

**INSTITUTE OF CHARTERED ACCOUNTANTS OF NEW ZEALAND  
NOTICE OF DECISION OF THE DISCIPLINARY TRIBUNAL**

**(Member guilty of misconduct in a professional capacity, negligence or incompetence in a professional capacity and Breaching the Institute's Rules and Code of Ethics)**

At a hearing of the Disciplinary Tribunal of the Institute of Chartered Accountants of New Zealand held in public on 2 March 2006, at which the member was in attendance by teleconference and was represented by counsel, **RICHARD GREGORY SMITHSON** of Rangiora pleaded guilty to the following charges (1), (2), (3), (4) and (5) and admitted the following particulars (a), (b), (c), (d), (e) (f), (g), (h) and a second set of particulars (a), (b), (c) and (d).

**Charges:**

**THAT** in terms of the Institute of Chartered Accountants of New Zealand Act 1996 and the Rules made thereunder, and in particular Rule 21.30 the member is guilty of:

- (1) Misconduct in a professional capacity; and/or
- (2) Negligence or incompetence in a professional capacity, and this has been of such a degree as to reflect on his fitness to practise as an accountant; and/or
- (3) Breaching the Rules or the Code of Ethics (particularly Rule 21.2, Code of Ethics Rules 10 & 11, PS-2); and/or
- (4) Failing to respond promptly to communications from the Institute; and/or
- (5) Failing to pay a sum due to the Institute by the date specified for payment.

**Particulars:**

**IN THAT**

Being a member of the Institute of Chartered Accountants of New Zealand and in relation to a complaint, the member:

- (a) Invested funds of organisation A into the company Scarba Fifty One Limited ("SFO Ltd") without gaining approval at a general meeting, as required by the Rules of the organisation;
- (b) Invested funds of organisation A into SFO Ltd without the prior written authority of the organisation, in breach of Professional Standard No 2, Client Monies and Members' Trust Accounts ("PS-2") (paragraph 41);
- (c) Invested funds of organisation A into SFO Ltd, a company of which he was the sole shareholder and director, in breach of PS-2 (paragraph 43);
- (d) Failed to repay to organisation A all the funds invested in SFO Ltd, when requested to do so;
- (e) Failed to pay to organisation A, within a reasonable period of time, the interest that is due to them from their investment in SFO Ltd;
- (f) Did not fully disclose organisation A's investment in SFO Ltd in the 2002 financial statements of organisation A;
- (g) Did not fully disclose organisation A's investment in SFO Ltd in the 2002 financial statements of SFO Ltd;
- (h) Failed to respond to a complaint about this conduct within the period specified in Rule 21.2(b).

And, in his role as a Chartered Accountant in public practice the member:

- (a) Has breached PS-2, in that funds that are direct credited into his client trust account do not have deposit details recorded (paragraph 24);
- (b) Has breached PS-2, in that numerous clients in his trust account had and/or continue to have overdrawn balances (paragraph 28);
- (c) Has breached PS-2, in that he is unable to provide client authority for the offset of fees charged against Inland Revenue refunds (paragraph 30);
- (d) Failed to pay his 2006 Institute membership fees by the due date of 31 July 2005

### **Reasons**

The Tribunal need to have regard to the protection of the public and the Institute. The offences were over a long period of time and go beyond mere incompetence or carelessness and relate to serious mishandling of other people's money, and this is not acceptable behaviour for a member of the Institute.

### **ORDERS OF THE TRIBUNAL**

- (a) Pursuant to Rule 21.31 (a) of the Rules of the Institute of Chartered Accountants of New Zealand, the Disciplinary Tribunal ordered that the name of **RICHARD GREGORY SMITHSON** be removed from the Institute's register of members.
- (b) Pursuant to Rule 21.33 of the Rules of the Institute of Chartered Accountants of New Zealand, the Disciplinary Tribunal ordered that **RICHARD GREGORY SMITHSON** pay to the Institute the sum of \$9,800.00 (inclusive of GST) in respect of the costs and expenses of the hearing before the Disciplinary Tribunal and the investigation by the Professional Conduct Committee.

In accordance with Rule 21.35 of the Rules of the Institute of Chartered Accountants of New Zealand, the Disciplinary Tribunal directed that the decision of the Tribunal be published in the Chartered Accountants Journal, the New Zealand Gazette and the Christchurch Press with mention of the member's name and locality.

### **RIGHT OF APPEAL**

Pursuant to Rule 21.41 of the Rules of the Institute of Chartered Accountants of New Zealand which were in force at the time of the original notice of complaint, the member may, not later than 14 days after the notification of this Tribunal to the member of the exercise of its powers, appeal in writing to the Appeals Council of the Institute against the decision.

No decision other than the direction as to publicity shall take effect while the member remains entitled to appeal or while any such appeal by the member awaits determination by the Appeals Council.

R J O Hoare  
**Tribunal Chairman**

6 March 2006

**Important Notice** – *New Zealand Institute of Chartered Accountants is the operating name of the Institute of Chartered Accountants of New Zealand.*