



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 a Member

**DETERMINATION OF THE DISCIPLINARY TRIBUNAL OF THE NEW ZEALAND
INSTITUTE OF CHARTERED ACCOUNTANTS
17 June 2013**

Hearing: 17 June 2013

Tribunal: Mr RJO Hoare FCA (Chairman)
Mr GR Leech FCA
Prof DJD Macdonald FCA
Dr R Janes (Lay member)

Legal Assessor: Mr Bruce Corkill QC

Counsel: Mr Richard Moon for the prosecution

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

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:

- (1) Has breached the Institute's Rules, in particular:
 - (a) Rule 18.2 of the Institute's Rules [particular 1]; and/or
 - (b) Clause 2.4(d) of Appendix IX of the Institute's Rules [particular 2].

Particulars

IN THAT

Being a provisional member of the New Zealand Institute of Chartered Accountants, the Member:

- (1) Offered accounting services to the public as a Provisional Chartered Accountant and without holding a Certificate of Public Practice; and/or
- (2) Directly controlled X Limited, an entity that offered accounting services to the public and which did not meet the requirements of clause 2.2 or 2.3 of Appendix IX of the Institute's Rules.

DECISION

The Member is a provisional member only and, as such, is not entitled to offer any accounting services to the public.

The Member verbally assisted members of his extended family (as far removed as his sister's husband's cousin's brother) with their tax returns without financial reward.

Notwithstanding the complete prohibition on "offering accounting services to the public" set out in Rule 18.2, the Tribunal accepts that providing advice to members of the Member's immediate family does not constitute offering accounting services to the public.

However, the Member provided this service to a number of extended family members and one family friend which does constitute offering service to the 'public' for the purposes of Rule 18.1 whether or not a fee was charged.

The Member also issued a letter in the name of X Limited, seeking to assist a friend recover their accounting records from a Chartered Accountant. That letter referred to the friend as a client -

which can be reasonably inferred as offering accounting services to the public notwithstanding that the friend did not become a client of the Member's.

The Member formed X Limited in anticipation of obtaining a Certificate of Public Practice. X Limited has never traded and has since been struck off.

The Tribunal finds particular (1) proved as it may be reasonably inferred from the Member's conduct (in providing services beyond his immediate family and issuing a letter to a Chartered Accountant that could be interpreted as seeking to supersede him) that the Member was "offering accounting services to the public".

The Tribunal finds particular (2) is proved in that X Limited was the issuer of the letter referred to under particular (1) above.

Accordingly the Tribunal finds the Member guilty of charges (1)(a) and (1)(b).

PENALTY

Pursuant to Rule 21.31(k) of the Rules of the New Zealand Institute of Chartered Accountants the Disciplinary Tribunal orders that the Member be censured.

COSTS

The Professional Conduct Committee seeks full costs of \$9,026.

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, given the relatively minor nature of the offending and the personal financial information the Member provided (pursuant to Rule 21.33 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 \$2,500 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 permanent suppression of the identity of the Member and his company and his personal financial information.

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* without 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 order 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 be 'R J O Hoare', written in a cursive style.

R J O Hoare
Chairman
Disciplinary Tribunal