



**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 **Ian Leslie Stevenson**, Chartered Accountant, of Tauranga

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**DETERMINATION OF THE DISCIPLINARY TRIBUNAL OF THE NEW ZEALAND INSTITUTE OF CHARTERED ACCOUNTANTS**  
**16 August 2013 as to guilt, 16 October 2013 as to penalty, suppression orders and publication and 1 November 2013 as to costs**

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**Hearing:** 6-8 August 2013, 16 October 2013 and 1 November 2013

**Tribunal:** Mr RJO Hoare FCA (Chairman)  
Mr DP Scott CA (retired)  
Mr MJ Whale FCA  
Dr RS Janes (Lay member)

**Legal Assessor:** Mr Bruce Corkill QC

**Counsel:** Mr Terence Sissons for the prosecution  
Mr Paul Mabey QC for Mr Stevenson

At a hearing of the Disciplinary Tribunal held in public at which the Member was in attendance and represented by counsel the Member denied all particulars and pleaded not guilty to all charges.

The charges and particulars amended with the consent of both parties were 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 21.30, the Member is guilty of:

1. Conduct unbecoming an accountant (all particulars); and/or
2. Negligence and/or incompetence in a professional capacity that has been of such a degree and/or so frequent as to reflect on his fitness to practise as an accountant and/or tends to bring the profession into disrepute (particulars A (2), A (3), B (1), B (2) and B (3)); and/or
3. Breaching the Institute's Rule 21.4(b) (particular (C)(3)); and/or
4. Breaching the Institute's Code of Ethics (all particulars).

### **Particulars**

**IN THAT** in the Member's role as a Chartered Accountant in public practice, and

A. In relation to a complaint, the Member:

- 1 Failed to perform an independent valuation of a business, namely J Limited and/or act as an independent expert in related Family Court proceedings ("the engagement") with objectivity and/or independence, in breach of the Fundamental Principle of Objectivity and Independence and/or Rules 3 and/or 4 of the Code of Ethics; and/or
- 2 Failed to perform the engagement with due care and diligence in breach of the Fundamental Principle of Quality Performance and/or Rule 9 of the Code of Ethics, in that the Member:
  - a Prepared a valuation report of J Limited dated 5 May 2009 and/or swore affidavits based on his valuation of J Limited, which contained opinions based on speculation and/or guess work, in relation to:
    - i. Cash drawn from J Limited for personal spending by the Director; and/or
    - ii. Cash drawn from J Limited for replacement of plant; and/or
    - iii. The reasons for transfer of a property from J Limited to Y Limited; and/or
  - b Gave evidence as an independent expert witness in the family court proceedings without familiarising himself as to the duties imposed on an expert witness; and/or
  - c He formulated a business valuation opinion for J Limited which resulted in an unsustainable valuation as a consequence of him adopting assumptions for future maintainable earnings and earnings multiplier which were unreasonable and not supported by sufficient appropriate evidence; and/or
- 3 Failed to comply with relevant technical standards namely *AES-2 Independent Business Valuation Engagements* ("AES-2"), in breach of Rule 11 of the Code of Ethics, in that the Member:

