

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 Douglas Campbell** Chartered Accountant, of **Nelson**

**DETERMINATION OF THE DISCIPLINARY TRIBUNAL OF THE NEW
ZEALAND INSTITUTE OF CHARTERED ACCOUNTANTS
24 July 2019**

Hearing: 3 July 2019

Location: The offices of Chartered Accountants Australia and New Zealand, Level 7, Chartered Accountants House, 50-64 Customhouse Quay, Wellington, New Zealand

Tribunal: Mr MJ Whale FCA (Chairman)
Mrs A Atkinson FCA
Mr A Newman FCA
Ms A Kinzett (Lay member)

Legal Assessor: Mr Matthew Casey QC

Counsel: Mr Richard Moon for the prosecution

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At a hearing of the Disciplinary Tribunal held in public at which the Member was in attendance and represented by counsel the Member admitted all the Particulars except Particular 1(a) which the Member denied, and pleaded guilty to Charges 1-2 and 4-5 but not guilty to Charge 3.

The charges and particulars as laid 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 13.39 the Member is guilty of:

- 1) Misconduct in a professional capacity; or
- 2) Conduct unbecoming an accountant; and/or
- 3) Negligence or incompetence in a professional capacity and that this is 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; and/or
- 4) Supplying information to the Institute which is false and/or misleading; and/or
- 5) Breaching the Rules and/or the Institute's Code of Ethics,

PARTICULARS

IN THAT

In the Member's role as a Chartered Accountant and in relation to a complaint, the Member:

- (1) In breach of the Fundamental Principles of Integrity and/or Professional Competence and Due Care and/or Professional Behaviour and/or paragraphs 100.5(a) and/or 100.5(c) and/or 100.5(e) and/or 110.1 and/or 110.2 and/or 130.1 and/or 130.4 and/or 150.1 of the Code of Ethics (2017)¹, he:
 - (a) Submitted a Practice Information Questionnaire to NZICA on or about 17 November 2017 declaring that no assurance engagements were performed by his practice, when he knew (or ought to have known) that at the time he was the auditor of eight entities²; and/or
 - (b) Submitted a Mandatory Notification to NZICA on or about 30 November 2017 declaring that he had not signed any audit report, review report, or other assurance engagement report in the period from 1 July 2016 to 30 June 2017, when he knew

¹ And, as applicable, the equivalent provisions of the Code of Ethics (2014).

² BBB; YYY; WWW; NNN; XXX; ZZZ; HHH; and OOO.

(or ought to have known) that was not the case since he had signed and issued five assurance reports in this period³; and/or

(c) Having confirmed to NZICA on or about 5 June 2018 that he would not (either personally or through his practice) perform any further assurance engagements, subsequently accepted appointment as auditor and/or performed the audit of XXX in respect of the year ending 31 March 2018; and/or

(d) In response to NZICA's queries, provided information to NZICA regarding the status of his practice's GST arrears ("the arrears") with the Inland Revenue which he knew (or ought to have known) was incorrect, in that:

i. On or about 27 March 2018 he advised NZICA's practice reviewer, at the time of his review visit, that the arrears were being repaid under arrangement with the Inland Revenue and the arrangement was being met; and/or

ii. On or about 5 June 2018 confirmed in his response to his practice review report that the arrears were under arrangement with the Inland Revenue, and the arrangement was being met; and/or

iii. On or about 10 September 2018 advised NZICA by email that the arrears were under arrangement with the Inland Revenue; and/or

(2) In undertaking the audit of ZZZ in respect of the year ending 31 March 2017, he failed to:

(a) Identify threats to his independence arising from his compilation and/or formatting of the relevant financial statements; and/or

(b) Take appropriate action to eliminate the threats or reduce them to an acceptable level by either applying appropriate safeguards and/or withdrawing from the engagements if no such safeguards were available, as required by ISA (NZ) 220 and/or paragraphs 280.2 and/or 290.7 and/or 290.171 of PES 1 (Revised); and/or

(c) Disclose the relationship in his audit report, as required by ISA (NZ) 700,

in breach of the Fundamental Principle of Objectivity and/or Professional Competence and Due Care and/or paragraphs 100.5(b) and/or 100.5(c) and/or section 120 and/or 130.1 and/or 130.3 and/or 130.4 and/or 280.2 of the Code of Ethics (2014)⁴; and/or

³ Enner Glynn Community Hall Management Committee Trust in respect of the year ending 31 March 2016; Tasman School Fundraising Association in respect of the year ending 31 December 2016; Adult Learning Support Nelson Incorporated in respect of the year ending 31 December 2016; Mapua Public Hall Society Incorporated in respect of the year ending 31 March 2017; and Tasman Swim Club Incorporated in respect of the year ending 31 March 2017.

