NEW ZEALAND
INSTITUTE OF
CHARTERED
ACCOUNTANTS

NEW ZEALAND INSTITUTE OF CHARTERED ACCOUNTANTS
NOTICE OF DECISION AND ORDER OF THE PROFESSIONAL CONDUCT COMMITTEE

At a meeting of the Professional Conduct Committee of the New Zealand Institute of Chartered Accountants ("NZICA") held in private on 3 October 2017 in respect of **PETER JOHN CALDER WILSON,** a Chartered Accountant of Queenstown ("the Member"), the Committee found that the following matters would otherwise warrant being referred to the Disciplinary Tribunal:

In his role as a Chartered Accountant in public practice and in relation to a complaint by his client ("the Complainant"), the Member:

1. As the Complainant and their associated entities' accountant and in relation to the Complainant's charitable activities:

    a. failed to provide appropriate advice and/or ensure the Complainant's entities were appropriately constituted and/or structured so as to obtain available tax benefits and/or deductions; and/or

    b. failed to advise the Complainant in a timely manner that their trust ("the Trust") had not been correctly registered as a charitable trust when he knew or ought to have known this; and/or

    c. on becoming aware of the status of the Trust's registration status, failed to:

        i. take reasonable and/or timely steps to ensure it became properly registered; and/or

        ii. provide the Complainant with appropriate advice regarding their alternative options going forward;

    in breach of the Fundamental Principle of Quality Performance and/or Rules 9 and/or 10 of the Code of Ethics (2003)[1] and/or the Fundamental Principle of Professional Competence and/or paragraphs 130.1 and/or 130.4 of the Code of Ethics (2014)[2]; and/or

2. In charging for his and/or his practice's professional services, failed to act with due care and/or professionalism and/or objectivity, in that he:

    a. failed to render his invoices in a timely manner; and/or

    b. failed to ensure that his invoices were appropriately narrated in that they did not contain adequate annotations describing the work performed and/or the time and costs incurred; and/or

[1] Being the Code of Ethics applicable for conduct prior to 1 January 2014
[2] Being the Code of Ethics applicable for conduct post 1 January 2014

c. failed to appropriately respond to the Complainant's request for an explanation of his invoices and to provide a copy of his time and cost records; and/or

d. charged fees disproportionate to the value of the professional services performed; and/or

e. following the end of his professional engagement with the Complainant, charged fees when he did not have specific client consent to the basis upon which fees would be charged;

in breach of the Fundamental Principles of Objectivity and/or Professional Behaviour and/or Professional Competence and Due Care and/or paragraphs 120.1 and/or 120.2 and/or 130.4 and/or 150.1 and/or 150.3 of the Code of Ethics (2014); and/or

3. Failed to maintain an appropriate level of professionalism and objectivity in his communications with the Complainant and the Complainant's new accountant, in breach of the Fundamental Principle of Professional Behaviour and/or Objectivity and/or paragraphs 120.1 and/or 120.2 and/or 150.1 and/or NZ150.3 of the Code of Ethics (2014).

The Committee noted that the Member accepted particular 1(c)(i); partially accepted particulars 2(a) and 3; and denied all other particulars.

The Committee considered the matters raised in the complaint to be very serious, particularly the Member's failure to advise the Complainant in a timely manner on becoming aware of the Trust's incomplete charitable registration status; his failure to take reasonable steps to ensure the Trust became properly registered following his discovery of its status; and his lack of professional behaviour in his billing practices and correspondence with the Complainant and their new accountant.

Particular 1

In relation to particular 1(a)

The Committee considered the particular to be established in part in so far as it related to the Member's failure to ensure that the Complainant's entities had been appropriately constituted. It was of the view that even in the event that the Member was not responsible for registering the Trust as he suggested, he was aware of the intended taxation benefits that the Complainant sought via a charitable trust structure, from the outset. Further, the Committee noted the Member's submission that the Company was only intended to be a temporary mechanism to enable the Complainant to commence their charitable activities prior to the charity being registered.

