NEW ZEALAND INSTITUTE OF CHARTERED ACCOUNTANTS

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 **MARK JOHN PEVATS** of Whangarei, Chartered Accountant

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FINAL DETERMINATION OF THE DISCIPLINARY TRIBUNAL OF THE NEW ZEALAND INSTITUTE OF CHARTERED ACCOUNTANTS

28 June 2021

Hearing:	16 March 2021
Location:	The offices of Chartered Accountants Australia and New Zealand, 12-16 Nicholls Lane, Parnell, Auckland
Tribunal:	Matthew Casey QC (Chair) Andree Atkinson FCA John Murray FCA Allan Newman FCA Bethia Gibson (Lay Member)
Counsel:	Richard Moon for PCC Andrea Challis for the Member
Tribunal Secretariat:	Janene Hick Email: janene.hick.nzica@charteredaccountantsnz.com

At a hearing of the Disciplinary Tribunal held in public at which the Member was in attendance and represented by counsel the Member admitted some of the particulars and denied the others; and pleaded guilty to breaching section 220 of the Code of Ethics and not guilty to breaching other provisions of the Code of Ethics. This determination deals with the issue of liability only and there will be a later determination on penalty, costs and publication.

The charges and 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 13.50,[1] the Member is guilty of:

Breaching the Rules and/or Code of Ethics of the New Zealand Institute of Chartered Accountants.

PARTICULARS

IN THAT as a Chartered Accountant in public practice and in relation to a complaint by Mr X, he:

Particular 1

Failed to have and/or implement an effective conflict identification process within his firm when he and two of his then fellow directors of Yovich Hayward Pevats Johnston Limited (**YHPJL**) were each involved in advising potential purchasers of the property at 16 Rathbone Street, Whangarei (the **Property**) in or around June and July 2016 in breach of the Fundamental Principle of Objectivity and/or Section 220 of the Code of Ethics (2014)[2] (the **Code**) and/or PS-1 Quality Control;[3] and/or

Particular 2

Failed to identify actual and/or potential conflicts of interest and/or threats to his objectivity that arose by virtue of his differing roles in relation to the purchase of the Property, namely:

(a) His role as a director of YHPJL which was engaged by three separate bidders on the Property;

(b) His role as a director of ABC Limited, in the making of an (unsuccessful) offer to purchase the Property;

(c) His role as a director and shareholder of YOYO Nominees Limited, which purchased the Property in its role as a bare trustee for Rathbone Business Centre Limited;

in breach of the Fundamental Principles of Objectivity and/or Professional Behaviour and/or Sections 120 and/or 150 and/or 220 and/or 280 of the Code; and/or

1 Formerly Rule 13.39 of NZICA's Rules effective 15 December 2014 to 29 May 2019.
2 Being the Code of Ethics in force at the relevant time.
3 As amended July 2013.

Particular 3

Failed to appropriately manage actual and/or potential conflicts of interest and/or threats to his objectivity that arose by virtue of his differing roles in relation to the purchase of the Property including:

(a) evaluating the nature of the conflict of interest and/or threat to his objectivity; and/or

(b) disclosing the nature of the conflict and the proposed safeguards, if any, to ABC Limited; and/or

(c) obtaining the informed consent of ABC Limited to be involved in its offer on the Property; and/or

(d) applying safeguards to eliminate the threats to his compliance with the Code of Ethics or reduce them to an acceptable level; and/or

(e) documenting his disclosure of the circumstances of the conflict, the safeguards applied, and the consent obtained;

in breach of the Fundamental Principles of Objectivity and/or Professional Behaviour and/or Sections 120 and/or 150 and/or 220 of the Code.

BACKGROUND

1. The Member was at the relevant time a director of the accounting practice Yovich Hayward Pevats Johnson Ltd (**YHPJL**). Two other former directors of the practice, Walter Yovich and Paul Yovich, also face charges over the same events. The charges against all three were heard together, but the Tribunal has considered the liability of each of them separately.

