



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 **John (Mick) Blair Lloyd**, Chartered Accountant, of Tauranga

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

Hearing: 18 December 2012

Tribunal: Mr RJO Hoare FCA (Chairman)
Mr DP Scott CA (retired)
Mr MJ Whale FCA
Ms B Gibson (Lay member)

Legal Assessor: Mr Bruce Corkill QC

Counsel: Mr Terence Sissons for the prosecution
Ms Barbarella McCarthy and Ms Kirsty Perrett for Mr Lloyd

At a hearing of the Disciplinary Tribunal held in public at which the Member was in attendance and 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, in particular:
 - a. Rule 20.6(d) [particular 2]; and/or
 - b. Appendix IX, paragraph 2.10 (and its predecessor) [particular 4]; and/or
 - c. Rule 21.2(b) (being the rule in force at the relevant time) [particular(s) 6 and/or 7]; and/or
3. Breaching the Code of Ethics, in particular:
 - a. Rule 9 – *Due Care and Diligence* [particular(s) 1 and/or 3]; and/or
 - b. Rule 11 – *Compliance with Technical and Professional Standards* [particular(s) 1 and/or 5].

Particulars

IN THAT

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

- 1) Failed to perform his audits of A for the years ended 31 January 2008 and/or 31 January 2010 with due care and diligence and/or in accordance with applicable technical and/or professional standards, in breach of Rule(s) 9 and/or 11 of the Code of Ethics; and/or
- 2) Performed the audit of A for the year ended 31 January 2010 in breach of the direction of the Practice Review Board under Rule 20.6(d) (being the rule in force at the relevant time) that he not accept any audit appointments without undertaking further audit training and appointing a mentor suitable to the Practice Review Board; and/or
- 3) He recommended and/or introduced his clients to, and assisted them to implement, a template scheme or arrangement (namely, the Employee Entitlement Fund ("EEF")) without undertaking sufficient appropriate due diligence on the EEF and/or taking reasonable care to ensure that the scheme was appropriate for each client on an individual basis, in breach of Rule 9 of the Code of Ethics; and/or
- 4) Failed to obtain appropriate professional indemnity insurance cover from on or around 9 November 2008, in breach of Appendix IX, paragraph 2.10 (and its predecessor) to the Institute's Rules; and/or
- 5) Failed to comply with the requirements of PS-2 *Client Monies* in that he:
 - a) Made payments on behalf of clients from a trust account that were in excess of the amounts standing to the credit of the particular clients in the trust account resulting in the client's balance being overdrawn, in breach of paragraph 53 of PS-2; and/or

- b) Failed to maintain his trust account records in a manner that can clearly disclose details of all transactions, the position of the firm's trust accounts and client monies therein at all times and enable the same to be conveniently and properly audited, in breach of paragraph 64 of PS-2;
in breach of Rule 11 of the Code of Ethics; and/or
- 6) In relation to the complaint from the Practice Review Board, failed to respond and/or respond within a reasonable and proper time to correspondence from the Professional Conduct Committee, despite being required to do so in accordance with Rule 21.2(b) (being the rule in force at the relevant time), specifically, the Professional Conduct Committee's letters of 4 August 2009 and/or 1 September 2009 and/or 27 October 2009 and/or 9 December 2009 and/or 14 June 2010 and/or 2 August 2010; and/or
- 7) In relation to the complaint, failed to respond and/or respond within a reasonable and proper time to correspondence from the Professional Conduct Committee, despite being required to do so in accordance with Rule 21.2(b) (being the rule in force at the relevant time), specifically, the Professional Conduct Committee's letter of 21 February 2011.

DECISION

These charges arose from Practice Reviews conducted in 2008 and 2010. The shortcomings identified in the particulars fall well short of the standards required of practitioners.

However, the Tribunal notes that:

1. The Member has ceased audit engagements
2. The Member has settled the Inland Revenue Department claims relating to the Employment Entitlement Fund on behalf of his clients at considerable expense to himself. The Member also personally invested in the scheme. Of those clients who invested in the scheme, most continue to be the Member's clients
3. The Member now has professional indemnity insurance cover of a level acceptable to the Institute
4. The Member has taken steps to improve the management of his trust account which the Institute has found to be satisfactory.

The Tribunal was provided with the results of a practice review undertaken in October 2012. The reviewer confirmed that the improvements referred to above had taken place and noted that the overall standard of his practice's compilation work was very good.

The Professional Conduct Committee submitted that the appropriate penalty in this case was that the Member be censured, receive a monetary penalty of \$5,000 and be prohibited from undertaking audit and assurance engagements for a period of 10 years. The Professional Conduct Committee also requested that the decision of the Tribunal be published in the Chartered Accountants' Journal and on the Institute's website with name and locality but that it not be more widely published. This was accepted by the Member.

In reaching its decision the Tribunal has taken into account the views of the Professional Conduct Committee and the Member's explanations and plea in mitigation. Among other matters, it has had regard to the fact that (prompted by the Practice Review Board) the Member has undertaken a considerable amount of verifiable Continuing Professional Development in the last two and a half years.

The Tribunal considers the penalty proposed by the Professional Conduct Committee is the appropriate proportionate response to the charges and adequately addresses the interests of the public, the maintenance of professional standards and the Member's rehabilitation.

PENALTY

Pursuant to Rule 21.31(c) of the Rules of the New Zealand Institute of Chartered Accountants the Disciplinary Tribunal orders that **John (Mick) Blair Lloyd** pay a monetary penalty of \$5,000.

Pursuant to Rule 21.31(k) of the Rules of the New Zealand Institute of Chartered Accountants the Disciplinary Tribunal orders that **John (Mick) Blair Lloyd** be censured.

Pursuant to Rule 21.31(n) of the Rules of the New Zealand Institute of Chartered Accountants the Disciplinary Tribunal orders that **John (Mick) Blair Lloyd** is not to undertake audit assignments or assurance engagements (including Review Engagements and Agreed Upon Procedures engagements) whether or not on a paid basis for a period of 10 years.

COSTS

The Professional Conduct Committee seeks costs of \$18,000.

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.

In this case the amount has been agreed between the Member and the Professional Conduct Committee.

Pursuant to Rule 21.33 of the Rules of the New Zealand Institute of Chartered Accountants the Disciplinary Tribunal orders, by consent, that **John (Mick) Blair Lloyd** pay to the Institute the sum of \$18,000 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 21.52 (b) of the Rules of the New Zealand Institute of Chartered Accountants the Disciplinary Tribunal orders the suppression of the identity of the Member's clients,

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* with mention of the Member's name and locality.

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 direction as to publicity and the suppression of the identity of his clients shall take effect while the Member remains entitled to appeal, or while any such appeal by the Member awaits determination by the Appeals Council.



R J O Hoare
Chairman
Disciplinary Tribunal