- a Provided property valuation evidence to the Court, which is outside his area of expertise and in contravention of paragraph 20 of AES-2; and/or
  - b Failed to gather sufficient evidence by means of inspection, enquiry, computation and analysis, to ensure that his business valuation conclusion and report were properly supported, as required by paragraph 33 of AES-2; and/or
  - c Failed to document and/or retain copies of documentation to support the business valuation conclusion and/or justify decisions made in the conduct of the engagement and/or demonstrate that the engagement was carried out in accordance with the Professional Standards of the Institute, as required by paragraph 39 of AES-2; and/or
  - d Failed to include appropriate caveats concerning the achievability of forecast results relied on in the valuation, as required by paragraph 49(j) of AES-2; and/or,
  - e Failed to include a statement in his valuation report disclosing interest or relationships with the parties, as required by paragraph 49(m); and/or
  - f Having concluded that the information provided to him, was incomplete, failed to disclose the potential impact on his business valuation conclusion, as required by paragraph 59; and/or
  - g Having written to the Family Court on or about 9 June 2007 objecting to the appointment of counsel for the parties' children, were not and/or did not appear to be objective and/or independent at the time of signing his valuation report on or about 5 May 2009 and/or swearing affidavit(s) on or about 2 July 2007 on/or 6 July 2010 reaffirming his valuation, in breach of paragraph 11 of AES-2; and/or
- 4 In giving evidence before the Family Court the Member breached the confidentiality of Mr X, a former client, who was not a party to the proceedings, and from whom he did not hold authority to disclose the confidential information and/or in respect of whom he did not have a legal or professional right or duty to disclose the confidential information, in breach of Rule 12 of the Code of Ethics; and/or
- 5 In performing the engagement the Member behaved in a manner which was inconsistent with the good reputation of the profession and/or brought discredit to the profession, such that he received significant criticism from a Family Court Judge as to his valuation dated 5 May 2009 and/or his conduct as an expert witness in the family court proceedings, in breach of the Fundamental Principle of Professional Behaviour; and/or

B. In relation to a complaint, the Member:

- 1 Failed to perform professional work with due care and diligence, , in breach of the Fundamental Principle of Quality Performance and/or Rule 9 of the Code of Ethics, in that he:
  - a Select financial reporting frameworks which are inappropriate for the nature and/or reporting requirements of clients; and/or
  - b Include contradictory claims about financial reporting frameworks utilised in Disclaimer Statements and Statements of Accounting Policies; and/or

- c Did not issue compilation reports in breach of paragraph 62 of SES-2 *Compilation of Financial Information* (“SES-2”); and/or
  - d Did not disclose circumstances in which he is not independent of the reporting entity, such as where he also act as a trustee of the reporting entity, in breach of paragraph 26 of SES-2; and/or
  - e Use disclaimer statements when he is not independent of the reporting entity, in breach of paragraph 69 of SES-2; and/or
  - f Fail to appropriately review and/or amend notes to the financial statements generated from his accounting software; and/or
  - g Have not established and/or documented quality control policies and procedures in breach of paragraphs 19 and/or 22 of PS-1 *Quality Control* (“PS-1”); and/or
- 2 Failed to observe and maintain a high standard of competence, in that the Member has failed to rectify the shortcoming particularised at (B)(1)(a) and/or (B)(1)(b) and/or (B)(1)(c) and/or (B)(1)(e) and/or (B)(1)(f) and/or (B)(1)(g) despite these issues being brought to his attention during a practice review conducted in 2009, in breach of Rule 8 of the Code of Ethics; and/or
  - 3 Failed to comply with relevant technical and/or professional standards namely paragraphs 26 and/or 62 and/or 69 of SES-2 and/or paragraph 22 of PS-1, in breach of Rule 11 of the Code of Ethics; and/or

C. In relation to a complaint, the Member:

- 1 Despite being sanctioned by the Professional Conduct Committee on or about 22 March 2006 for improperly attempting to charge fees for time spent responding to a complaint from Mr X, the Member persisted in attempting to recover those fees from Mr X and/or his related entities, in breach of the Fundamental Principles of Integrity and/or Professional Behaviour; and/or
- 2 In attempting to recover debts for professional fees from former clients, Mr and/or Mrs X and/or their related entities, the Member have behaved in a manner inconsistent with the good reputation of the profession and/or have brought discredit to the profession, in breach of the Fundamental Principle of Professional Behaviour of the Code of Ethics, in that he:
  - a Lodged successive claims with the Disputes Tribunal which were, except to a minimal extent, dismissed on the basis that his claims were found to be unsubstantiated and/or not supported by appropriate records and/or vexatious and/or retaliatory and/or he failed to attend a hearing to pursue his claim; and/or
  - b Published intemperate information and/or claims about his former clients and/or the debts on a disreputable public website, which was an unprofessional method of debt recovery and/or a unbecoming a member of the Institute; and/or
  - c Failed to remove or modify his claims that the debts were owed on that website, after his Disputes Tribunal claims were dismissed; and/or

- 3 Failed to respond and/or respond in a timely and/or professional manner to correspondence from the Professional Conduct Committee, when the Member was required to do so in accordance with Rule 21.4(b).