The Committee noted that the Member was responsible for managing the Company's day to day financial administration, such as paying bills. Noting the Company was incorporated in May 2013 and that the Member did not realise the Trust was not correctly registered until June 2015, the Committee considered that the Member ought to have been aware or taken steps to rectify the status of the Trust at a much earlier stage. It considered his failure to do so breached the due care and diligence provision of the Code of Ethics.

Regarding particular 1(b)

The Committee was very concerned that on becoming aware that the Complainant's Trust had not been correctly registered as a charitable trust in June 2015, the Member had failed to inform his client immediately. It was not until March 2016 when his client enquired about his invoices that he had informed the Complainant about the Trust's incomplete registration status. It had become apparent to the Complainant that something was not right as some of his invoices contained the narration "updating charities register".

Regarding particular 1(c)(i) and (ii)

In relation to particular 1(c)(i), the Committee was troubled that on becoming aware of the Trust's incomplete registration status, and having discussed the matter with the Complainant's lawyer, the Member failed to take appropriate and/or timely steps to ensure the Trust became properly registered as a charity. It was of the view that the Member's allocation of the task to his staff member without his significant oversight was insufficient. It considered that at a minimum, he should have followed up with his staff member at regular intervals to ensure that the proper registration of the Trust was being progressed.

The Committee did not consider particular 1(c)(ii) to be established. It noted that once the Member had become aware of the Trust's registration status, the only appropriate option going forward was to ensure that the Trust became properly registered as a charitable trust. There was no alternative option that the Member could have appropriately advised to the Complainant.

Conclusion on particular 1

The Committee noted that the Complainant had unquestionably trusted the Member with their personal and their related entities' affairs. It considered the Member's failure to bring to the Complainant's attention that the Trust had not been properly registered to be unacceptable. It was incumbent on the Member, following his discovery of the Trust's incomplete registration status, to take appropriate steps to address the situation. The first and most important step being to inform his client, which he failed to do so.

The Committee was disappointed with the Member's conduct in this regard, which it considered fell well below the standards of professional competence, due care and diligence expected of a Chartered Accountant in public practice.

Particular 2

The Committee considered particulars 2 (a), (b), (c) and (e) to be established.

The Committee was of the view that the Member's billing and invoicing practices were unprofessional and demonstrated a lack of objectivity on the part of the Member. It was also troubled by the Member's failure to appropriately engage with the Complainant when they raised queries about his invoices.

In relation to particulars 2(a) and (b), the Committee considered that it was unprofessional for the Member to have rendered 10 invoices at one time to the Complainant covering a number of months of work which all contained identical narrations. The Committee also considered that the issuing the invoices in that manner was untimely given they spanned a number of months of work and the Member's engagement letter stipulated that invoices would be rendered monthly. Furthermore, the lack of specificity about the work undertaken, and failure to appropriately narrate the invoices, made it hard for the Complainant to understand what work had been done.

With regard to particular 2(c) the Committee was of the view that, having then been asked by the Complainant to explain what the invoices related to and provide specific time and cost narrations, the Member had not responded to the Complainant's queries in a constructive or professional manner. In particular it noted that the Member appeared to have taken exception to the request and questioned whether the Complainant sought the same information from their other professional advisors. It was also concerned that the Member then began questioning some of the invoices the Complainant had received from other professionals which he was paying on the Complainant's behalf. It noted that clients are entitled to query a member's invoice and receive an appropriate explanation to understand what work had been undertaken by a member. The Committee was of the view that it is not unreasonable for clients to request a copy of a member's time and cost records underlying the invoices rendered.

It considered that when the Member received the explicit request to provide more details in relation to his invoices, he should have taken it upon himself to ensure the Complainant had a clear understanding going forward.

In regards to particular 2(d), it did not consider that there was sufficient information before it to determine whether the fees charged for work completed prior to the end of the engagement were proportionate to the work completed by the Member. To the extent that there was evidence of inappropriate billing following the end of the engagement, the Committee considered that this issue was more appropriately considered under particular 2(e). The Committee determined to take no further action on particular (2)(d) but reminds the Member that having clear engagement terms and narration of invoices assists clients to understand work undertaken.