2. The charges arise out of events surrounding the sale of a property at 16 Rathbone Street, Whangarei (**Property**) in July 2016. The complainant, Mr X, was a real estate salesman for XYZ in Whangarei, which was marketing the Property. Mr X had introduced Mr Z and his company ABC Ltd to the Property in 2015. The Member was Mr Z's (and ABC Ltd's) accountant and was also a director of ABC Ltd.

3. There were at least two meetings at which Mr Z and the Member discussed the purchase of the Property, in December 2015 and early June 2016. ABC Ltd submitted an offer on 8 June 2016 which was not accepted. Mr Z was still interested in acquiring the Property and the Member and he attended a meeting with the vendor on 29 June 2016. ABC Ltd submitted an increased offer on 1 July 2016.

4. Mr X had been approached by Walter Yovich in August 2015 and provided information to him about the Property. Nothing came of that introduction and in June the following year another agency introduced Paul Yovich to the Property. This resulted in the sale of the Property on 2 July 2016 to Rathbone Business Centre Ltd (**Rathbone**). Rathbone's sole shareholder was YoYo Nominees Ltd (**YoYo**), a trustee company set up by YHPJL to act as a bare trustee for its clients. In this case the Property was being purchased on behalf of the three family trusts of Paul Yovich and his two sisters. Paul Yovich was a trustee and principal beneficiary

of one of the trusts and Walter Yovich was a trustee of another. He also effectively funded the purchase through an arrangement with his bank.

5. Walter Yovich was also a trustee of the DEF Trust to which he had been appointed by his client Mr W. Mr W wished to put in an offer for the Property in the name of his trust and met with Walter Yovich on 1 July 2016 for this purpose. The Member was unaware that the Yovich family interests were interested in buying the Property or that Walter Yovich had signed an offer on behalf of the DEF Trust.

6. On leaving the meeting of 29 June 2016, the Member saw Mr W waiting to go in, so became aware that he might also be interested in buying the Property. The Member knew that Mr W was a client of Walter Yovich, but was not aware that Mr Yovich was involved, and made no inquiry.

7. The ABC Ltd offer was rejected, as was that by the DEF Trust. The sale to Rathbone was at a price considerably higher than either of them. Neither Mr Z nor Mr W would have been prepared to increase their offers to that extent.

8. After Mr X learned of the sale he made inquiries and ascertained that the purchaser was Rathbone, that Paul Yovich was its sole director and YoYo its sole shareholder, that the directors of YoYo were the Member and Walter and Paul Yovich, and that all the directors of YHPJL were shareholders of YoYo.

9. Mr X believed that as he had introduced Walter Yovich to the Property and it had been sold to interests closely associated with him, XYZ (and he) were entitled to a commission. He also raised concerns about the apparent conflict of interest between the firm and its the two clients, Mr Z and Mr W, whom he had also introduced to the Property.

10. Mr X initially contacted the firm but when his concerns were not resolved he complained to the Institute. The Member's co-accused face charges arising out of events that occurred after the sale and Mr X's complaint, but the Member does not.

DECISION

Particulars 1 – 3: Conflicts of Interest

11. In the investigation of the complaint, it became apparent that YHPJL did not have in place, or implement, effective conflict identification and management processes. The evidence of the three members charged, and of another director Mr K, was that they each operated within their own silo and shared no information about their clients, either as to who they were or what work was being done for them. The exception was where one director might occasionally seek a second opinion, such as in relation to a tax planning matter. They regarded any issue of conflict of interest as confined to their own clients, not to clients of the firm. Although the firm's database would have shown the names of the firm's clients, there was no system (or practice) of conflict checking. Nor did they follow any quality control system for managing conflicts once they might be identified, even within a director's own 'silo'.

12. They claimed that this was to protect the confidentiality of their clients' affairs, as they would not want anyone else knowing about their financial or other dealings. The approach was that by each director keeping his or her clients and their affairs to him (or her) self, there would

be no opportunity for conflict as regards the clients of any other director. It was claimed that this is a common practice by accounting firms in provincial areas such as Whangarei. The Tribunal does not accept this claim, and even if it is correct, it is not acceptable practice.

13. The Member has admitted **Particular 1** to the extent that he failed to implement the conflict identification process within the firm but denies that there was no effective process. He admits that this was a breach of s 220 of the Code but denies breaching the Fundamental Principle of Objectivity and PS-1 Quality Control.

