

Determination of the Disciplinary Tribunal of Chartered Accountants Australia and New Zealand 16 May 2019

Case Number:	D-1197
Member:	Ian John Coombe interim suspended CA of Queensland
Hearing Date:	1 May 2019
Tribunal:	David Fairlie (Chair and lay member of Tribunal) Bob Grice AO FCA Bruce Glanville FCA
Representation:	Paul Forbes for the Professional Conduct Committee (PCC) The Member appeared via teleconference
Case description:	<ol style="list-style-type: none">1. Member pleaded guilty to, and was found guilty of, a criminal offence which has not been set aside on appeal.2. Member committed an act, omission or default which brings discredit upon that Member, CA ANZ and the profession of accountancy.3. Member bankrupt.

1. DECISIONS

1.1 DECISION ABOUT THE PCC'S ALLEGATIONS WHICH ARE SET OUT IN FULL IN SCHEDULE 1

At a hearing of the Disciplinary Tribunal which the Member attended by way of teleconference, the Member admitted the allegations and the Tribunal was satisfied the allegations were established.

1.2 DECISION ABOUT SANCTIONS

The Tribunal considered that the appropriate sanction in these circumstances was to terminate the Member's membership, to remove the Member's name from the Registers on which it appears and to advise NZICA of that termination and removal.

1.3 DECISION ABOUT COSTS SANCTION

The Tribunal determined that the Member pay to Chartered Accountants ANZ the sum of \$12,403 for the full costs and expenses of the proceedings, inclusive of the interim suspension proceedings (By-Law 40(10.12)(l)). No GST is payable.

1.4 DECISION ABOUT PUBLICATION

This decision will not take effect while the Member remains entitled to appeal.

In accordance with By-Laws 40(12.3) and 40(12.4), the Tribunal directed that:

- its decision with reasons, mentioning the Member's name and locality, be published on the website of Chartered Accountants ANZ (the **Published Decision**)
- a notice mentioning the Member's name and locality with a web address for the Published Decision be published in the Chartered Accountants ANZ digital and print magazine "Acuity".

1.5 NOTIFICATION TO OTHER BODIES

The Member advised and the PCC confirmed that the Member holds no other registrations or memberships and, as a consequence, no bodies will be notified of this decision.

2. RIGHT OF APPEAL

The Member may, within 21 days after the notification of the written decision with reasons to the Member of this Tribunal's decision, appeal in writing to the Appeals Tribunal of Chartered Accountants ANZ against the decision (By-Law 40(11.1)).

While the Member remains entitled to appeal, or while any such appeal by the Member awaits determination by the Appeals Tribunal, the following decisions shall not take effect:

- Decision about the PCC's allegations
- Decision about sanctions
- Decision about costs sanction.

The PCC may, within 21 days after notification of the written decision with reasons to the PCC of this Tribunal's decision, appeal in writing to the Appeals Tribunal of Chartered Accountants ANZ against the decision (By-Law 40(11.2)).

3. BACKGROUND

- On 6 January 2017 the Member was charged with a criminal offence. The Queensland Police Service Charge List dated 6 January 2017 stated "*That between the 1st day of June 2015 and the 8th day of July 2015 at Rockhampton in the State of Queensland [the Member] dishonestly caused a bank loan of \$465,000 to Central Queensland Rugby Union Limited and the yield to [the Member] from the dishonesty was of a value of more than \$30,000 namely \$465,000*" and that the Member was charged pursuant to sections 408C(1)(e) and (2)(d) of the *Criminal Code 1899* (Qld).
- On 11 April 2017 the Disciplinary Tribunal determined that the Member's membership should be suspended on an interim basis, pending the full and final resolution of the criminal proceedings brought against him, pursuant to By-Law 40(9.1):
 - ... if the Disciplinary Tribunal is satisfied that it is necessary or desirable to do so, having regard to the urgency of the matter, the interests of the public, the reputation of CA ANZ, or the integrity of the profession of accounting, the Disciplinary Tribunal may suspend the Member from Membership of CA ANZ on an interim basis pending further investigation and determination of the complaint.
- On 16 January 2019 the media reported that the Member was charged and convicted of a criminal offence following a guilty plea and sentenced to five years' imprisonment, to be suspended after serving 18 months' imprisonment.
- On 22 February 2019 whilst interim suspended, the Member sought to resign from Chartered Accountants ANZ. The resignation request was refused pursuant to By-Law 19:
 - ...The Board may decline to accept the resignation of a Member who is the subject of disciplinary action or professional conduct proceedings ...

4. REASONS FOR DECISION

4.1 ALLEGATION 1

- The Member admitted the allegation.
- The Tribunal was satisfied that the allegation was established, as the Member had pleaded guilty to, and been convicted of, a criminal offence under sections 408(C)(1)(e), (2)(a) and (2)(d) of the *Criminal Code 1899* (Qld) which had not been set aside on appeal and that this constituted a breach of By-Law 40(2.1)(b).

4.2 ALLEGATION 2

- The Member admitted the allegation.
- The Tribunal was provided with an extract from the National Personal Insolvency Index dated 28 February 2019 which showed that the Member was an undischarged bankrupt and that his date of bankruptcy was 25 May 2017.
- The Tribunal was satisfied that the allegation was established because the Member had suffered an insolvency event and that this constituted a breach of By-Law 40(2.1)(j).

4.3 ALLEGATION 3

- The Member admitted the allegation.

- The Tribunal was satisfied that the allegation was established because:
 - the offence to which the Member had pleaded guilty was serious and involved fraud whilst in a position of trust
 - the matter had been widely reported, both at the time of the charge and at sentencing

and that these factors brought discredit on each of the Member, Chartered Accountants ANZ and the profession pursuant to By-Law 40(2.1)(k).