Regarding particular 2(e) the Committee was troubled that the Member appeared to have billed the Complainant for a number of inappropriate attendances following being advised of the termination of his engagement with the Complainant and their related entities on or about 28 April 2016. These included: tasks he appeared to have had undertaken without specific authority or instruction following the end of the engagement, time spent on narrations explaining his inadequately rendered invoices, and time spent responding to the Complainant's new accountant. The Committee was surprised by the level of fees the Member had charged in relation to the handover to the Complainant's new accountant. It noted his engagement letter did not contain a clear explicit authority to bill for such work, nor did the Member advise the Complainant or their new accountant he would be billing for his attendances post engagement. The Committee considered there appeared to be an element of retaliation to the Member's conduct post-engagement and this appeared to have carried into his billing.

The Committee was also of the view that the Member had taken an unduly aggressive approach to pursue outstanding invoices given that some of his charges were dubious, the Complainant was querying and disputing some of the charges, and the Complainant was trying to understand what work had been undertaken and the status of their affairs given the failure to properly register the charitable trust. It considered some of the Member's correspondence with the Complainant and their advisors about the outstanding bills demonstrated a lack of professionalism and objectivity. The Committee noted that the Member accepted some of his correspondence, including his email of 16 December 2016, was inappropriate. While members are legally entitled to recover the debts, they must nevertheless be mindful of their professional obligations.

Looking at the matters established under particular 2, the Committee considered that the Member's billing practices fell well below the standard expected of a Chartered Accountant in public practice, and that his conduct did not comply with the standards of Objectivity, Professional Behaviour, or Professional Competence and Due Care. It was of the view that invoices rendered after 30 April 2016, being the period following the termination of his engagement were not justifiable by the Member.

Particular 3

The Committee considered particular 3 to be established and noted the Member's acceptance that some of his correspondence with the Complainant and their new accountant following the end of his engagement was unprofessional. It was pleased to see he had reflected on his behaviour, to an extent.

The Committee observed that in accordance with the Fundamental Principle of Professional Behaviour, members are required to act professionally and with courtesy at all times. This includes those times when a member's conduct is being called into question. It did not consider the Member's conduct towards the Complainant and their new accountant, particularly in relation to the correspondence following the termination of the engagement, to have met the standard of professional behaviour required of a Chartered Accountant in public practice.

The Committee also noted that in his correspondence with NZICA, the Member appeared to express frustration at being required to respond to the complaint. The Committee reminds the Member that the obligation to participate in the complaints process is a key responsibility of membership. Part of what differentiates chartered accountants is that users of their services have recourse to the complaints process.

PENALTY

Having regard to the established particulars, the Committee was of the view that the complaint met the threshold to warrant referral to the Disciplinary Tribunal, however, could be appropriately dealt with by way of consent order with the following terms:

1) that the Member waive all unpaid invoices that relate to work performed after 30 April 2016, being the period following the termination of his engagement with the Complainant and their related entities;

2) that the Member be severely reprimanded; and

3) that the Member pay costs to NZICA of $5,305.00 in respect of the final determination.

In determining to offer a consent order, the Committee considered the sanctions under (1) and (2) would be a proportionate response to the breaches of the Code of Ethics identified. In making the costs order under (3) the Committee noted that it is appropriate for members to pay a contribution towards the Committee's costs as such costs are otherwise borne by the wider membership.

PUBLICITY

The Committee also determined to publish a notice of its decision and orders made in CA ANZ's *Acuity* magazine and on its website with mention of the Member's name and location. The Committee considered that it was appropriate and in the interests of the public and the wider membership for there to be transparency as to its decision and to understand the types of conduct dealt with in this complaint.

The terms of the proposed consent and publicity orders were provided to the Member in writing on 5 October 2017 and the Member was given 15 days in which to consider the terms of the order and take legal advice. After taking legal advice, the Member confirmed his agreement to the Committee's order.

Rob Pascoe FCA
Chairman
Professional Conduct Committee

22 December 2017