14. Since 2010 PS-1 has required an accounting firm to establish and maintain a system of quality control to give reasonable assurance that the firm and its personnel comply with professional standards and other requirements. It also requires a firm to implement quality control procedures.

15. YHPJL had in place a generic quality control manual (**QCM**) from July 2010. It stated that all directors (and others) must know where to locate a copy of the manual, were responsible for keeping themselves up to date with its contents and to follow its procedures to ensure maintenance of professional standards. A practice review in 2012 noted that the directors were unaware of the QCM's existence. A later practice review in 2020 noted that (with some exceptions including as to conflicts of interest) the firm's quality control documentation and processes were generally well maintained and followed.

16. The evidence shows that this was not the case in 2016 as no steps were taken either to identify or manage conflicts of interest or threats objectivity. Whether or not the QCM was adequate in terms of PS-1, the directors adopted a completely ad hoc approach to the identification and management of conflicts, and then only as between clients within their own silo. They did not have any system for identifying whether any other director, or that director's client, might be acting on or have an interest in a matter that might give rise to a conflict of interest or threat to objectivity. Although the firm had a QCM to assist them in complying with PS-1, it was not effective as the relevant aspects were not incorporated into the day-to-day practice of the firm and were not followed. Accountancy firms should have in place and follow a proper system for identifying potential conflicts and a firm of any reasonable size should as a matter of good practice maintain a register for identifying possible conflicts of interest.

17. Particular 1 alleges that the Member and others were *"involved in advising"* potential purchasers. The Member has admitted that he (and the others) were *"involved with offers for the Property"*. The Member's involvement and that of Walter Yovich was in their professional capacity and Paul Yovich's was in a personal, family capacity. Whether or not they 'advised' potential purchasers is not material to the need for there to be effective conflict identification and management processes.

18. The Member submits that while there may have been a breach of s 220, it does not necessarily, and did not in this case, amount to a breach of the Fundamental Principle of Objectivity in the Code. The PCC submits that any breach of s 220 must also breach the Fundamental Principle of Objectivity.

19. There may be circumstances where a breach of a particular section of the Code of Ethics would not also amount to a breach of the Fundamental Principle to which that section relates, such as where the breach was trivial or of a purely technical nature. The breaches in this case were not of that type and go directly to the Fundamental Principles which the particular sections of the Code relate to.

20. The Tribunal finds Particular 1 proved and that it there has been a breach of the Fundamental Principle of Objectivity as well as s 220 of the Code, and of PS-1.

21. **Particular 2** concerns the failure to identify actual or potential conflicts of interest and threats to objectivity by virtue of the Member's various roles in relation to the purchase of the Property. The Member has admitted sub-particulars (a) and (b) but denies (c). He admits that he breached s 220 in respect of the admitted sub-particulars, but denies breaching ss 120, 150 and 280 of the Code, and denies breaching the Fundamental Principles of Objectivity and Professional Behaviour.

22. The actual or potential conflicts of interest in this Particular relate to the involvement of YHPJL on behalf of the various parties interested in purchasing the Property. The Member was both the accountant for, and a director of, ABC Ltd. The Member admits that he failed to identify potential conflicts of interest or threats to objectivity by reason of those differing interests but denies that his role as a director and shareholder of YoYo gave rise to a conflict of interest or threat to objectivity.

23. YoYo was a vehicle used by the directors of YHPJL to undertake transactions on behalf of their clients, seemingly at times without the knowledge or involvement of the other directors. The purpose of using a nominee company was to maintain confidentiality of the ultimate purchaser or beneficiary. While this might now be regarded as contrary to anti-money laundering legislation, that was not the case in 2016.

24. The Property was purchased by Rathbone on behalf of YoYo as a bare trustee of the three trusts connected to the Yovich family interests. As a director and shareholder of YoYo, the Member was (albeit unknowingly) involved as an interested party in the Rathbone transaction. This was a matter in which that involvement should have been identified and managed because of its potential to lead to a conflict of interest and/or threat to objectivity.

