

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 **ROBERT BRUCE WALKER**, Interim Suspended Chartered Accountant, of Auckland

DETERMINATION OF THE DISCIPLINARY TRIBUNAL AS TO PENALTY, COSTS AND PUBLICATION

6 May 2024

Please refer to the decision on liability dated 8 March 2024 attached.

Hearing: On the papers

Tribunal: Matthew Casey KC (Chair and lay member)
Richard Simpson FCA
John Murray FCA
Kerry Price CA

Appearances: Richard Moon for the Professional Conduct Committee (**PCC**)
Written submissions from the Member in person

Tribunal Secretariat: Janene Hick
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1. In its determination as to liability issued on 8 March 2024 the Disciplinary Tribunal found **Robert Bruce Walker** guilty of misconduct in a professional capacity, conduct unbecoming an accountant, and of breaching the Rules and Code of Ethics of the Institute. It reserved its decision on penalty, costs and publication for the PCC and Mr Walker to make submissions.
2. The PCC's submissions were received on 2 April 2024 and Mr Walker responded on the same day. The Tribunal has determined penalty, costs and publication on the papers, as neither party requested an in-person hearing. This determination should be read together with the Tribunal's liability determination dated 8 March 2024.
3. The PCC submits that the appropriate penalty is for Mr Walker's membership of the Institute to be terminated and his name removed from the Register of Members. It seeks an order that Mr Walker pay 90% of the Institute's costs and expenses of \$209,706.44. It also seeks publication of notice of the Tribunal's decision, including name and location, on the CAANZ website, in Acuity magazine and in the NZ Herald.
4. The PCC submits that the Tribunal's findings of serious and sustained breaches by Mr Walker of the Fundamental Principles of Objectivity and Professional Behaviour underlain by his lack of judgment and self-control, and his refusal to be regulated, mean that the only appropriate penalty is removal from the Register.
5. In relation to costs, the PCC submits that the matters raised by Mr Walker in his various communications to the Institute and the Tribunal, as well as his refusal to co-operate in the investigation, added significantly to the work required and accordingly the high level of costs. The PCC proposes the costs be discounted by 10% in recognition that the Tribunal did not uphold one of the particulars.
6. In relation to publication, the PCC submits that the degree of public interest is such that the Tribunal's decision should be publicised more widely than the Institute's website and magazine.
7. Mr Walker's response did not address any of these issues, nor engage in any other way with questions of penalty, costs and publication. In part, at least, it appeared to be a continuation of his challenges to the investigation and prosecution of the charges, and to the liability determination. Mr Walker also referred to a High Court hearing which was underway at the time that determination was issued, and in which he is a party and/or witness.

PENALTY

8. The factors identified by the High Court in *Roberts v Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354 apply to the determination of penalty by professional disciplinary bodies including the Tribunal. The Court held that the penalty imposed should be one that:
 - Most appropriately protects the public and deters others.
 - Facilitates the setting and maintaining of professional standards.
 - Reflects the seriousness of the misconduct.
 - Punishes the practitioner (although subsequent Court decisions have taken the view that punishment is more a by-product of the other factors).
 - Allows for the rehabilitation of the practitioner.

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- Promotes consistency with penalties in similar cases.
 - Is the least restrictive penalty appropriate in the circumstances.
 - Looked at overall, is fair, reasonable and proportionate in the circumstances.
9. The courts have emphasised the protective rather than punitive nature of professional disciplinary proceedings: see e.g. *Z v Dental Complaints Assessment Committee* [2008] NZSC 55 at [128]. This includes protecting the reputation of the profession in the eyes of the public, which has an interest in professional standards being upheld.
 10. The range of sanctions available to the Tribunal includes the power to strike-off or suspend a member for particularly serious misconduct. As the PCC submits, a finding of misconduct in a professional capacity will normally result either in a suspension or the Member being removed from the Register.
 11. The Tribunal has considered whether the appropriate response should be a period of suspension during which Mr Walker might reflect on his conduct and undertake steps to rehabilitate. It is clear, however, that despite ample opportunity Mr Walker has made no endeavour to modify his behaviour. On the contrary, it has continued and escalated.
 12. Mr Walker's misconduct took place over a sustained period and rather than moderate his conduct in response to warnings, he continued to behave in the manner complained of, including escalating his unjustifiable and at times outrageous allegations against those responding to and investigating the complaint.
 13. The Tribunal finds that Mr Walker's behaviour is wholly inconsistent with the objectivity, professional detachment and decorum expected of a Chartered Accountant. While he is no longer involved in the PVL liquidation, his intentional and reckless breaches of the Code of Ethics, and his disdain for the Institute's regulatory oversight, go directly to the protection of the public and maintaining professional standards. They are incompatible with ongoing membership of the Institute.
 14. In its submissions, the PCC referred to other cases where Members have been removed from the Register for serious and sustained behavioural issues incompatible with membership of the Institute¹. Mr Walker's removal from the Register would be consistent with the penalty in those cases (and others).
 15. Having considered the *Roberts* factors and applying them to this case the Tribunal is satisfied that removal of Mr Walker's name from the Register most appropriately reflects the seriousness of his misconduct, the need to protect the public and to maintain professional standards, is consistent with similar cases and that anything less restrictive would not be reasonable in the circumstances.

Pursuant to Rule 13.51(a) of the Rules of the New Zealand Institute of Chartered Accountants the Disciplinary Tribunal orders that the Membership of ROBERT BRUCE WALKER of the Institute be terminated and that his name be removed from the Register of Members.

¹ *NZICA v Dai*, DT 30 January 2023; *NZICA v Bognuda*, DT 9 June 2014; *Central Standards Committee 3 v Sawyer* [2022] NZLCDT 38

COSTS

16. Rule 13.53 of the Institute's Rules provides that the Tribunal may order payment of the costs and expenses of the investigation and prosecution by the PCC and of the Tribunal's hearing and determination, and publication of its decision. The Tribunal's usual practice, as set out in its practice note, is that the Member should pay in full the costs incurred by the Institute.
17. The costs incurred in this case were unusually high at \$209,706.44. A significant portion (over \$135,000) relates to the costs of the investigation, report and evidence of Mr Webb, the expert investigator engaged by the PCC. This, and much of the costs of the prosecution, could have been reduced or avoided if Mr Walker had been cooperative in the investigation and had confined himself to the subject matter of the original complaint. The extensive documentation, correspondence and submissions from Mr Walker relating to his ongoing conduct and his challenges to the processes and personnel involved, have added considerably to the time needed for, and accordingly the costs of, investigating and determining the charges.
18. Costs are in the discretion of the Tribunal but in the absence of reasons to the contrary it will usually require a Member who has been found guilty to reimburse the costs incurred, which would otherwise be a charge on the Institute's membership. Where some of the charges or particulars are not established, the Tribunal may reduce the award of costs to fairly reflect so much (if any) of the costs as may have been avoided.
19. In this case the Tribunal did not uphold one of the particulars, and the PCC submits that a reduction of 10% would be appropriate to reflect this. Relative to the large volume of evidence, correspondence, submissions and other material placed before the Tribunal, this particular was a minor point and did not add significantly to the costs. Despite this, the Tribunal considers that a 10% reduction is appropriate, and finds that it is reasonable for Mr Walker to be required to pay 90% of the costs incurred.