⁴ And, as applicable, the equivalent provisions of PES 1 (Revised).

(3) Failed to ensure that the compilation and/or assurance engagements he performed were completed with professional competence and/or due care and/or diligence and/or in accordance with the relevant technical and professional standards, in that the Member:

(a) Regarding his compilation engagement for ZZZ in respect of the year ending 31 March 2017, failed to compile its financial statements in accordance with the applicable public benefit entity reporting framework, as required by XRB A1: Application of the Accounting Standards Framework; and/or

(b) Regarding his assurance engagement for ZZZ in respect of the year ending 31 March 2017, failed to:

i. In determining whether preconditions for an audit of the entity were present, correctly determine whether the reporting framework to be applied in the preparation of the financial statements was acceptable, as required by ISA (NZ) 210; and/or

ii. Express his audit opinion in the correct terms and/or in accordance with the applicable reporting framework as required by ISA (NZ) 700 (Revise) and/or ISA (NZ) 705; and/or

iii. Issue a qualified or adverse opinion in respect of the entity's financial statements failure to comply with the applicable reporting framework, as required by ISA (NZ) 700 (Revised) and/or ISA (NZ) 705; and/or

(c) Regarding his assurance engagement for BBB in respect of the year ending 31 December 2017, failed to:

i. Express his audit opinion in the correct terms and/or in accordance with the applicable reporting framework as required by ISA (NZ) 700 and/or ISA (NZ) 705; and/or

ii. Issue a qualified or adverse opinion in respect of the entity's financial statements failure to comply with the applicable reporting framework, as required by ISA (NZ) 700 (Revised) and/or ISA (NZ) 705,

in breach of the Fundamental Principle of Professional Competence and Due Care and/or paragraphs 100.5(c) and/or 130.1 and/or 130.3 and/or 130.4 of the Code of Ethics (2017)⁵; and/or

(4) Failed to maintain his professional competence to ensure that he remained up to date with all current standards applicable to assurance engagements in breach of the Fundamental Principle of Professional Competence and Due Care and/or paragraphs 100.5(c) and/or 130.1 and/or 130.3 of the Code of Ethics (2017)⁶.

⁵ And, as applicable, the equivalent provisions of the Code of Ethics (2014) and/or PES 1 (Revised).

⁶ And, as applicable, the equivalent provisions of the Code of Ethics (2014) and/or PES 1 (Revised).

BACKGROUND

The Tribunal continues to hear cases involving ‘the occasional auditor’ work of members. The features of recent cases are all too strikingly similar and cover a number of the following types of conduct:

- Providing misleading or false information to the Institute.
- Undertaking statutory audits when the member is not qualified to do so.
- Continuing to undertake audits after being directed by the Institute not to do so except under certain conditions and not complying with that direction.
- Lack of independence in that the Member compiled and also audited an entity’s financial statements.
- Lack of professional competence.
- Failure to document compliance with practice quality control policies and procedures monitoring assurance engagements.
- Failure to comply with continuing professional development obligations and/or to maintain professional competence to ensure the Member remains up to date with all current standards applicable to assurance engagements.

Unfortunately the Tribunal will continue to hear similar cases unless Members address this area of being an “occasional auditor”. There is no place for a Member undertaking such work where there is lack of competence, qualification and skill to address the highly specialised activity of an assurance engagement.

The Rules of the New Zealand Institute of Chartered Accountants were revised, effective 30 May 2019. The Tribunal’s legal assessor advised that the Rules that apply to this hearing are those which were in force immediately before the adoption of the revised Rules. References to the Rules in this decision are to those earlier Rules.