25. The Tribunal has found in its determination relating to Walter Yovich that he (and therefore the firm) was engaged in a professional capacity on behalf of the DEF Trust.

26. The Tribunal finds Particular 2 proved, noting however that in respect of Rathbone as purchaser the firm (and the Member) were involved, rather than being engaged by or acting for a client. The Member denied breaching ss 120, 150 and 280, and the Fundamental Principles of Objectivity and Professional Behaviour.

27. The Fundamental Principle of Objectivity requires a member not to allow bias, conflict of interest or undue influence of others to override professional or business judgements. Section 120: Objectivity restates this principle and notes that a member may be exposed to situations that may impair objectivity. A member must not perform a professional service if a circumstance or relationship biases or unduly influences professional judgement with respect to that service.

28. Section 280 extends this to requiring members to determine whether there are threats resulting from interests in, or relationships with, clients. A threat to objectivity may arise from a familial or close personal or business relationship. The Member submits that his professional or business judgement was not actually affected, referring to the facts that the due diligence was undertaken by Mr Z and that he was never likely to make an offer approaching the price at which the Property was sold; that most of his involvement was

before either Paul Yovich became interested in buying the Property or Walter Yovich was consulted by Mr W; and that he was unaware of the involvement of either of the Yovichs.

29. The Member failed to assess the threat to compliance with the Fundamental Principle of Objectivity, even though in the circumstances his objectivity may not in fact have been compromised. There were threats in relation to the other clients of the firm. The absence of a proper and effective means of identifying those threats, meaning the Member was unaware of them, does not excuse compliance with the Code. No matter how a threat to objectivity arises (here primarily because of a lack of judgement as to the potential conflict between his client's interests and those of the firm's other client and the Yovich family interests, and the lack of adherence to policy and procedural systems), the need for objectivity at all times is paramount to the exercise of members' duties of care and professionalism, and observance of their ethical obligations under the Code of Ethics.

30. The Fundamental Principle of Professional Behaviour requires a member (inter alia) to avoid any action that discredits the profession. Section 150 extends this to include actions that a reasonable and informed third-party, weighing all the specific facts and circumstances available to the member, would be likely to conclude adversely affects the good reputation of the profession. The objective facts and circumstances in this case were that the Member had been actively engaged on behalf of ABC Ltd, of which he was both its accountant and a director, and signed an offer for the Property on its behalf. This was at a time when his fellow directors at YHPJL were also involved in making offers for the Property, both on behalf of a client and personally. The Member's lack of knowledge of that circumstance is not an answer – especially when that lack of knowledge was due to the firm not having in place any process for identifying and managing such potential conflicts.

31. These circumstances and events would be regarded by a reasonable outsider as adversely affecting the good reputation of the profession. The Tribunal therefore finds that s 150 of the Code and the Fundamental Principle of Professional Behaviour were breached.

32. Counsel for the PCC directed our attention to clause NZ1.6 of the Code which requires members to be guided not merely by the words, but also by the spirit of the Code. Particular behaviour or conduct that does not receive a specific mention within the Code can still amount to a breach.

33. As well as the literal wording of the particular sections of the Code, there is also the question of perception. Questions of conflict of interest should be looked at holistically, as circumstances that can give rise to a conflict of interest should be identified whether or not a conflict actually occurs, or a member's professional or business judgement is actually impaired. The combination of matters in Particular 2, and the lack of any identification or management of them, would be regarded as reflecting adversely on the profession.

34. The Tribunal therefore finds the Member's conduct in Particular 2 breached sections 120, 150 and 280 of the Code, as well as s 220 as admitted, and breached the Fundamental Principles of Objectivity and Professional Behaviour.

35. **Particular 3** concerns the failure to manage the actual or potential conflicts of interest that arose by virtue of the Member's various roles. He has admitted failing to appropriately manage the conflicts as a result of not initially identifying them, and that this was in breach of s 220 of the Code.

36. Sub-particular 3(a) refers to the Member's failure to evaluate the nature of the conflict of interest and/or the threat to his objectivity. His failure to identify both the potential conflict and the threat to objectivity that existed once his fellow YHPJL directors became involved, meant he did not evaluate them. This sub-particular has been made out.

