



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 **Junho Lee**, Chartered Accountant, of Christchurch

**DETERMINATION OF THE DISCIPLINARY TRIBUNAL OF THE NEW ZEALAND
INSTITUTE OF CHARTERED ACCOUNTANTS
4 April 2013 as to guilt and 6 May 2013 as to penalty**

Hearing: 20 March 2013 and 6 May 2013

Tribunal: Mr RJO Hoare FCA (Chairman)
Prof DJD Macdonald FCA
Mr MJ Whale FCA
Ms B Gibson (Lay member)

Legal Assessor: Mr Bruce Corkill QC

Counsel: Mr Terence Sissons for the prosecution
Mr Mark Ryan for Mr Lee

At a hearing of the Disciplinary Tribunal held in public which the Member attended by videoconference and at which he was represented by counsel, the Member partially admitted the particulars and pleaded guilty to charge (3) and not guilty to charges (1) and (2).

The Professional Conduct Committee sought leave to amend with the Member's consent particular (a) to remove the words "and/or that you had completed five years post-qualification experience in accounting" and the words "and/or post qualification experience".

The charges and amended particulars 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) Misconduct in a professional capacity; and/or
- (2) Conduct unbecoming an accountant; and/or
- (3) Breaching the Institute's Code of Ethics, in particular the Fundamental Principles of Integrity and/or Professional Behaviour and/or Rule 2 False or Misleading Statements.

Particulars

IN THAT

In the Member's role as a Chartered Accountant in Public Practice, and in applying for a transitional auditor licence under the Auditor Regulation Act 2011, he:

- (a) Represented that he had completed 3000 hours of audit experience in a statutory declaration which he signed on or about 18 May 2012, when he knew or ought to have known that he had not completed the requisite hours; and/or
- (b) Represented that he had undertaken an issuer audit within the two year period prior to 1 May 2012 by signing Form TR 100 on or about 18 May 2012, when he knew or ought to have known that he had not undertaken an audit of an issuer.

DECISION

The advent of the new auditor regulations introduced transitional provisions for the automatic temporary registration of any Institute member upon application. Such applications are subject to various criteria, including (among other requirements) that the member had:

- completed not less than 3,000 hours of audit experience; and
- undertaken an 'issuer audit' within the two years prior to applying.

The Member sought such registration and duly completed and submitted the form "SD1" - a document in the form of a statutory declaration - to the effect that he:

- had completed a minimum of five years post-qualification experience in accounting;
- had completed a minimum of 3,000 hours of audit experience during that period; and
- was a fit and proper person to be licensed as an auditor.

The application also required submission of a form “TR100” – which was not in the form of a statutory declaration - to evidence that the Member had acted as auditor on an issuer audit within the past two years.

Particular (b)

The charges laid in particular (b) were that the Member had not undertaken an issuer audit, and knew or ought to have known that he had not.

The Member accepted that he had not undertaken an issuer audit - and that he ought to have known that he had not - but denied that he knew the application to be incorrect at the time he made the application.

The Member’s audit activity in the two years preceding the application comprised the audit of six small organisations which he listed on your form “TR100” application. Before doing so, he phoned the Institute and was – he said – led to believe that, if he listed his audits on the form, his application would be reviewed. And then, if he was ineligible, his application would be declined; or, if further evidence was required, he would be asked for that information.

The Member claims to have been unaware that the granting of a temporary registration was automatic upon application and that no “checking” of the information would be undertaken.

The Tribunal notes that the Member’s registration has since been cancelled.

The Member’s counsel advised that English is his second language and submitted that, although he has lived in New Zealand for many years and understands and speaks good English, on occasions he experiences some conceptual difficulties. The Tribunal notes that despite these difficulties the Member gained his academic and professional qualifications in New Zealand and holds a Certificate of Public Practice.

The Tribunal accepts that in this case the Member may have misunderstood or been confused by the advice he received from the Institute; and accordingly finds that whilst particular (b) constitutes a breach of the Institute’s Code of Ethics it does not amount to either ‘conduct unbecoming an accountant’ or ‘misconduct in a professional capacity’.

Particular (a)

The charges laid in particular (a) were that the Member had not completed the required 3,000 hours, and knew or ought to have known that he had not.

The Member accepted that he had not completed the required 3,000 hours, and that he ought to have known that he had not, but denied that he knew the application to be incorrect at the time he made the application.