DECISION

The Tribunal finds that those Particulars which the Member admitted are borne out by the evidence before it, which was produced by consent.

The Tribunal does not find Particular 1(a), which the Member denied, made out. The audit reports were signed by the Member personally and were not on his practice letterhead. The Member advised the Tribunal that he personally, not his practice, invoiced the organisations involved and his fees were nominal. The Member genuinely believed that the PIQ required him to answer the questions asked only in relation to his practice.

In the Tribunal’s view, the requirements of and questions in section 11 of the PIQ dealing with audits are not particularly clear. In one case a distinction is made between the practice and related entities or any individuals within the practice – in other cases the reference is simply to “the practice” and in one instance to “your”. It is understandable that a misunderstanding could arise.

In relation to Particular 1(d) the Member advised the Tribunal that he had a loose arrangement with the Inland Revenue official responsible for his tax agency regarding his GST arrears. However, the Member appears to have made no payments to reduce the arrears for an extended period. The Member also stated that just before 10 September 2018 he had in fact made a formal online arrangement proposal which, after he had communicated with the Institute on 10 September, was initially declined as a result of a technicality but subsequently accepted. However, the fact was that at each date the Member told the Institute the arrears were under arrangement they were not, as he has now admitted.

As to Particular 3, it would appear the assurance engagements were diligently completed and Practice Review did not find fault with the workpapers, procedures and processes undertaken. However, the Member's failure to apply the correct reporting standards demonstrated a lack of competence in the specialised areas of charitable organisation reporting and audit engagements which are public facing.

The Member's attempt to help organisations may be honourable, but without the right skill set the way in which he did was below standard and has brought the profession into disrepute.

As to the Charges, it follows from the Member's admissions and the Tribunal's findings on the Particulars that the Member is guilty of Charges 4 and 5, which he accepted.

As to Charge 3, to which the Member pled not guilty, the Tribunal finds on the evidence before it that Particulars 2-4 amount to negligence or incompetence (in the sense of failing to comply with standards) in a professional capacity. Whilst in the Tribunal's view the Member's conduct is not of such a degree or so frequent as to reflect on his fitness to practice as an accountant, it is of such a degree or so frequent as to tend to bring the profession into disrepute. A number of the audits related to charities and using the wrong reporting frameworks including expressing audit opinions in incorrect terms are significant failings which reflect adversely on the profession. As is the failure to address independence threats (the Tribunal agrees with the PCC's witness that this is a fundamental tenet for members carrying out assurance engagements of any size). The Tribunal finds Charge 3 proved to the extent set out in this paragraph.

The Tribunal notes the PCC's acknowledgement that Charges 1 and 2 could on this occasion be regarded as having been laid in the alternative.

The test for a charge of conduct unbecoming of an accountant (Charge 2) is whether the conduct was an acceptable discharge of a member's professional obligations according to the standards applied by competent, ethical and responsible practitioners. The threshold is inevitably one of degree.

In the Tribunal's view, the Member's conduct in Particulars 1(b)-(d) falls significantly below the relevant standards and, as the Member admitted, below his own standards. It is simply unacceptable to ignore previously provided undertakings to the Institute not to complete an assurance engagement and then to do so. The Member's poor communications with the Institute and the way in which he dealt with the matter of his GST arrears do not meet the

accepted standards required of members of the profession. The incorrect completion of a mandatory statement to the Institute is also an action that does not meet the accepted standards.

The Tribunal finds the Member guilty of Charge 2.

The Tribunal considers that, although the Member was at best careless when completing his mandatory notification and he was not open and honest in disclosing to the Institute the status of his practice's GST arrears, his conduct does not quite meet the threshold for the more serious charge of misconduct in a professional capacity (Charge 1), and finds the Member not guilty of that charge.

The Tribunal considers that behind all the Particulars there were circumstances and decisions made (even if some of the decisions were misguided) as to why events may have occurred in the way they did. Although not an excuse for the Member's failing to meet the standards that are imposed to protect the public, the profession and fellow members, the Tribunal has had some regard to them when assessing the seriousness of the Member's conduct.