37. Sub-particular 3(b) refers to his failure to disclose the nature of the conflict and any proposed safeguards to ABC Ltd. While the Member was unaware of the involvement of his fellow YHPJL directors, that was due to a failure to have in place an effective means of conflict identification.

38. Sub-particular 3(c) refers to the failure to obtain informed consent from ABC Ltd. Again, the Member should have been aware of the potential conflict and should therefore have sought ABC Ltd's informed consent.

39. The remaining sub-particulars are more general, alleging a failure to apply safeguards to eliminate or reduce threats to non-compliance with the Code and a failure to document the conflict, any safeguards applied, and any consent obtained. Because none of these things were done, the sub- particulars are made out.

40. The question is whether they amounted to breaches of the Fundamental Principles of Objectivity and/or Professional Behaviour; and of ss 120 and 150 of the Code.

41. The Tribunal's reasoning and findings in relation to Particular 2 as above also apply to the facts established in Particular 3. The Tribunal finds that Particular 3 is made out and that the Member's conduct breached ss 120 and 150 of the Code, as well as the admitted breach of s 220, and breached the Fundamental Principles of Objectivity and Professional Behaviour.

DETERMINATION

42. The Tribunal finds the particulars established to the extent set out above and finds **MARK JOHN PEVATS** guilty of the charge of breaching the Code of Ethics of the New Zealand Institute of Chartered Accountants.

PENALTY, COSTS AND PUBLICATION

43. Following its determination on liability as above, the Tribunal received submissions from the Member and the PCC on penalty, costs and publication. The PCC submitted that the appropriate penalty should be a censure. The Member accepts that a censure is appropriate but seeks that any publication of the decision does not include his name and location. He does not oppose the award of costs.

44. The question of publication is somewhat complicated by the fact that the Rules of the Institute were revised and amended with effect from 30 May 2019. So far as is relevant to the Member, the rule as to publication (now in rule 13.55) introduced a threshold of 'exceptional circumstances' for suppression of the Member's name in any publication of the decision.

45. It is a general principle that a person should not be liable for any greater penalty than was in force at the time of the offending. Although publication is not strictly speaking a penalty, it is more a matter of substance than of procedure and can be regarded in this context as in the

nature of a penalty. The Tribunal therefore approaches the question of publication as if the former rule applies, which did not specify 'exceptional circumstances'.

PENALTY

46. Rule 13.51 sets out the penalties and other orders that may be imposed following a guilty finding. They include striking off, suspension, imposing a fine and/or censure and various orders affecting the Member's practice. The PCC seeks an order for censure, which is not opposed by the Member. It says this is consistent with other decisions of the Tribunal, in many cases accompanied by a fine and/or an order affecting the Member's practice.

47. The Tribunal has found that the failure to have in place and implement an effective conflict identification and management process was made more serious by the failures that occurred in relation to the events surrounding the purchase of the Property. The Tribunal accepts however that the Member was not motivated by personal gain and that Mr Z would not have increased his company's offer for the Property to match the price paid by Rathbone.

48. Additional factors put forward by the Member include co-operation with the disciplinary process, insight and learnings, the lack of personal gain, previous unblemished record and his intention to retire from practice in the near future.

49. The Tribunal has considered the mitigating circumstances put forward by the Member. These include the insight he has shown and his involvement in updating and enhancing the firm's QCM and compliance. The Member has an unblemished record and intends shortly to retire from public practice. He also has been extensively involved in the local community.

50. In balancing these factors and applying the principles in the *Roberts* case the Tribunal considers the appropriate penalty to be one of censure.

51. Having regard to the factors set out by the High Court in *Roberts v Nursing Council* [2012] NZHC 3354, the Tribunal agrees that a censure is the most appropriate.

The Disciplinary Tribunal orders that pursuant to Rule 13.51(m) of the Rules of the New Zealand Institute of Chartered Accountants orders that MARK JOHN PEVATS be censured.

COSTS

52. The PCC seeks full costs of $68,908.41, split equally among the three Members concerned. Counsel for the Members does not contest the overall amount or the suggested allocation.