## DECISION

The Member faced a series of charges and particulars arising from three complaints.

The evidence of the three Professional Conduct Committee (PCC) witnesses as well as the Member's own evidence was helpfully set out in order of and dealing with each of the particulars.

### Complaint One - Particular A

Particular A relates to the Member's valuation of a business as an expert witness for the purposes of Family Court proceedings. The Tribunal had available to it the judgment and the transcript of the proceedings.

Particular A1 alleges that the Member lacked objectivity and independence. Whilst the Member's loyalty to his client is understandable, as an expert witness – and he claims to have some experience in that role – he demonstrated such a lack of objectivity and independence that the Judge described his participation thus:-

*"[You were] reminded of the... rules that apply to an expert witness. [You] appeared to be unfamiliar with the rules and unaware that an expert witness has an overriding duty to assist the court impartially on relevant matters..... [You] were also reminded by counsel of the Code of Ethics ....which require [You] to act with a degree of independence. Yet [your] evidence was peppered with references to Mr B's personal circumstances, based on surmise rather than facts. In this and other areas I retained a serious concern about [your] objectivity as an expert witness...."*

The Tribunal share the Judge's concern. For example the statements in the Member's valuation speculating as to Mr B's motivation regarding non-disclosure of information clearly showed a lack of objectivity and independence.

Before the Tribunal the Member agreed that if he was an impartial independent expert his evidence to the Court should be the same whether he was acting for the plaintiff or the respondent. The Tribunal's view is that the evidence the Member gave did not reflect that position. The Member became an advocate for his client. The Judge found that the Member compromised his integrity as an impartial witness and discounted his valuation.

The Tribunal finds this particular proved.

Particular A2 alleges that the Member performed the engagement without due care or diligence.

Whilst the Member rightly identified that if cash was being withdrawn from the business that would be relevant as to value, he then based his valuation on his own estimates – well - intentioned as they may have been – in the absence of appropriate evidence and without caveating the valuation for uncertainty.

The Member drew conclusions and made adjustments relating to replacement of plant without speaking to the owner of the business about it and without visiting the business premises and sighting the alleged replacement assets.

During the Court hearing the Member admitted that he had not read the High Court Rules that apply to an expert witness.

The Tribunal finds this particular proved.

Particular A3 alleges that the Member failed to comply with AES-2 *Independent Business Valuation Engagements*.

Whilst the Member rightly identified that the value of the property acquired by Y Limited was a relevant factor, in saying as he did in his third affidavit that "*the sale price should have been \$415,000 plus GST*" he departed from his area of expertise. The Member also improperly speculated as to Mr B's motivation for the transaction.

As to failing to retain records [particular A3c] the Member advised that because he had been required by a judge to destroy files he was unable to produce the records. The Tribunal had the Judge's oral judgment which contained no mention of destroying files. The Member's explanation for this was that the judgment transcript, signed by the Judge was wrong. The Tribunal considers that the transcript accurately records what the Judge said – this is consistent with the evidence the Member gave at the Family Court proceedings.

Similarly there were numerous instances where the Member's evidence before the Tribunal was at odds with his evidence given in court as recorded in the transcripts and/or his advice to the Institute/Professional Conduct Committee (PCC).

For example in attempting to justify the Member's inclusion of an adjustment for cash withdrawn from the business by the owner Mr B, the Member told the Tribunal that he had asked Mr B about this and he had declined to reply whereas the transcript of the Member's evidence in the court shows that he was asked more than once if he had questioned Mr B about the cash withdrawn and each time replied that he had not done so.

The Tribunal finds that the particulars detailed under A3 were established by the evidence of Mr Lyne, an expert valuer who outlined each of the requirements of AES-2 and the Member's failure to comply with them, despite his evidence to the contrary.