Pursuant to Rule 13.53 of the Rules of the New Zealand Institute of Chartered Accountants the Tribunal orders that ROBERT BRUCE WALKER pay \$188,735 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 publication. No GST is payable.

PUBLICATION

20. The PCC seeks publication of this decision on the CAANZ website and in the official publication *Acuity*, with mention of Mr Walker's name and location. Rule 13.55 requires the Tribunal to make such a direction unless there are exceptional circumstances for not doing so. Mr Walker did not contend for such circumstances.
21. Rule 13.55 also provides that the Tribunal may order that notice of its decision be published in any other publication. The PCC submits that notice of the Tribunal's decision should be published in the NZ Herald. The charges and Mr Walker's conduct were in the context of a high-profile liquidation involving court proceedings and widespread media comment. It is therefore appropriate that the Tribunal's findings are publicised more widely than in the professional media.

In accordance with Rule 13.55 of the Rules of the New Zealand Institute of Chartered Accountants appropriate notice of the decisions of the Disciplinary Tribunal as to liability and penalty shall be published on the CAANZ website and in the official publication *Acuity* with mention of the Member's name and locality, and in the NZ Herald.

RIGHT OF APPEAL

22. Pursuant to Rule 13.63 Mr Walker or the PCC may, not later than 21 days after the notification to them of this decision, appeal in writing to the Appeals Council of the Institute against the decision, including the Tribunal's determination as to liability.
23. Pursuant to Rule 13.59 the Tribunal's decision as to penalty shall not take effect while Mr Walker remains entitled to appeal, or while any such appeal awaits determination by the Appeals Council.



Matthew Casey, KC
Chair, Disciplinary Tribunal

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 **ROBERT BRUCE WALKER**, Interim Suspended Chartered Accountant, of Auckland

DETERMINATION OF THE DISCIPLINARY TRIBUNAL OF THE NEW ZEALAND INSTITUTE OF CHARTERED ACCOUNTANTS

8 March 2024

Hearing: 18 & 19 October 2023

Location: The offices of Chartered Accountants Australia and New Zealand, Wellington

Tribunal: Matthew Casey KC (Chair and lay member)
Richard Simpson FCA
John Murray FCA
Kerry Price CA

Appearances: Richard Moon for the Professional Conduct Committee (**PCC**)
No appearance by the Member (but written submissions).

Tribunal Secretariat: Janene Hick
Email: janene.hick.nzica@charteredaccountantsanz.com

The hearing of the Disciplinary Tribunal into the charges against **Robert Bruce Walker**, an interim suspended Chartered Accountant, was held in public on 18 & 19 October 2023 at the Wellington offices of Chartered Accountants Australia and New Zealand. Prior to the hearing the Tribunal was advised that Mr Walker pleaded not guilty to the charges and denied the particulars. Mr Walker did not attend the hearing, but provided written submissions for the Tribunal's consideration.

The charges and particulars 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 13.50 Mr Walker is guilty of:

- A. Misconduct in a Professional Capacity; and/or
- B. Conduct unbecoming an accountant; and/or
- C. Breaching the Rules and/or Code of Ethics.

PARTICULARS

IN THAT

In his role as a Chartered Accountant in public practice and in relation to a complaint from David Henderson, Mr Walker:

1. Failed to act with objectivity and/or professionalism in relation to his role as liquidator of companies associated with Mr Henderson, in that:
 - a. the tone and content of Mr Walker's communications has, in relation to Mr Henderson, been unprofessional and/or lacking objectivity and independence; and/or
 - b. in October 2018 Mr Walker complained to the High Court in Christchurch alleging breach by Mr Henderson of the conditions attaching to his discharge from bankruptcy; and/or
 - c. in November 2018, as Liquidator of Lichfield investments, Mr Walker intervened in the High Court proceeding CIV 2016-409-888 (*100 Investments Limited v IAG New Zealand Limited* [2019] NZHC 535) resulting in a finding that Mr Walker had not acted reasonably and, therefore, an increased award of costs against Mr Walker; and/or
 - d. having reported the conduct of Mr Henderson to various government agencies (and provided the information necessary for them to discharge their functions), Mr Walker refused to accept their decisions regarding whether further action against Mr Henderson was warranted, in breach of Fundamental Principles of Objectivity and/or Professional Behaviour and/or paragraphs R112.1 and/or R115.1 and/or NZ R115.3 of the Code of Ethics.
2. Was the subject of adverse findings by the High Court in *David Ian Henderson v Robert Bruce Walker* [2019] NZHC 2184 in which Justice Thomas found Mr Walker had breached Mr Henderson's privacy, in breach the Fundamental Principles of Professional Behaviour and/or Confidentiality and/or paragraphs R114.1 and/or R115.1 of the Code of Ethics and/or paragraph 23 of IES; and/or

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3. [Withdrawn]
 4. Failed to act with professionalism and/or in a manner becoming a Chartered Accountant and/or in accordance with NZICA's Rules and/or Code of Ethics in responding to the PCC's investigation of Mr Henderson's complaint, in that:
 - a. the tone and content of correspondence Mr Walker sent to and/or about NZICA and/or CA ANZ staff, PCC and disciplinary panel members, Mr Webb, Mr Henderson and others has been unprofessional and lacking courtesy and consideration; and/or
 - b. Mr Walker failed to provide information requested by David Webb as part of his investigation on behalf of the PCC, in breach of the Fundamental Principle of Professional Behaviour and/or R115.1 and/or NZ R115.3 of the Code of Ethics and/or Rules 13.3 and/or 13.11(b) of the NZICA Rules.