Pursuant to Rule 13.53 of the Rules of the New Zealand Institute of Chartered Accountants the Disciplinary Tribunal orders that MARK JOHN PEVATS pay to the Institute the sum of $22,969.47 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

53. The PCC seeks a direction that notice of the decision including the Member's name, location, the particulars of the charges and a summary of the reasons for the decision and the penalty

imposed, be published in *Acuity* and on the CAANZ website. The PCC has no objection to the names of all third parties including the firm's clients and the family trusts being suppressed.

54. The Member seeks suppression of his name and location in any report of the decision.

55. Rule 13.44(a) of the former Rules provided that unless the Tribunal directs otherwise, decisions are to be published with mention of the Member's name and location. Former Rule 13.62(b) provided that if the Tribunal considers that it is 'appropriate' to do so, having regard to the interests of any person or to the public interest, it may make an order prohibiting the publication of the name of the person to whom any hearing relates, or any other person.

56. Both the PCC and counsel for the Member agree that, as a starting point, there is a presumption in favour of full publication in order to maintain public interest, open justice and the maintenance of confidence in the disciplinary process.

57. The leading authority on publication in relation to Tribunal decisions is *J v The Institute of Chartered Accountants Appeals Council* [2020] NZHC 1566, which was decided under the former rules. The Court held that:

    (a) Rule 13.44(a) establishes a strong presumption in favour of publication, which may be displaced under rule 13.62, although the threshold is high.

    (b) While there is no onus or burden on the person seeking suppression, there needs to be supporting evidence to depart from the presumption.

    (c) The standard in the disciplinary context is high, and closer to the criminal than civil jurisdiction due to the public interest factors of transparency, accountability and public protection.

    (d) Publication decisions in disciplinary cases require the weighing of the public interest with the particular interests of any person in the context of the facts of the particular case.

    (e) There is not a single universally applicable threshold. The degree of impact on the interests of any person required to make non-publication appropriate will lessen as does the degree of public interest militating in favour of publication (for instance, where a practitioner is unlikely to repeat an isolated error).

    (f) However, because of the public interest factors underpinning publication of professional disciplinary decisions, that standard will generally be high.

    (g) The use of the word 'appropriate' in rule 13.62 does not add content to the test usually applied in the civil jurisdiction or set a threshold lower than that applying in the civil jurisdiction. The rule is broad and sets out neither a specific threshold nor mandatory specific considerations. The question will be, having regard to the public interest and the interests of the affected parties, what is appropriate in the particular circumstances.

58. There are a number of other cases supporting the view that the Member's name and location should be published unless there are very good reasons not to.

59. In *Daniels v Wellington District Law Society* [2011] NZLR 850 the Full Court held that:

> Harm to reputation is an inevitable consequence of publication if a professional is the subject of an adverse disciplinary finding but of itself cannot provide sufficient ground for there to be suppression of his name … It is more than a question of publication being required to protect the public. Rather it is to advance the public interest, namely to protect the profession's most valuable asset, being its collective reputation.

60. It also adopted a quote from *T v Director of Proceedings* (2006) that:

> Following an adverse disciplinary finding … The probability must be that public interest considerations will require that the name of the practitioner be published in a preponderance of cases.

61. In *Collier v Director of Proceedings* [2001] NZAAR 91 the High Court held that the public is entitled to know if a professional has engaged in practice deemed by others to be below standard and what, if any, restrictions have been put in place.

62. In *Hart v The Standards Committee (No. 1) of the NZLS* [2012] NZSC 4, the Supreme Court held that it is necessary to strike a balance between the principle of open justice and the interests of the party seeking suppression.

63. In *Erceg v Erceg* [2017] 1 NZLR 310 the Supreme Court held that a party seeking a suppression order must show specific adverse consequences that are sufficient to justify an exception to the fundamental rule, and that the standard is a high one.