Having left his employment some two years earlier following which there were issues about the transfer of clients, he was unable to obtain the relevant time records. The Member’s calculation of the ‘required hours’, as he outlined in his response to the Institute’s complaint, was that his audit work whilst in employment constituted 35% of his time. Over the approximately three years of his employment this amounted to 2,159 hours, plus a further 700 hours which he said he worked outside normal hours without recording that time into his employer’s time records. The

balance of the required 3,000 hours were said to be made up by audit hours in the last two years in the Member's own practice. The Member attributed the total hours to seven specific clients – five of which related to his employment with his previous employer.

The Tribunal heard evidence from the Member's former employer, who produced the firm's time records relating to those clients for all years that he was employed by that firm. This evidence showed that during the period of the Member's employment his audit-related hours totalled 44.25 hours on five small audit clients. And that, even if some audit work had been wrongly classified as non-audit, and some allowance made for audit work done for other partners, his total audit time "would be unlikely to have exceeded 50-100 hours".

The Member asserted that, being unable to obtain access to time records (despite having made requests of his former employer for information held about him and/or records relating to clients he worked on), he had no option but to resort to his best recollections and use the estimates outlined above.

As to the hours attributable to the recent past, the Member recorded a total of 450 hours on three audits he carried out in his own practice. The Tribunal accepts that the Member may have spent 150 hours on each client but does not accept that all of the time was spent auditing.

The Member further maintained that, at the time, he genuinely believed his estimates were justifiable - although he now accepts both that they were wrong and that he ought to have known that they were wrong.

The Tribunal finds the Member guilty of both 'conduct unbecoming an accountant' and 'misconduct in a professional capacity', in that:

- his statement claiming 3,000 hours of audit experience was incorrect and, given the extreme degree of incorrectness, he must have known that it was incorrect; and
- he knowingly signed a statutory declaration which was significantly and substantially in error.

PENALTY

Misconduct in a professional capacity is one of the most serious charges a member can face. In assessing penalty, the Tribunal has had regard to the eight factors the High Court in *Roberts v Professional Conduct Committee* [Health Practitioners] identified as relevant when determining an appropriate penalty and has taken into account, among other matters, the following:

- There is substantial public interest in the integrity of the transitional auditor licencing regime.
- An aggravating factor is that, when asked by the Institute for the details of the 3,000 hours of audit experience the Member declared in a statutory declaration, he provided the Institute with a spreadsheet which the Tribunal has found was significantly and substantially in error and he must have known it was so.
- We accept that the Member genuinely believed at the time that his application would not result in automatic registration but would be qualitatively reviewed as part of the registration procedure.
- The Member is a young man and this is the first occasion on which he has been subject to the Institute's disciplinary process.

- The Member produced a number of references from Korean community organisations (including clients), other clients and his professional mentor detailing the professional quality of his work, his good character and the pro bono accounting and other work he has carried out in the community.
- No financial loss was caused to any person as a result of the Member's actions.

We have also considered earlier Tribunal decisions relating to penalty referred to us by counsel.

The Tribunal considers that the penalty we have decided to impose will protect the public and deter others, and is a proportionate punishment. By a fine margin, the Tribunal considers that the prospect of the Member's rehabilitation is preferable to removing his name from the register.

Pursuant to the Rules of the New Zealand Institute of Chartered Accountants, the Disciplinary Tribunal orders that:

- **Junho Lee** pay a monetary penalty of \$5,000 (Rule 21.31 (c));
- **Junho Lee's** practice (including his audit practice) be reviewed by the Institute who shall report their findings to the Professional Conduct Committee (Rule 21.31 (f)); and
- **Junho Lee** be censured (Rule 21.31 (k)).

COSTS

The Professional Conduct Committee seeks full costs of \$29,299.

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 are no 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 **Junho Lee** pay to the Institute the sum of \$29,299 in respect of the costs and expenses of the hearing before the Disciplinary Tribunal, the investigation by the Professional Conduct Committee and the cost of publicity. No GST is payable.

PUBLICATION

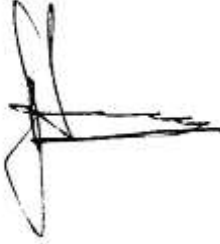
Given the significance of the auditor licencing regime this decision is to be published in the *New Zealand Herald* and the *Christchurch Press* as well as the *Chartered Accountants' Journal* and on the Institute's website.

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, in the *Chartered Accountants' Journal*, the *New Zealand Herald* and the *Christchurch Press* 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 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