BACKGROUND

1. Mr Walker is a Chartered Accountant, presently under interim suspension following an order made by the Tribunal on 30 August 2021. He had been admitted to full membership in 1989 and held a Certificate of Public Practice from 1991.
2. Mr Walker became an approved insolvency practitioner in May 2020 and was granted a transitional licence under the Insolvency Practitioners Registration Act 2019. He did not receive a full licence, by reason *inter alia* of his interim suspension.
3. In July 2010 Mr Walker was appointed liquidator of Property Ventures Limited (**PVL**), then in receivership, and subsequently of some 26 other companies associated with PVL and/or Mr David Henderson, the managing director and a shareholder of PVL¹. Mr Henderson was a property developer and the PVL companies were entities through which he undertook these ventures. He was bankrupted in November 2010, but took an active interest in the liquidations and Mr Walker's conduct of them.
4. The liquidation of PVL, and consequently Mr Walker's appointment as liquidator, were stayed by court order, until February 2012. Other PVL companies went into liquidation in the meantime, and it is understood that Mr Walker was able to operate as liquidator of those companies notwithstanding the stay of the PVL liquidation. For some companies Mr Walker was initially a joint liquidator, and for others he was not the original liquidator, but over time he became sole liquidator of all the PVL companies. He was replaced as liquidator following his interim suspension in August 2021.
5. PVL remained in receivership until June 2013. There was a shortfall to secured creditors and no surplus available for unsecured creditors or Mr Walker as liquidator. Mr Walker initially therefore focused on pursuing claims against outside parties as the only means of obtaining a return for creditors. He first brought a claim against PwC and others which resulted in a substantial settlement, in 2018. As noted below, none of the proceeds found their way to unsecured creditors. Mr Walker also sought to pursue Mr Henderson and others associated with him but was unsuccessful, although it is understood that at least one claim was still underway at the time of his interim suspension and replacement as liquidator.

¹ The abbreviation PVL is used for convenience to refer to Property Ventures Ltd and its associated companies in liquidation, as their particular identities are not important for an understanding of this decision.

6. The liquidations were complex, including by reason of the interrelationships of the various companies and of other entities and persons associated with Mr Henderson. They were further complicated by the difficulties Mr Walker experienced in obtaining information and company records from Mr Henderson.
7. During the period that the PVL liquidation was stayed, the Police executed a search warrant and took possession of computer files and records, which were passed on to Mr Walker. His misuse of some of that information is the subject of Particular 2 and is addressed in more detail later in this Decision.
8. The following background is from the Supreme Court judgment in *PricewaterhouseCoopers v Walker & Ors* [2017] NZSC 151. Court action was commenced in late 2012 by Mr Walker against PricewaterhouseCoopers (PwC) and others seeking damages for breaches of duty and for negligence in the conduct of PVL audits. At the time the claim was filed, Mr Walker entered into a litigation funding agreement (**LFA**) with a litigation funder SPF No 10 Ltd (**SPF**). PwC then challenged the LFA as an abuse of process, such that the court action should be stayed.
9. At the time of its receivership and liquidation, PVL owed substantial sums to Allied Farmers Investments Ltd (**Allied**) secured by a general security agreement (**GSA**) over PVL's assets. By 2012 all assets of value in PVL had been sold by the receivers for the benefit of Allied. The only remaining asset was any right of action PVL might have against PwC and others, including PVL's former directors.
10. There was a substantial shortfall still owing to Allied as a secured creditor, which would take priority over unsecured creditors in any recovery. It would also take priority over any return to SPF as litigation funder. SPF therefore took an assignment of Allied's GSA.
11. The challenge by PwC was that any proceeds from the claim (if successful) would go to SPF as secured creditor and litigation funder, with no benefit to unsecured creditors. As liquidator, Mr Walker could only act for the benefit of unsecured creditors, so the claim was an abuse of process. To counter this argument, SPF undertook to pay a proportion of any proceeds to Mr Walker. But for this it appears that the Court would have upheld PwC's challenge, as there was no realistic prospect otherwise of any recovery for unsecured creditors.
12. The claim was settled in 2018 for a substantial figure, but less than the secured debt. Mr Walker received \$5.8m for his liquidator's fees and disbursements, with legal and other professional fees also being paid from the settlement. The rest went to SPF with nothing for the unsecured creditors. Mr Walker said that his payment included \$900,000 "to finish the liquidations". This sum was soon exhausted, after which he says he worked without remuneration, resorting to personal funds.
13. After the PwC settlement Mr Walker faced proceedings brought by entities under Mr Henderson's control claiming to be secured creditors of PVL and that they should have received a share of the settlement proceeds. There were other related proceedings in which Mr Walker was also involved. In some of these his involvement would have been reluctant (i.e. he was being sued). In others he sought to pursue recovery of funds which he says were owed, or had been misappropriated, by Mr Henderson and/or entities associated with him.
14. It is apparent that Mr Walker encountered sustained opposition and hostility from Mr Henderson and his associates, including non-compliance with Companies Act obligations to provide Mr Walker with company records to which he was entitled as liquidator. Throughout this period Mr Walker's communications, and some of the court findings, demonstrate a level of frustration and

antagonism on Mr Walker's part. Mr Walker sought, but without much success, to gain the support of Government agencies and this also was a cause of frustration for him.

15. As discussed below in relation to the Particulars, the manner in which Mr Walker conducted himself in response to those frustrations, including the language used and the accusations he made, displayed a lack professionalism and objectivity. They included strident criticisms of those who did not go along with what Mr Walker wanted or expected of them, including that they were abetting Mr Henderson's wrongdoings, and accusations of criminal and other misconduct.
16. A notable characteristic of Mr Walker's communications and his overall approach is an inability to accept the views and decisions of others with whom he disagrees. There are numerous examples of this in his communications, as well as in his responses to the PCC and his submissions to the Tribunal. They demonstrate a lack of introspection and awareness of the effects on his objectivity and professionalism of the circumstances in which he found himself.
17. Mr Walker should have reflected on whether he could properly continue in his role as liquidator in those circumstances. There is no evidence that he did so, and if anything the opposite was the case as he continued to behave in ways that emphasised his loss of objectivity and professionalism.