PENALTY

The PCC sought that the Member be censured, that a fine be imposed to sanction the conduct in Particular 1(b)-(d) and that the Member be ordered not to undertake assurance engagements for a period of time. The PCC cited the Tribunal's recent cases of *Middleton* (15 March 2018), *Freeman* (31 May 2018), *Small* (18 December 2018) and *Sinclair* (18 December 2018), all with similar circumstances relating to the roles of members in undertaking assurance engagements without the appropriate competence and adherence to standards.

The Member accepted the PCC's submission but submitted that he did not consider that the incorrect reporting affected his fitness to practice - the Tribunal concurs.

Although no two cases are the same, in the Tribunal's view the Member's conduct is sufficiently similar to the conduct in the cases cited by the PCC as to warrant the penalties being broadly in line with those imposed in those earlier decisions. As almost all of the Member's conduct took place before those cases were decided, it would be inappropriate to order a more deterrent penalty.

In reaching its decision on penalty the Tribunal has also taken into account the following factors.

- The Member's previously unblemished record during 29 years of membership
- The Member's early acceptance of the Particulars and genuine remorse from the outset, and his insight into his failings
- The Member's full cooperation with the disciplinary process
- The Member's genuine desire to assist the community groups involved
- The Member did not profit from his audit work as all fees were very modest

- There was no suggestion of any loss from the incorrect reporting standards being applied, although the potential for a loss cannot be ignored.

The Disciplinary Tribunal orders that:

- **Pursuant to Rule 13.40(k) of the Rules of the New Zealand Institute of Chartered Accountants, the Member be censured and**
- **Pursuant to Rule 13.40(c) of the Rules of the New Zealand Institute of Chartered Accountants, the Member pay the Institute a monetary penalty of \$4,000 and**
- **Pursuant to Rule 13.40(n) of the Rules of the New Zealand Institute of Chartered Accountants, the Member not to undertake any audit or other assurance engagements for a period of five years.**

COSTS

The Professional Conduct Committee seeks full costs of \$15,193.

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 Member submitted that due to his acceptance of the charges and the Particulars, except the Particular the Tribunal found was not proven, and because of his cooperation in the disciplinary process there should be some reduction in the costs and that the costs should be 'absorbed' with any monetary penalty. However, the Tribunal notes that, apart from the last factor, the costs sought are already in effect considerably reduced from what they would be if the Member had disputed facts or defended the Charges.

Having regard to all relevant factors the Tribunal considers an award of \$14,000 is fair and reasonable in the circumstances.

Pursuant to Rule 13.42 of the Rules of the New Zealand Institute of Chartered Accountants the Disciplinary Tribunal orders that the Member pay to the Institute the sum of \$14,000 in respect of the costs and expenses of the hearing before the Disciplinary Tribunal and the investigation by the Professional Conduct Committee. No GST is payable.

SUPPRESSION ORDERS

Pursuant to Rule 13.62(b) of the Rules of the New Zealand Institute of Chartered Accountants the Disciplinary Tribunal orders that the names of the Member's clients or former clients referred to in these proceedings be suppressed.

PUBLICATION

The PCC sought publication of the Tribunal's decision in *Acuity* and on the Institute's website with mention of the Member's name and location.

The Member submitted any publication should note that his fitness to practice was not in issue before the Tribunal (the text of the decision reflects this) and requested that his name and location not be published in *Acuity* because of the disproportionate effect that might have on him. However, in the Tribunal's view, confirmed by its legal assessor, the threshold for non-publication is a high one which the Member has not met in this case – one of the Charges that the Member admitted to is a serious one and damage to reputation is an inevitable consequence of disciplinary proceedings and not of itself grounds for such an order.

In accordance with Rule 13.44 of the Rules of the New Zealand Institute of Chartered Accountants the decision of the Disciplinary Tribunal shall be published on Chartered Accountants Australia and New Zealand's website and in the official publication *Acuity* with mention of the Member's name and locality.

RIGHT OF APPEAL

Pursuant to Rule 13.47 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 parties may, not later than 14 days after the notification to the parties 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 parties remain entitled to appeal, or while any such appeal by the parties awaits determination by the Appeals Council.



MJ Whale FCA
Chairman
Disciplinary Tribunal