence encompasses the responsibility to act in accordance with the requirements of an assignment, carefully, thoroughly and on a timely basis.

SECTION 150

Professional Behaviour

150.1 The principle of professional behaviour imposes an obligation on all Members to comply with relevant laws and regulations and avoid any action or omission that the Member knows or should know may discredit the profession. This includes actions or omissions that a reasonable and informed third party, weighing all the specific facts and

circumstances available to the Member at that time, would be likely to conclude adversely affects the good reputation of the profession.

150.2 In marketing and promoting themselves and their work, Members shall not bring the profession into disrepute. Members shall be honest and truthful and not:

- (a) Make exaggerated claims for the services they are able to offer, the qualifications they possess, or experience they have gained; or
- (b) Make disparaging references or unsubstantiated comparisons to the work of others.

APES 220, *Taxation Services*

- 4.1 A Member shall prepare and/or lodge returns and other relevant documents required to be lodged with a Revenue Authority in accordance with the information provided by a Client or Employer, their instructions and the relevant Taxation Law.**
- 6.1 A Member shall not prepare or be associated with the preparation of returns or submissions to Revenue Authorities involving the use of estimates unless their use is generally accepted or under the circumstances it is impracticable to obtain exact data.**
- 11.1 A Member shall prepare working papers in accordance with this Standard that appropriately document the work performed, including aspects of the Taxation Service that have been provided in Writing in accordance with this Standard, and the basis on which, and the method by which, any calculations, determinations or estimates used in the provision of the Taxation Service have been made.**

SCHEDULE B - 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 the Member has committed a breach of:
 - i. APES 110, *Code of Ethics for Professional Accountants*, sections 110, 120 and/or 150; and
 - ii. APES 220, *Taxation Services*, sections 4.1, 6.1 and 11.1,by his conduct as set out below:
 - a) the Member failed to follow a client's instructions in relation to the cessation of his retainer by the client, and thereby did not comply with section 150.1 of APES 110, *Code of Ethics for Professional Accountants*;
 - b) the Member made assertions regarding the conduct of another professional to a client which:
 - i. he had no evidence were correct; and/or
 - ii. he had taken insufficient care to ensure were correct; and/or
 - iii. were inappropriately derogatory; and/or
 - iv. were clearly intended to besmirch the reputation of another professional,and thereby did not comply with sections 110, 120 and 150 of APES 110, *Code of Ethics for Professional Accountants*;
 - c) the Member failed to prepare financial statements for a client and/or consider financial statements already prepared and as a result:
 - i. failed to properly prepare company tax returns taking into account the content of such financial statements, and thereby did not comply with sections 4.1 and 6.1 of APES 220, *Taxation Services*;
 - ii. failed to prepare working papers to appropriately document the work performed and the basis on which, and the method by which, any calculations, determinations or estimates used in the provision of the Taxation Service have been made, and thereby did not comply with section 11.1 of APES 220, *Taxation Services*.
2. By-Law 40(2.1)(a), in that the Member failed to observe a proper standard of professional care, skill or competence in the course of carrying out his professional duties:
 - a) in that the Member failed to perform work for a client on a timely basis, and thereby did not comply with sections 130.1(b) and 130.4 of APES 110, *Code of Ethics for Professional Accountants*; and/or
 - b) by the conduct referred to in paragraph 1 above.
3. By-Law 40(2.1)(k), in that, by the Member's conduct referred to in paragraphs 1 and 2 above, he has committed an act, omission or default which brings, or may bring, discredit upon the Member, CA ANZ and/or the profession of accountancy.

SCHEDULE C - 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:

- (a) has failed to observe a proper standard of professional care, skill, competence or diligence in the course of carrying out that Member's professional duties and obligations;

...

- (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;

...

- (k) has committed any act, omission or default which, in the opinion of the Professional Conduct Committee, Disciplinary Tribunal or Appeals Tribunal brings, or may bring, discredit upon that Member, CA ANZ or the profession of accountancy; or

...

40(11) Appeals Tribunal

40(11.1) Any Member in respect of whom any determination has been made by the Disciplinary Tribunal or upon whom any sanction has been imposed by the Disciplinary Tribunal may, subject to paragraph 9.4, within 21 days after notice of the written reasons for such determination or sanction is given to that Member, give notice of appeal in the form prescribed by the Regulations to the Appeals Tribunal against any such determination or sanction or both. At the discretion of the Appeals Tribunal later notice may be accepted.

...

40(11.5) Every appeal shall be by way of rehearing but, unless the Appeals Tribunal directs otherwise, it shall not allow witnesses to be recalled who gave evidence before the Disciplinary Tribunal or to introduce any new evidence.

...

40(11.10) On each appeal the Appeals Tribunal may affirm, vary or set aside any determination of the Disciplinary Tribunal and may affirm, increase, reduce or set aside any sanction imposed and may impose any additional or alternative sanction or sanctions from those permitted to the Disciplinary Tribunal by paragraphs 9.1, 10.12, 10.13, 12.3, 12.4 (as applicable) and 13.8.

...