Complaint background

18. There was an earlier complaint against Mr Walker which led to a Disciplinary Tribunal decision dated 24 April 2014. It involved derogatory and unprofessional statements Mr Walker made about Mr Henderson in a telephone conversation with a third party (Mr Idour) in June 2011, and in two liquidator's reports for PVL in 2012 and 2013. The Tribunal found Mr Walker guilty of breaching the Fundamental Principle of Professional Behaviour in the Code of Ethics. It ordered costs and publication but did not impose any other sanction.
19. In March 2019 Mr Henderson made a further, wide-ranging complaint to NZICA about Mr Walker's conduct as liquidator. He said that Mr Walker continued to behave unprofessionally and that he was pursuing a personal vendetta against Mr Henderson, his family and associates. He listed examples which he claimed showed that Mr Walker had lost his independence as liquidator and was acting unprofessionally, and in some cases unethically. He said Mr Walker was unreasonably extending the liquidations, using creditors' funds to advance his personal enmities, had breached his obligations and undertakings to the court and was continuing to file liquidator's reports containing untrue and defamatory statements.
20. Mr Walker's solicitors responded to the complaint, denying the allegations, including that Mr Walker was conducting a vendetta or was obsessed. They said that most of the communications Mr Henderson referred to were historical, many predating the April 2014 Tribunal decision. They claimed that Mr Henderson was using the complaints process to deter Mr Walker from his conduct of the liquidations, including the pursuit of legitimate claims against Mr Henderson and his associates. They also claimed that Mr Walker's views about and actions towards Mr Henderson were justified and supported by evidence, including that given in court proceedings, and by court decisions.
21. Their position was that Mr Henderson's complaint should be dismissed under Rule 13.9 as frivolous and vexatious, and that no further action should be taken.
22. Their response was referred to Mr Henderson, who also responded at length and in detail. He provided a copy of the High Court decision in *Henderson v Walker* [2019] NZHC 2184 which

awarded him \$5,000 damages against Mr Walker for breach of confidence and invasion of privacy arising out of his misuse of the information obtained by the Police under the search warrant. This decision is the basis for Particular 2.

Appointment by PCC of investigator, Mr Walker's interim suspension

23. The complaint and this correspondence were referred to the PCC to consider what further steps should be taken. It reviewed the competing allegations and denials and considered they raised potentially very serious concerns. This included whether Mr Walker had performed his engagements with sufficient diligence and timeliness, and whether he had lost impartiality such that his objectivity and independence were compromised. The PCC resolved to appoint a specialist investigator to assist its understanding of the complaint, the potential objectivity issues it raised and to identify whether the liquidations were being conducted with diligence and due care. It resolved as follows:

In accordance with Rule 13.11(a) that an investigator be appointed to review the complaint, make any further enquiries they see fit, including meet with relevant parties; and to prepare a written report of their findings to the [PCC].
24. Mr Walker and Mr Henderson were advised of this resolution, but with the intervention of the Covid-19 lockdowns, the appointment was not finalised until February 2021, when Mr David Webb of Deloitte was appointed as investigator. Mr Webb is an experienced and reputable insolvency practitioner, and well qualified to undertake the task.
25. In the meantime, Mr Henderson complained that Mr Walker was continuing to engage in the types of conduct referred to in his earlier complaint. This including filing liquidator's reports Mr Henderson said were false and defamatory, which were (he said) removed by the Registrar for that reason.
26. While Mr Walker's then solicitors said he would co-operate with Mr Webb's investigation, it soon became apparent that he would not do so. Mr Webb's efforts after he was appointed to engage with Mr Walker, and the failure or refusal by Mr Walker to meet with him and to provide information, formed part of the reasons for the Tribunal's interim suspension of Mr Walker in August 2021. The circumstances are fully addressed in the Tribunal's decision dated 12 January 2022 declining Mr Walker's application to revoke the interim suspension (**Revocation Decision**). Mr Walker appealed that decision to the Appeals Council but his appeal lapsed for non-payment of security for costs.
27. Mr Walker still did not co-operate with Mr Webb's investigation after his interim suspension and the lapse of his appeal, despite Mr Webb's further attempts to engage with and obtain information from him. Mr Webb finalised his report based on such information as he had received from Mr Walker (as well as from Mr Henderson). He presented his report to the PCC in December 2022, and this was provided to Mr Walker.
28. Mr Walker responded to Mr Webb's report in January 2023 with a 55-page denunciation (and voluminous "Exhibits") plus a 5-page summary. His response was highly critical of Mr Webb and the report. It included statements that he could have provided information to Mr Webb had he been asked to. This was a remarkable response given his refusal to co-operate with Mr Webb's investigation.
29. In his evidence at the Tribunal hearing, Mr Webb said he had read Mr Walker's response and there was nothing in it that caused him to change his opinion and conclusions. It appeared however that he may not have read all the material tendered by Mr Walker with his response.

The Tribunal has also considered Mr Walker's response to Mr Webb's report and reviewed that material, when preparing this Decision.

30. Mr Henderson also responded to the Webb report and the PCC reconvened in May 2023 (having received a further response from Mr Walker) to consider the next steps. It determined to refer the Charges listed above to the Disciplinary Tribunal. Originally there was an additional particular (Particular 3) which was withdrawn by the PCC after correspondence with Mr Walker's legal advisers.
31. Mr Walker sought to make much of the withdrawal of this Particular in his submission to the Tribunal. The Particular was that Mr Walker had entered into the LFA without reading it and/or taking legal advice. This was based on a statement by Mr Walker that he did not read the LFA. After the Charges were served on Mr Walker, his legal advisers drew attention to a letter from his then solicitors about the LFA. The PCC then withdrew that Particular. It remains the case, however, that Mr Walker said he had not read the LFA before signing it. The legal advice he received was very qualified and by no means an endorsement of the LFA's terms. However as it is not now part of the case against him it is not to be taken into account in the determination of the Charges.

Lead-up to the hearing and Mr Walker's failure to attend and give evidence

32. The charges were served on Mr Walker in July 2023 with a hearing scheduled for 28 August. After the PCC's evidence was served, counsel for Mr Walker sought and was granted an adjournment to allow more time to consider a plea and prepare evidence, both of which the Tribunal expects to be provided a week before a hearing.
33. The hearing was accordingly rescheduled, to commence on 18 October 2023. On 12 October the Tribunal was advised that Mr Walker's counsel was no longer acting and he would be representing himself, and that he pleaded not guilty to the charges. Despite the adjournment being for the purpose of preparing evidence, no evidence was provided by or on behalf of Mr Walker at that time.
34. Mr Walker initially requested to attend the hearing remotely but then advised that he would not attend at all. On the afternoon of 16 October, he tendered a lengthy written submission. This was followed by a series of emails, including documents additional to those already in the PCC's evidence bundle. Further emails and documents were received from Mr Walker after the hearing concluded.
35. As with many of his previous communications, much of Mr Walker's submission and emails was given over to attacking the process and personnel involved in the investigation and prosecution of the charges against him. This and the discursive nature of Mr Walker's communications have made it difficult for the Tribunal to elicit his substantive defence to the charges. This has been further compounded by his decision not to attend the hearing and assist the Tribunal in person. The Tribunal's efforts to work through Mr Walker's material and understand his position have contributed to the time it has taken to issue this Decision.
36. Mr Walker's decision not to attend and give evidence was in the knowledge that he would be subject to cross-examination by counsel for the PCC and to questioning by the Tribunal. A Member who does not attend for these reasons cannot expect the Tribunal to have regard to evidence sought to be introduced informally. Where the Tribunal is left to draw inferences from the evidence before it, they are more likely to be unfavourable to a Member who has not been prepared to give sworn evidence and be questioned.