Confidentiality of client information, the subject of the allegation in particular A4, is an important professional responsibility. Despite the Member's assertion to both the PCC and the Tribunal that the information was only given because he was asked about those matters whilst giving evidence on oath in court, the transcript shows that he was asked only about the basis of Mr X's complaints against the Member and not about the Member's purported claims against him. However the Member then proceeded to talk about Mr X's affairs raising matters which the Member knew were both sensitive and irrelevant to the matters before the court. The Member later acknowledged in cross examination that he could have declined to discuss matters that were confidential to Mr X. In her judgment the Judge stated that the question put to the Member did not require him to disclose confidential information about Mr X – that is directly at odds with the Member's assertions to the PCC and the Tribunal about what had happened at the Court hearing.

Particular A5 relates to the Judge's criticism of the Member when she said [amongst other things] "*In my view Mr Stevenson became hopelessly subjective in these proceedings and it was not a surprise that other accountants refused to meet with Mr Stevenson*". It is one thing for a judge to disagree with a witness or with their valuation, but this criticism is at another level altogether. We consider this criticism was justified and that the Member's behaviour was inconsistent with the good reputation of the profession.

#### Complaint Two, Particular B

Particular B arises as a result of a Practice Review in 2012 which followed an earlier review in 2009. The reviewer identified numerous shortcomings in the 2009 review which were to be corrected. The Member admitted during the hearing most of the matters identified in particular B1 although he did not accept particular B1f or B1g and considered that any shortcomings in relation to those matters were no more than minor technical discrepancies. Faced with the evidence of the 2012 reviewer the Member's own testimony was typically "*I accept this criticism*". It is disappointing to find that so little was done as a consequence of the 2009 review, and that the Member's shortcomings are so fundamental (for instance, not issuing compilation reports). The Tribunal finds the particulars proved on the evidence.

#### Complaint Three, Particular C

At a hearing of the PCC at which the Member was in attendance the PCC held that it was unacceptable conduct for the Member to invoice for time spent responding to a complaint and he was admonished for that conduct. However although the Member had withdrawn the invoice to his client he reissued that invoice to his client's new accountants. Following the PCC hearing the Member failed to adjust the invoice to remove the relevant charges and he later listed this claim against the accountants on the website as an undisputed claim. This was a blatant breach of the PCC's sanction. The Member also asserted that the accountants had agreed in writing to pay these fees – however before the Tribunal the Member acknowledged that was not true.

The Tribunal finds particular C2a not proved. Members are entitled to seek recovery of their fees through the Disputes Tribunal, successfully or otherwise. In this case we are not sufficiently persuaded that the Member's inability to substantiate his claims was inconsistent with the good reputation of the profession.

However, the Tribunal has no hesitation in determining that the use of the website was unprofessional and inconsistent with the good reputation of the profession. It is not acceptable to use a debt collection organisation where extensive disclosures about a member's clients or former clients are made on a public website. The Member's listing of the debts also claimed that the amounts listed were not disputed – which they clearly were. Even when the Member lost at the Disputes Tribunal he continued to allege on the website that the debts were not in dispute. When asked whether he would use the website for collecting unpaid debts again the Member said he would not and he acknowledged that in hindsight it was a bad decision to have done so in this case.

There were significant delays in the Member's responses but the Tribunal are prepared to accept he had numerous valid reasons for some of the delays. In all the circumstances the Tribunal is prepared to find particular C3 not proven.

The Tribunal finds all of the particulars proved except C2a and C3.

### Charges

The conduct referred to in particulars A1, A4 and A5, C1 and C2 (except C2a) is conduct that departs so far from acceptable professional standards that it must attract sanction for the purposes of protecting the public and maintaining professional standards. The Tribunal finds the Member guilty of charge 1.

Based on the particulars set out in charge 2 the Tribunal finds that the Member has been both negligent and incompetent in a professional capacity in more than one respect. In relation to particular B the shortcomings have been ones not expected of an accountant of the Member's experience and have continued over a period of many years. Collectively these particulars are such as to both reflect on the Member's fitness to practice as an accountant and tend to bring the profession into disrepute. The Tribunal finds the Member guilty of charge 2.