64. Counsel for the Member referred to a number of previous decisions of the Tribunal and of the Appeals Council where suppression orders have been made. In *Name Not Published* (29 June 2012), the member was found guilty of conduct unbecoming an accountant and was struck off. The Appeals Council granted name suppression taking into account a combination of factors including the member's previous unblemished record, the fact he was 70 years of age and would not be practising as a Chartered Accountant again. There were other factors, which in combination the Appeals Council held to constitute 'special circumstances'. They included that all of the clients, community organisations and companies with which he was involved had been or would be directly informed. He was also suffering a serious health condition. The Appeals Council emphasised that each case must be considered on its own facts and circumstances will differ. There was no discussion in the decision of the caselaw on name suppression in the professional disciplinary context, as to which there is now a substantial body as discussed above.

65. In its recent decision of *Britton* (24 December 2020) the Tribunal noted that there needs to be special circumstances or a highly prejudicial effect (something more than the normal consequences) of the publication on a member or their family if their private interests are to displace the important public interest considerations. While *Britton* was a decision under the new rules (now requiring 'exceptional circumstances' to displace the presumption) the Tribunal's observations were based on decisions under the previous rules including earlier Appeals Council decisions and the *J* case.

66. There may be circumstances in which the adverse publicity would impact on the Member so disproportionately to the level of offending as to displace the presumption in favour of publication. They would need to constitute special (albeit not 'extraordinary') circumstances or 'specific adverse consequences'.

67. The Member correctly points out that the more serious charge of conduct unbecoming was withdrawn and the offence of which he was found guilty was at the lower end of seriousness.

While this is so, and the particular event was a 'one-off', the evidence showed a systemic failure to have in place an effective system for identifying and managing conflicts of interest. The Member points out that there was no improper motive and that he had no personal or financial interest in the outcome. He has shown insight and has been personally responsible for enhancing the firm's conflicts policy since the complaint. The Tribunal also notes that he has co-operated in the investigation of the complaint.

68. The Member also has considerable community involvement and an unblemished record in over 40 years of practice. He intends to retire in the next year or so.

69. While these are all commendable features, they are not so unusual as to amount specific adverse consequences that would justify a departure from the strong public interest presumption in favour of publication. While the Tribunal accepts that there will be adverse consequences, they are not significantly greater than those that inevitably follow in a professional disciplinary context. Harm to reputation is such a consequence of an adverse disciplinary finding and is not, of itself, a reason for suppressing the member's name.

70. A further reason in this case is that the two former co-directors of the Member have been found guilty of more serious offending and do not qualify for name suppression. It will become a matter of public knowledge, as will the name of the Member's former firm, in which the Member's name features. There is an element of futility in directing suppression of the Member's name in those circumstances. On balance therefore, the Tribunal has concluded that the Member's name should not be suppressed.

71. In order not to prejudice the Member's right to appeal this decision (particularly in relation to publication) the Tribunal will order that any publication of this decision prior to the expiry of the appeal period is not to include the Member's name and location.

Pursuant to rule 13.44 of the Rules of the New Zealand Institute of Chartered Accountants effective from 26 June 2017, and rule 13.55 of the Rules effective from 30 May 2019, notice of this decision of the Disciplinary Tribunal shall be published on the website and in the official publication *Acuity* with mention of the Member's name and location.

Pursuant to rule 13.59(b) of the Rules of the New Zealand Institute of Chartered Accountants the Tribunal orders that prior to the expiry of the appeal period provided for in rule 13.63 there shall be no publication of the Member's name and location, or the name of his firm.

Pursuant to rule 13.78(b)(iii) of the Rules of the New Zealand Institute of Chartered Accountants the Tribunal orders that the names of the third parties including the complainant, witnesses and clients of Yovich Howard Pevats Johnston Ltd (but not the firm itself), and any information or documents which might identify them, be suppressed.

APPEAL

72. Pursuant to rule 13.63 of the Rules, the Member or the PCC may, not later than 21 days after the notification to them of this decision, appeal in writing to the Appeals Council of the Institute against the decision.

73. Pursuant to rule 13.59 the Tribunal's decision as to penalty shall not take effect while the Member remains entitled to appeal, or while any such appeal awaits determination by the Appeals Council.

74. If an appeal is lodged then any further name suppression for the Member will be a matter for the Appeals Council under rule 13.78.

Matthew Casey QC
Chair, Disciplinary Tribunal