HEARING AND DECISION

37. Much of the evidence relied on by the PCC in support of the charges is in written communications from Mr Walker. Those relied on in support of Particular 1 were mainly concerning Mr Henderson, and for Particular 4 are communications disparaging of NZICA/CAANZ personnel, the PCC and Disciplinary Tribunal members, Mr Webb and his firm, and others.
38. The evidence produced to the Tribunal included these communications, various court decisions involving Mr Walker, and evidence as to the procedural and administrative history of Mr Henderson's complaint and its investigation. Mr Webb gave evidence by producing and speaking to his report. Although this evidence was unchallenged the Tribunal has reviewed Mr Walker's response to the report and the other material he submitted in the lead up to the hearing. Where these comprise statements by Mr Walker of an evidential nature, they have been given little weight as they were not on oath and subject to testing under cross-examination.
39. It is clear that Mr Walker formed an adverse view of Mr Henderson from a very early stage in the liquidations, and the belief that Mr Henderson had committed (or was committing) fraud and misappropriation. Mr Walker claimed that Mr Henderson had diverted in the order of \$6 million to \$10 million belonging to PVL.
40. The Tribunal is not in a position to find wrongdoing on the part of Mr Henderson, nor has it any function in that regard. The allegations by Mr Walker have not been established in evidence before the Tribunal and do no more than provide context for his conduct giving rise to the charges. For the purposes of assessing that conduct the Tribunal proceeds on the basis that he genuinely believed what he alleges about Mr Henderson, but without any finding as to whether he was correct.
41. Several decisions of the High Court indicate that Mr Henderson was a prolific litigant, and lend support to Mr Walker's claim that he was hindered in his conduct of the liquidations by Mr Henderson's lack of cooperation and antagonism towards Mr Walker². They refer to patterns of behaviour on the part of Mr Henderson such as the arrangement of his and his companies' affairs so as to avoid paying tax and honouring guarantees.
42. It is apparent from these decisions and other sources that Mr Henderson engaged in actions that were confronting to Mr Walker personally and in his conduct of the liquidations. It is a reasonable inference that Mr Henderson's complaint which led to the present charges was part of his efforts to deter Mr Walker's pursuit of recovery action against him and his associates.
43. Regardless of Mr Henderson's motive, the issue for the Tribunal is whether Mr Walker's conduct fell below the standards required of a Chartered Accountant and a Member of the Institute. Whether Mr Henderson was or was not at fault as Mr Walker alleges does not excuse conduct which falls below those standards.
44. Liquidations are almost by definition often complex and adversarial. A liquidator will commonly encounter difficult business owners with actions that could be described as obstructive or even unlawful. This would be no surprise to an experienced liquidator when discharging their duties and does not give licence for the liquidator to conduct themselves in a similar fashion.

² See in particular *Havenleigh Global Services v Henderson* [2016] NZHC 2969

45. From its review of the background materials, the Tribunal appreciates the frustration (and probably isolation) experienced by Mr Walker in carrying out what he regarded as his duties as liquidator in the face of a determined adversary in Mr Henderson. Several matters raised in Mr Henderson's complaint have not been carried through by the PCC into charges against Mr Walker. They include Mr Henderson's complaints about Mr Walker's general conduct of the liquidations. The Tribunal accepts that the liquidations were complex due in part to the number of, and interrelationships among, the various PVL entities, and to the difficulties Mr Walker had obtaining records and information.
46. However, a matter of concern to the Tribunal when reviewing the evidence was the purpose of Mr Walker's continued pursuit of Mr Henderson when the funds to do so had been exhausted and with no clear prospect of an outcome that would benefit unsecured creditors. In his submissions to the Tribunal, Mr Walker stated that he had not succeeded in what he was "really trying to do, which was to prove the efficacy of a single economic theory in corporate law". From this and other communications, it appeared that Mr Walker was pursuing Mr Henderson to highlight legal loopholes that Mr Henderson had exploited, or to recover his costs (or both), which did not appear to be in the interests of the unsecured creditors. This was also apparent when having referred Mr Henderson's conduct to the appropriate authorities, as was his duty under (then) s 258A Companies Act 1993, he refused to accept their decision and resorted to accusations of incompetence and worse.
47. As summarised below, the evidence satisfies the Tribunal that as well as the lack of professionalism exhibited by Mr Walker, he had lost his objectivity. He allowed his personal interests and ambition to override his professional judgement. The Tribunal saw no evidence, and Mr Walker did not claim, that he ever stepped back from the conflict with Mr Henderson, and his challenges to various Crown agencies, to reflect on how he was meeting his professional and ethical responsibilities, not only as liquidator but as a Chartered Accountant and Member of the Institute.
48. This was especially after the findings of the Tribunal in 2014, and of the High Court in 2018 and 2019 which are discussed below. As a professional liquidator, acting objectively, he should have seen these clear warnings to moderate his conduct and approach. If he felt unable to do so, he needed to consider withdrawing as liquidator. Mr Walker's response instead was to escalate matters to the stage where now faces charges of serious misconduct.

Particular 1 – lack of objectivity and/or professionalism

49. The NZICA Insolvency Engagements Standard requires a member to not allow, or be seen to allow, prejudice or bias to override their objectivity unless the law requires otherwise. Members are expected to perform insolvency work in an unbiased and independent manner. Similar requirements are expressed in the Fundamental Principle of Objectivity in the Code of Ethics. The Code also requires at 112.2 that a member not undertake a professional activity if a circumstance or relationship unduly influences their professional judgment regarding that activity.
50. Particular 1(a) is that the tone and content of Mr Walker's communications in relation to Mr Henderson have been unprofessional and/or lacking objectivity and independence. There are many examples of communications by Mr Walker exhibiting a lack of professionalism and objectivity. Several are identified in the Webb report and in the evidence, including the following:
 - a. An email to IRD personnel on 28 May 2011 which was generally disparaging of Mr Henderson, describing him as "a silver tongued buffoon" and "not a worthy adversary".