Particular C3 having not been proved the Tribunal finds the Member not guilty of charge 3.

As to charge 4 the Tribunal is satisfied that all the particulars found proved constitute breaches of the Code of Ethics.

### **PENALTY**

The Tribunal had before it written submissions on penalty, costs, publicity and suppression from the Member and the PCC.

We accept the Member's submission that the Tribunal's views as to whether he was untruthful or without candor at the hearing, the way in which he defended the charges and the fact that he did not enter a guilty plea are not aggravating factors when considering penalty and costs.

The Tribunal accepts the submissions of the PCC as to the seriousness of the conduct of which the Tribunal have found the Member guilty. It also accepts that the Member's conduct was such that nothing short of removing his name from the register would be an appropriate penalty. The Member has advised the Tribunal that he did not dispute or contest that his name should be removed from the register or the orders as to publication and suppression which the PCC have requested and which the Tribunal is minded to make.

Pursuant to Rule 21.31 (a) of the Rules of the New Zealand Institute of Chartered Accountants the Disciplinary Tribunal orders that the name of **Ian Leslie Stevenson** be removed from the Institute's register of members.

### **SUPPRESSION ORDERS**

Pursuant to Rule 21.52 (b) of the Rules of the New Zealand Institute of Chartered Accountants the Disciplinary Tribunal orders the permanent suppression of all documents made available by the Family Court as part of the first complaint and the permanent suppression of the names and any identifying details of all third parties referred to in the three complaints and proceedings before the Tribunal.

## PUBLICATION

In accordance with Rule 21.35 of the Rules of the New Zealand Institute of Chartered Accountants the decision of the Disciplinary Tribunal shall be published on the Institute's website, in the *Chartered Accountants' Journal* and the *Bay of Plenty Times* with mention of the Member's name and locality.

## COSTS

The Professional Conduct Committee seeks full costs of \$118,193.

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.

The Tribunal does not understand the Member to contest the quantum of the costs calculation. However the Member has submitted that he is in a poor financial position and simply cannot meet any substantial order of costs. Inability to pay costs as a result of financial hardship is a factor which the Tribunal takes into account when considering costs awards.

The Member submitted information about his financial position. The PCC requested additional information which the Tribunal accepts that in the time available the Member was unable to provide for the hearing on 16 October 2013.

The PCC submit that the Member as presented insufficient evidence to make out his case that he is not able to pay a full costs award. The onus is on the Member to persuade the Tribunal of his inability to pay.

The Tribunal adjourned the hearing on 16 October 2013 to give the Member a final opportunity to provide additional information about his financial position, which he did through his counsel. The PCC also provided submissions on that information.

Although the information the Member has presented was incomplete and raised further questions the Tribunal is satisfied that his current financial position is such that he cannot meet a full costs award.

The Tribunal is satisfied based in part on the Member's client testimonials that his income prospects are sufficient to provide some capacity to pay.

On balance the Tribunal considers having regard to all the submissions received that an appropriate costs award is \$60,000 (approximately 50% of the costs sought). The Tribunal anticipates that the Member may seek to negotiate with the Institute a suitable plan for payment over time.

Pursuant to Rule 21.33 of the Rules of the New Zealand Institute of Chartered Accountants the Disciplinary Tribunal orders that **Ian Leslie Stevenson** pay to the Institute the sum of \$60,000 in respect of the costs and expenses of the hearing before the Disciplinary Tribunal, the investigation by the Professional Conduct Committee and the cost of publicity. No GST is payable.

## **RIGHT OF APPEAL**

Pursuant to Rule 21.41 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 Member may, not later than 14 days after the notification to the Member of this Tribunal's 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 and the suppression orders shall take effect while the Member remains entitled to appeal, or while any such appeal by the Member awaits determination by the Appeals Council.

A handwritten signature in black ink, appearing to be 'R J O Hoare', written over a horizontal line.

R J O Hoare FCA  
**Chairman**  
**Disciplinary Tribunal**