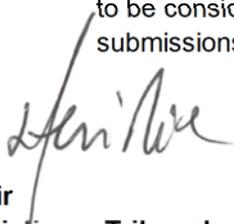
5. REASONS FOR SANCTIONS

- The PCC submitted that termination of membership was the appropriate sanction, having regard to Regulation CR8.11 - Guidelines for the imposition of sanctions:
 - the seriousness of the conduct which involved the conviction for fraud, was at the very serious end of conduct for an accountant
 - the aggravating factors were that the Member was a director of the not for profit organisation from which he had stolen, and the fraud involved breaches of fiduciary obligations
 - the sum defrauded by the Member was a large amount
 - the five year sentence was a significant sentence.
- The Member submitted that:
 - he had no wish to bring discredit on his professional body
 - the Court had accepted he was owed money and he had repaid the defrauded funds in full
 - he had been in a position to wind-up the not for profit organisation in order to recoup the monies he had loaned, but had been motivated by his desire to see the organisation continue
 - he now understood his resignation could not be accepted and he generally accepted that it was appropriate for him to lose his membership.
- The Tribunal had regard for the Member's full cooperation in the Chartered Accountants ANZ disciplinary process and to the Member's submission that he had advanced significant sums of money to the organisation he had defrauded, however, in determining what are appropriate and sufficient sanctions, the Tribunal must balance the interests of the Member against the public interest, the reputation of Chartered Accountants ANZ, and the need to support the integrity of the profession of accounting. The Tribunal accepted the PCC's submission that termination of membership was the only appropriate sanction.

6. REASONS FOR COSTS SANCTION

- The PCC submitted that the full costs should be payable by the Member, including the costs of the interim suspension hearing, having regard to the factors of Regulation CR8.12 - Costs awards, because of the seriousness of the offence, notwithstanding that the offence was not systemic and that the Member had been cooperative.
- The PCC accepted that the Member had cooperated in the disciplinary process and also accepted that he had been made bankrupt and had no capacity to pay costs at this time.
- The Member submitted that he had no funds, no assets, and was not in a position to pay costs for some period of time.

- The Tribunal considered that the seriousness of the offence was the most relevant factor to be considered under Regulation CR8.12 and therefore accepted the PCC's submissions that full costs of the hearings be payable by the Member.

A handwritten signature in black ink, appearing to read 'John Doe', is written over the text of the list item.

**Chair
Disciplinary Tribunal**

SCHEDULE 1 - THE PCC'S ALLEGATIONS

It is alleged that while a member of Chartered Accountants Australia and New Zealand (**CA ANZ**) the Member is liable to disciplinary action in accordance with:

1. By-law 40(2.1)(b), in that on 15 January 2019 the Member pleaded guilty to and was subsequently convicted of one offence pursuant to sections 408C(1)(e), (2)(a) and (2)(d) of the *Criminal Code 1899* (Qld), which have not been set aside on appeal, being one count of dishonestly causing detriment as a director/member of a governing body with a value of or over \$30,000;
2. By-Law 40(2.1)(j), in that on 25 May 2017 the Member became bankrupt; and
3. By-law 40(2.1)(k), in that the acts, omissions and defaults as set out in paragraph 1 above bring, or may bring, discredit on the Member, CA ANZ or the profession of accountancy.

SCHEDULE 2 - RELEVANT BY-LAWS

Resignation

19. Any Member may resign his or her Membership by sending his or her resignation in writing together with all moneys owing by him or her to CA ANZ, whether for subscription, fee or other amount, to the Chief Executive Officer:
- (a) Provided that no resignation shall take effect unless and until it has been accepted by the Board. The Board may decline to accept the resignation of a Member who is the subject of disciplinary action or professional conduct proceedings by either CA ANZ or NZICA or whose conduct, in the opinion of the Board, by virtue of matters brought to the attention of CA ANZ, may become the subject of professional conduct proceedings.

...

40. Except as provided by By-Law 41, the By-Laws in this Section 5, including the following paragraphs of this By-Law 40, do not apply to Members who are also members of NZICA in respect of disciplinary matters over which NZICA has jurisdiction and which relate to the practice of the profession of accountancy by NZICA's members in New Zealand. Nothing in this By-Law 40 excludes from the operation of this Section 5, conduct of a Member:
- (a) who was, but is no longer, a member of NZICA; or
- (b) who has subsequently also become a member of NZICA.

Except as provided by By-Law 41, no Member shall be sanctioned under both this Section 5 and NZICA Rule 13 in respect of the same conduct.

...

40(2) Disciplinary action

- 40(2.1) A Member is liable to disciplinary sanctions under these By-Laws if (whether before or after the date of adoption of this By-Law) that Member:

...

- (b) has, before any court of law in any jurisdiction in Australia or elsewhere pleaded guilty to, or been found guilty of, any criminal offence which has not been set aside on appeal;

...

- (j) suffers an Insolvency Event;

...

- (k) has committed any act, omission or default which, in the opinion of the Professional Conduct Committee, Disciplinary Tribunal or Appeals Tribunal brings, or may bring, discredit upon that Member, CA ANZ or the profession of accountancy; or

...

40(9) Interim suspension of Membership

...

- 40(9.2) For the period of a Member's suspension on an interim basis:

- (a) that Member's name shall be removed from the Registers on which it appears; and

- (b) that Member:

- (i) loses the rights and privileges of Membership;

- (ii) must surrender that Member's certificate of Membership, certificate(s) of public practice and any other documents specified in paragraph 13.4 to CA ANZ; and
- (iii) save as provided in paragraph 4.3(e), remains subject to the disciplinary processes and sanctions under these By-Laws (including this Section 5) as if still a Member.