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- b. An email to IRD personnel of 17 February 2013 describing Mr Henderson as “the most odious man alive” and needing to be “skewered”. This email also included highly unprofessional statements about MBIE and its personnel – e.g. “myopic idiots”.
 - c. Mr Walker wrote to the Prime Minister on 9 May 2019 claiming that the Crown had repeatedly failed to address matters concerning Mr Henderson. This arose out of his dissatisfaction with the inactions of the various Government agencies he considered should have supported him and pursued action against Mr Henderson. His allegations against Mr Henderson were expressed in a manner that demonstrated a lack of objectivity and professionalism. He also accused the Crown of connivance with Mr Henderson “to its eternal shame”.
 - d. Following Mr Walker’s receipt of advice from MBIE in October 2019 (referred to below) that they would not take further action against Mr Henderson, he wrote at length to the Attorney-General on 18 December 2019. His letter concluded by describing the Crown and Crown employees as spineless and incompetent, and that by obstructing him they were guilty of complicity in Mr Henderson’s wrongdoing.
- 51. Particular 1(b) is that Mr Walker complained to the High Court in October 2018 alleging a breach by Mr Henderson of conditions attaching to his discharge from bankruptcy. In his letter to the Prime Minister (as above) Mr Walker stated that he had “felt compelled” to intervene because the Crown had failed in its duty. The PCC’s position was that there was no identifiable reason, referable to Mr Walker’s role as liquidator of PVL and the interests of unsecured creditors, for him to do so.
 - 52. Mr Walker was at the time engaged in Court proceedings in which Mr Henderson was taking an active role and giving evidence. Mr Walker was disputing that evidence and a ground of challenge was that Mr Henderson’s involvement in and knowledge of matters in his evidence showed that the conditions of his discharge were being breached.
 - 53. Mr Walker was represented by reputable lawyers at the time, and appears to have acted on their advice (or at least not contrary to it). Through them, he raised the issue of Mr Henderson’s apparent breaches in a memorandum to the Court, which the Judge considered serious enough to warrant referral to the authorities. The memorandum recorded that Mr Walker did not intend to take the matter any further himself.
 - 54. In the context in which Mr Walker brought the issue to the Court’s attention, the Tribunal finds that it was not unreasonable and did not of itself amount to a breach of professional standards. It was a legitimate strategy as part of the litigation in which Mr Walker was involved for him to dispute the evidence of Mr Henderson in this way. The Tribunal therefore finds that Particular 1(b) is not established, in that while Mr Walker did complain to the High Court it was in the circumstances not unreasonable nor unprofessional to do so.
 - 55. Mr Walker’s conduct after his complaint to the High Court was however at odds with his statement that he would not take the matter further. The Court had directed that it be referred to the Official Assignee and Registrar of Companies for their consideration. On their behalf the Ministry of Business Innovation & Employment (MBIE) wrote to Mr Walker on 18 October 2019, stating that they did not consider it in the public interest to take the matter further.
 - 56. Mr Walker’s immediate response was to write at length to the Chief Executive of MBIE (copying other senior Crown officials), criticising those involved and giving a lengthy discourse on what was meant by the public interest. After getting no (or no satisfactory) response to this letter Mr

Walker wrote (again at length) to the Attorney-General on 18 December 2019. The tone and content of that letter is part of Particular 1(a) above.

57. Particular 1(c) is that Mr Walker intervened in a High Court proceeding which resulted in a finding that he had not acted reasonably, and in an award of increased costs being made against him, see: *100 Investments Ltd v IAG New Zealand Ltd* [2019] NZHC 535, 22 March 2019. While it appears Mr Walker had legal representation this did not prevent the Court finding that he had intervened unreasonably and without justification. His intervention was after the case had been heard, claiming that he was entitled to the insurance proceeds which were the subject of the proceeding. He did not disclose that his predecessor as liquidator had disclaimed any interest. In awarding increased costs, the Judge also noted that Mr Walker's real focus was to protect the interests of secured creditors, which was an unreasonable stance for a liquidator.
58. Particular 1(d) is that having reported Mr Henderson's conduct to various government agencies and providing the information necessary for them to discharge their functions, Mr Walker refused to accept their decisions regarding whether further action against Mr Henderson was warranted. This particularly relates to Mr Walker's conduct after MBIE's letter of 18 October 2019 referred to above. It had been reasonable, particularly in light of then s 285A Companies Act 1993, for Mr Walker to refer evidence of Mr Henderson's alleged misconduct to the appropriate authorities. However once they had become seized of the matter, and had decided not to take any action, Mr Walker had no further obligation to pursue them.
59. It is particularly concerning that his ongoing criticisms of government agencies and attempts to escalate the matter came on the heels of the decision of the High Court referred to in Particular 2 below. The Court's criticisms of Mr Walker's conduct in a decision issued on 3 September 2019, did not deter him from continuing such conduct. There was by this stage no apparent justification for him doing so in his role as liquidator.

Particular 2 – finding of breach of privacy

60. This Particular arises out of the adverse findings against Mr Walker in the High Court judgment: *Henderson v Walker* [2019] NZHC 2184, 3 September 2019. The background was that during the period that the PVL liquidation was stayed, Mr Walker complained to the authorities that Mr Henderson was in breach of s 261 Companies Act for not providing records and information he had requested. He was instrumental in the Police executing search warrants resulting in the seizure of PVL's computer records and a laptop, then in Mr Henderson's possession, which they passed on to Mr Walker. Mr Henderson later took proceedings to challenge the search warrants, and they were declared to have been unlawful.
61. In the meantime Mr Walker had accessed information and emails on the computers, some of which concerned Mr Henderson in his private capacity. He sent some of these to others, including a person Mr Walker knew was hostile to Mr Henderson. The Judge found that Mr Walker could not resist looking at them and, if sufficiently gossip-worthy, forwarding them on. She found Mr Walker liable for invasion of privacy and breach of confidence, and ordered him to pay Mr Henderson damages of \$5,000.
62. The PCC's case against Mr Walker also relied on the Court's findings that he improperly dealt with PVL's property while there was a stay of the liquidation meaning he had no right to do so. Secondly, the Court's observation that Mr Walker "appeared to see himself as something of an avenging angel" and "openly acknowledged that his primary motivation was to earn money for himself rather than to recover it for creditors."

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63. These findings were contained in a fully-reasoned judgment following a hearing at which Mr Walker was represented and gave evidence, and are particularly serious matters. The disclosures by Mr Walker which breached Mr Henderson's privacy were in clear breach of the Fundamental Principle of Confidentiality in 114.1 of the Code of Ethics. That and the other findings of improper conduct also amounted to breaches of the Fundamental Principle of Professional Behaviour in 115 of the Code of Ethics.
64. The Court's criticism of Mr Walker's motivation and purpose should have been a clear signal that his approach was unprofessional and unreasonable, despite which his approach and conduct continued unabated, as was apparent from communications by Mr Walker including those to the PCC and Tribunal.

