



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 **Bari Joseph Nicholas**, Suspended Chartered Accountant, of Auckland

**DETERMINATION OF THE DISCIPLINARY TRIBUNAL OF THE NEW ZEALAND
INSTITUTE OF CHARTERED ACCOUNTANTS
12 December 2012**

Hearing: 12 December 2012

Tribunal: Mr RJO Hoare FCA (Chairman)
Mr GR Leech FCA
Mr MJ Whale FCA
Ms A Hauk-Willis (Lay member)

Legal Assessor: Mr Bruce Corkill QC

Counsel: Mr T Sissons for the prosecution

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

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 21.30 the Member is guilty of:

1. Negligence or incompetence in a professional capacity and this has been of such a degree or so frequent as to reflect on his fitness to practise as an accountant or tends to bring the profession into disrepute [all particulars]; and/or
2. Breaching the Institute's Rules and/or Code of Ethics, in particular:
 - a. Rule 18.2 of the Institute's Rules (and its predecessor) [particular 1]; and/or
 - b. Rule 7 *Competence* in the Code of Ethics [particular 2]; and/or
 - c. Rule 11 *Compliance with Technical and Professional Standards* in the Code of Ethics [particulars 3, 4 and 6] and/or
 - d. Appendix IX, paragraph 2.10 to the Institute's Rules [particular 5].

IN THAT

Being a member of the New Zealand Institute of Chartered Accountants:

- (1) From 1994 to date the Member has offered accounting services to the public without holding a Certificate of Public Practice, in breach of Rule 18.2 (and its predecessor) of the Institute's Rules; and/or
- (2) The Member's compilation files, including the 31 March 2011 financial statements for A Limited, demonstrated that he was unable to select the correct reporting framework for individual entities, having regard to the provisions of the Financial Reporting Act 1993 and/or the Financial Reporting Order 1994, in breach of Rule 7 of the Code of Ethics; and/or
- (3) In relation to the Member's audit of B Limited for the year ended 31 March 2009, he failed to limit the scope of his audit report to the terms set out in the letter of engagement dated 20 May 2010 and the Ministry of Education Circular dated April 2009, in breach of Rule 11 of the Code of Ethics; and/or
- (4) The Member failed to implement the requirements of Service Engagement Standard 2 *Compilation of Financial Information*, in that he failed to issue engagements letters, and/or failed to either issue client questionnaires or identify the source of information received, in breach of Rule 11 of the Code of Ethics; and/or
- (5) The Member failed to obtain appropriate professional indemnity insurance cover until August 2011, despite being requested to do so by Practice Review in or about March 2010, in breach of Appendix IX, paragraph 2.10 to the Institute's Rules; and/or
- (6) The Member failed to develop a Quality Control manual as required by Professional Standard 1 *Quality Control*, in breach of Rule 11 of the Code of Ethics.

DECISION

The Member is a practitioner who has been practising since 1994 without a Certificate of Public Practice (CPP).

The Member first applied for a CPP in 2007 but had not supplied all the necessary supporting documentation. He has since then been the subject of two Practice Reviews in 2010 and 2011 to assess his suitability to be granted a CPP. Both reviewers recommended that he not be granted a CPP.

The Member was the subject of an interim suspension order of the Tribunal, in relation to the same issues, in June 2012. The order and the background and reasons for it can be found on the Institute's website.

At that time the Member advised the Tribunal that he was in a state of flux and that he needed to decide what he was going to do – whether he was going to continue to practice, sell his fees and work for someone else or do something completely different. The Member was getting advice on whether or not he should sell his client base.

At this substantive hearing the Member provided the Tribunal with a short email acknowledging his guilt but provided no submissions in mitigation and no update as to decisions made relating to his practice.

The 2010 review identified many significant short comings in relation to the Member's knowledge of and compliance with technical and professional standards, none of which he had addressed by the time of the 2011 review. In the Tribunal's view it is in the interests of the Member's clients and the public that his name be removed from the Institute's register of members and that his clients and the public be made aware of the reasons.

PENALTY

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 **Bari Joseph Nicholas** be removed from the Institute's register of members.

COSTS

The Professional Conduct Committee seeks full costs of \$13,505.

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.

There is no evidence of mitigating factors such as excessive or unnecessary expenses incurred or demonstrated evidence of hardship (inability to pay).

Pursuant to Rule 21.33 of the Rules of the New Zealand Institute of Chartered Accountants the Disciplinary Tribunal orders that **Bari Joseph Nicholas** pay to the Institute the sum of \$13,505 in respect of the costs and expenses of the both the interim suspension and substantive hearings before the Disciplinary Tribunal, the investigation by the Professional Conduct Committee and the cost of publicity. No GST is payable.

SUPPRESSION ORDERS

Pursuant to Rule 21.52 (b) of the Rules of the New Zealand Institute of Chartered Accountants the Disciplinary Tribunal orders that the identity of the Member's clients be suppressed.

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 and in the *Chartered Accountants' Journal* and the *New Zealand Herald* with mention of the Member's name and locality.

Pursuant to Rule 21.35 (b) (ii) of the Rules of the New Zealand Institute of Chartered Accountants the Disciplinary Tribunal orders that the interim suspension and substantive decisions be circulated to the Member's clients.

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 directions as to publicity shall take effect while the Member remains entitled to appeal, or while any such appeal by the Member awaits determination by the Appeals Council.

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

R J O Hoare
Chairman
Disciplinary Tribunal