Particular 4 – lack of professionalism in responding to the investigation of Mr Henderson's complaint

65. Particular 4(a) relates to the tone and content of communications by Mr Walker disparaging the numerous personnel involved in the investigation and consideration of the Henderson complaint.
66. While Mr Walker might not necessarily agree with the actions and decisions of others, the manner in which he chose to express his disagreement went far beyond any reasonable dissent. He resorted to offensive and unjustified attacks, making allegations and adverse inferences that had no foundation and were gratuitously insulting of the personnel involved.
67. There are numerous examples of these included the following:
- a. An email to NZICA in August 2021 accused Mr Webb of negligence and alleged that his firm Deloitte was involved in criminal activity and had abetted Mr Henderson. These allegations were entirely baseless. Mr Walker also accused an Institute staff member of being a friend, ally and possible accomplice of Mr Henderson, simply by reason of her contact with Mr Henderson concerning his complaint.
 - b. Mr Walker made repeated assertions that Mr Henderson's misconduct was aided and abetted by NZICA by continuing to investigate his complaint and not dismissing it as Mr Walker maintained it should have done. This included statements that NZICA's conduct in relation to its handling of Mr Henderson's complaint was shameful, disgraceful, unconscionable, evil, and possibly criminal.
 - c. Some of these allegations were made against particular personnel including NZICA staff, members of the PCC, and its counsel. Mr Walker accused them of being accomplices of Mr Henderson and of committing offences under the Crimes Act. He threatened complaints to the Law Society in respect of legally qualified personnel.
68. Many of Mr Walker's communications went on at length and raised spurious and at times nonsensical arguments, seemingly in an endeavour to divert attention away from his own conduct. Mr Walker seemed either oblivious to, or did not care, that his ongoing tirades and specious allegations of serious misconduct on the part of others compounded and reinforced the PCC's position that he had lost all objectivity and professionalism.
69. Particular 4(b) relates to Mr Walker's failure to provide information requested by Mr Webb as part of his investigation on behalf of the PCC of Mr Henderson's complaint. The details of this, up to the time of Mr Walker's interim suspension, are set out in the Revocation Decision, and are not repeated here. Despite that decision and the lapse of his appeal against it, Mr Walker continued to refuse any co-operation in Mr Webb's investigation. He raised the same issues and allegations as were dealt with (and rejected) in the Revocation Decision. His ongoing

refusal, exacerbated by its continuation after the Revocation Decision, is both a breach of professional obligations and a clear demonstration that he cannot be regulated.

Findings as to liability

70. The Tribunal is satisfied that the Particulars (with the exception of 1(b)) have been made out on the evidence. Regardless of Mr Walker's belief in Mr Henderson's wrongdoing, the tone and content of his communications were unprofessional and lacking in courtesy. They demonstrated a loss of objectivity in relation to Mr Henderson, such that Mr Walker should have given serious consideration to withdrawing from the liquidations. The point was reached where he was pursuing the liquidations in his own interest and as part of a campaign to bring down Mr Henderson as an exemplar of corporate greed and exploitation.
71. As Mr Walker became increasingly frustrated that others did not share his views about Mr Henderson, the tone and content of his criticisms became increasingly strident and abusive. These were initially directed against Crown agencies and their personnel, but following Mr Henderson's complaint Mr Walker targeted NZICA, the PCC and their staff, and Mr Webb (and his firm). Mr Walker should have been able to respond objectively and dispassionately to Mr Henderson's complaint, and cooperated in Mr Webb's investigation, without resorting to unwarranted criticism and outright vilification of those involved. That he did so, and continued despite the clear indications that such conduct was unprofessional, is a significant aggravating factor.
72. Mr Walker's conduct involved serious breaches of the Fundamental Principles of Objectivity and Professional Behaviour in the Code of Ethics. It unquestionably amounted to conduct unbecoming an accountant. The question for the Tribunal is whether the more serious charge of misconduct in a professional capacity has been made out.
73. The test for misconduct in a professional capacity (also termed 'professional misconduct') has been discussed in a number of cases, including *Institute of Chartered Accountants of New Zealand v Bevan* [2003] 1 NZLR 154 (CA) at [52] – [53]. It is a serious charge, going beyond negligence or incompetence, or a breach of the Code of Ethics, without more. It usually involves a deliberate departure from accepted standards, or such serious conduct that although not deliberate demonstrates an indifference to and abuse of the privilege which accompanies membership of the Institute.
74. Mr Walker's communications regarding Mr Henderson constituted conduct unbecoming an accountant but might not have reached the threshold of professional misconduct had it not been for the continuation of that conduct in the face of clear warnings from the Tribunal (in 2014) and the High Court. Over time it is apparent that his lack of objectivity and professionalism were intentional, or at least with reckless disregard for the standards expected, and went far beyond conduct unbecoming.
75. A particularly aggravating factor was the ongoing, and escalating, nature of Mr Walker's attacks on others, particularly Institute personnel and Mr Webb. His professional obligation was to assist the PCC in its investigation, including providing all reasonable assistance to Mr Webb. Rather than cooperative, Mr Walker's approach was marked by outright disdain for the Institute and its role in the regulation of its Members.
76. The Tribunal's decision therefore is that, while the matters found established in relation to Particular 1 might, of themselves, only have amounted to conduct unbecoming, Particulars 2 and 4, both individually and in combination with Particular 1, amount to professional misconduct.

Issues raised by Mr Walker in submissions

77. Mr Walker's written submissions raised a number of procedural and jurisdictional challenges. Several of these were determined against Mr Walker as part of the Revocation Decision and will not be revisited in this decision.

Natural Justice

78. Mr Walker points out that the Act and Rules both require observance of the rules of natural justice in the application of disciplinary powers and processes. The aspects he submits on are that the decision-maker should not be tainted by bias or personal interest and that he should have the right to be heard in answer to the case against him.
79. Mr Walker has had ample opportunity to respond to and be heard on the case against him. The original complaint was responded to at length by solicitors on his behalf. He was given every opportunity to participate in the investigation by Mr Webb but chose not to. His responses to Mr Webb's report have been considered, but against the background that he chose not to cooperate with the investigation and instead to ramp up his criticisms after the report was issued.
80. Mr Walker was represented by solicitors and counsel at varying stages and up to immediately before the Tribunal hearing. The hearing was adjourned to allow more time for Mr Walker and his counsel to consider the charges and evidence, and to prepare evidence. It was Mr Walker's choice not to participate in the hearing. Written submissions and other communications by him have been considered.

Recusal

81. Mr Walker's submissions (received two days before the hearing) raised for the first time a claim that the Tribunal chair was biased and should recuse himself. Mr Walker had known for some time who would be chairing the Tribunal and took no issue with that (and nor did his counsel). At the commencement of the hearing the chair declined to recuse himself.
82. As best as can be discerned from Mr Walker's submission, he claims that the chair exhibited bias by being 'judge in his own cause', having chaired the Tribunal that suspended Mr Walker and then declined to revoke the suspension. Mr Walker claims that the Tribunal should have accepted his criticisms of the interim suspension decision and that by not revoking it the Tribunal was exhibiting bias.
83. The test for apparent bias so as to disqualify a judicial officer from sitting has been authoritatively described by the Supreme Court in *Saxmere v Wool Board Disestablishment Co Ltd (No.2)* [2010] 1 NZLR 76 and recently applied by the High Court in the professional disciplinary context in *J v Appeals Council* [2020] NZHC 1566. It is whether a fair-minded lay observer might reasonably apprehend that the judicial officer might not bring an impartial mind to the matter before him or her.
84. There is no principle that a judicial officer who has sat in judgment on a previous occasion involving the same parties is precluded from so acting on a future occasion. This would not be seen by the fair-minded lay observer is a circumstance in which the judicial officer would lose their impartiality. The fact that the previous Tribunal (and the chair) rejected Mr Walker's criticism of its decision to suspend him does not create an apprehension of bias. Such matters as were determined conclusively against Mr Walker in the previous decision are not open for reconsideration.

Standard of Evidence

85. Mr Walker asserts that the standard of proof required in a charge of professional misconduct (the most serious under the Rules) is proof beyond reasonable doubt, citing the judgment of Elias CJ in *Z v Dental Complaints Assessment Committee* [2009] 1 NZLR 1 (SC) in support. The Chief Justice was in the minority; the other four judges disagreeing. They, and therefore the Court, held that the civil standard of proof, being on the balance of probabilities, applies to professional disciplinary proceedings.
86. It is not clear from Mr Walker's submission as to the relevance of the standard of proof to the evidence on which the charges are based. It seems to be in relation to Particular 2, that while the High Court's findings in that case needed only to be based on the civil standard (balance of probabilities), before the Tribunal could accept and act on those findings it must find them established beyond reasonable doubt.
87. Particular 2 is based on the findings having been made, not whether they were factually correct. The Tribunal's role is not to inquire into the evidence or factual basis on which the Court made its findings. They were made by a court of competent jurisdiction and are a matter of record. Much of Mr Walker's 'submissions' on this topic were an attempt to give evidence challenging the findings, which the Tribunal is not prepared to receive given Mr Walker's decision not to give evidence in person and on oath.
88. Mr Walker cites *Institute of Chartered Accountants v Bevan* [2003] NZLR 154 (CA) which concerned an appeal by Mr Bevan from a 2-year suspension for professional misconduct following his failure to comply with a request from the PCC to provide documents. Mr Walker relies on this decision also in support of his submission that the higher standard of proof applies, and that Court's decision that a 2-year suspension was excessive.
89. The case is not authority for the standard of proof issue. Mr Walker may wish to rely on it in relation to penalty when that position is reached.

Double jeopardy

90. Mr Walker submits that the present charges amount to double jeopardy. It is an established principle that a person convicted (or acquitted) of an offence should not be tried again for the same offence. Mr Walker relies on the Tribunal's 2014 decision in which he was found guilty of breaching the Code of Ethics in respect of statements made by him about Mr Henderson in a particular telephone conversation in 2011, and in two liquidator's reports.
91. The present charges against Mr Walker are in respect of other (albeit in many cases similar) communications and conduct, but not those which were the subject of that decision. The particular conduct for which he was previously found guilty does not form part of the present charges or particulars, and has been excluded from the Tribunal's consideration.
92. The conduct on which the present charges are based does however demonstrate a continuation or repetition of the type of conduct the subject of the earlier decision. A finding of guilt (or innocence) of particular acts of misconduct does not protect against disciplinary action arising out of other acts or conduct, including repetition of the original misconduct.
93. It is relevant that Mr Walker was previously found to have acted unprofessionally and in breach of the Code of Ethics. This is particularly so when considering his awareness and understanding of the limits of professional conduct following that decision. It is an aggravating factor that after having been found guilty of misconduct, Mr Walker has not modified his conduct. The Tribunal

has been careful not to otherwise take into account the conduct for which he was previously charged in its consideration of the present charges.

94. Mr Walker also submits that double jeopardy applies by reason of his interim suspension ordered in August 2021. He says he cannot be penalised again in respect of the matters that lead to that suspension. Because the suspension was in the context of the investigation of Mr Henderson's complaint, and Mr Walker's conduct in relation to that complaint, Mr Walker says he has already been punished for his conduct.
95. This submission is to confuse the place of interim suspension in the disciplinary process. It does not represent the final determination or outcome of a disciplinary charge. It may be compared with a person facing a criminal charge being remanded in custody pending trial. The remand is not a penalty, although time spent in custody may be credited against the eventual sentence if the person is convicted. A reading of the Revocation Decision shows that the interim suspension was based on his refusal to cooperate with the investigation as well as statements he had made about his own competence. That refusal to cooperate is also the subject of the present Charges, and has continued beyond the interim suspension.
96. A Member who demonstrates an unwillingness or inability to be regulated by the Institute, is at risk of being suspended pending the investigation of a complaint about their conduct. It is not a penalty but is a method of protecting the public (and the reputation of the profession) while the complaint and any charges arising out of it are resolved.

CONCLUSIONS ON LIABILITY AND DIRECTIONS AS TO PENALTY COSTS AND PUBLICATION

97. For the above reasons, the Tribunal finds the Charges established and that Mr Walker is guilty of misconduct in a professional capacity, conduct unbecoming an accountant and of breaching the Rules and Code of Ethics of the Institute.
98. The Tribunal's next task is to determine penalty, costs and publication. This can be done on the papers, if the parties consent, or by a further in-person hearing if either party requests. The Tribunal will set a timetable for the exchange of submissions on penalty, costs and publication. The PCC should file its submissions first, and Mr Walker is to have 4 weeks thereafter to file his submissions.
99. The Tribunal directs that:
 - a. the PCC is to advise by 19 March 2024 whether it consents to the matters of penalty, costs and publication being dealt with on the papers, and the time within which it will file its submissions on these matters;
 - b. Mr Walker is to advise by 26 March 2024 whether he consents to these matters being dealt with on the papers.
100. The Tribunal will issue formal directions upon receipt of the above. If either party requires a hearing, the Tribunal Secretariat will arrange a hearing to accommodate the timetable for the exchange of submissions.



Matthew Casey KC
Chair, Disciplinary Tribunal