

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 **MEGAN NYREE FINDLAY** of Auckland, Former Chartered Accountant

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

9 July 2021

Hearing: 30 June 2021

Location: The offices of Chartered Accountants Australia and New Zealand, 12-16 Nicholls Lane, Parnell, Auckland

Tribunal: Matthew Casey QC (Chair and lay member)
John Naylor FCA
Kerry Price CA

Counsel: Richard Moon for the prosecution
No appearance for the Former Member

Tribunal Secretariat: Janene Hick
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The hearing of the Disciplinary Tribunal into the charge against the Former Member was held in public at Auckland on 30 June 2021. The Former Member was not in attendance and was not represented by counsel.

The charge and particular were as follows:

CHARGE

THAT in terms of the New Zealand Institute of Chartered Accountants Act 1996 and the Rules made thereunder, and in particular Rules 13.50, the Former Member:

1. Had been convicted of an offence punishable by imprisonment or a fine, and the conviction reflects on her fitness to practice accountancy and/or tends to bring the profession into disrepute.

PARTICULAR

THAT on 19 August 2020 in the District Court at Hamilton the Former Member was convicted of the following offences for conduct which occurred during her membership of NZICA:

1. Twenty-eight (28) charges pursuant to s 228(1)(b) of the Crimes Act 1961 of dishonestly and without claim of right, using a document with intent to obtain a pecuniary advantage between 30 September 2012 and 31 July 2018.

DECISION

1. The Former Member sent a letter dated 19 May 2021 to the Institute, in which she acknowledged receipt of the charge and admitted the convictions. She advised that she was still serving her sentence of imprisonment and would not be attending or be represented at the hearing, nor presenting any evidence. In her letter she took full responsibility for the offending and expressed her remorse.
2. Evidence was presented at the hearing by the Professional Conduct Committee (**PCC**), to establish the elements of the charge.
3. Notwithstanding the guilty plea the Tribunal must be satisfied that the charge is made out, to the required standard. For the following reasons, it is so satisfied.
4. The evidence shows that the Former Member was convicted in the District Court at Hamilton on 19 August 2020, on 28 charges of dishonestly using documents for pecuniary advantage. She was sentenced to a 3-year term of imprisonment.
5. The Court's sentencing decision and the record of conviction show that the offences took place over a 7-year period from 2012 to 2019. They involved falsifying GST and income tax returns for the family company of which she was its accountant. The amounts involved totalled \$740,000.

6. Throughout the period of her offending the Former Member was a Chartered Accountant and a member of the Institute. Her membership lapsed in February 2020. There was considerable publicity about her conviction, in which she was described as a chartered accountant.
7. In terms of rule 13.50(a) the Tribunal finds that the nature and seriousness of her conviction reflect on the Former Member's fitness to practice accountancy, and also tend to bring the profession into disrepute.
8. Accordingly, the Tribunal finds the particular proved and the Former Member guilty of the charge.

PENALTY

9. The PCC sought an order in terms of rule 13.87(a), that if the Former Member had still been a member, her name would have been removed from the register.
10. The factors identified by the High Court in *Roberts v Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354 apply to the determination of penalty by professional disciplinary bodies including the Tribunal. The Tribunal has considered these factors in coming to its decision on penalty.
11. The PCC referred to previous decisions of the Tribunal having similar features to the present case, being *Blacklaws* (22 October 2014), *Branton* (5 August 20104), *O'Leary* (15 April 2014) and *Christie* (28 February 2020). The Tribunal is assisted by these decisions in promoting consistency, as one of the *Roberts* factors. All four cases related to former members convicted of charges whilst members of NZICA and specifically in relation to dishonesty.
12. Criminal dishonesty on such a scale and of so serious a nature as to result in a 3-year term of imprisonment is incompatible with the status of a Chartered Accountant and with membership of the Institute. The Tribunal considers that the appropriate and proportionate response is a finding that if the Former Member had still been a member, she would have been struck off.

Pursuant to Rule 13.87(a) of the Rules of the New Zealand Institute of Chartered Accountants the Disciplinary Tribunal finds that if MEGAN NYREE FINDLAY had still been a member of the Institute, she would have been removed from the Institute's register.

COSTS

13. The PCC seeks full costs of \$3,913.27.
14. The Tribunal's practice is that in the absence of good reasons otherwise, 100% of costs should be paid by a member (or in this case a former member) found guilty of disciplinary charges. There appear to be no reasons in this case to depart from that.

Pursuant to Rule 13.53 of the Rules of the New Zealand Institute of Chartered Accountants the Disciplinary Tribunal orders that MEGAN NYREE FINDLAY pay to the Institute the sum of \$3,913.27 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

15. The PCC seeks publication of this decision on the Institute's website and in the official CAANZ publication *Acuity*, with mention of the Member's name and location. Rule 13.55 requires the Tribunal to make such a direction, unless in its view there are exceptional circumstances for not doing so. No submissions were made, or evidence provided, of such circumstances.
16. The public interest in open justice and transparency in the professional disciplinary process, and the maintaining of confidence in that process, create a presumption in favour of full publication. The presumption is strongly reflected in the Institute's Rules, including rule 13.55.

In accordance with Rule 13.55 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 official publication *Acuity* with mention of the Member's name and locality.

RIGHT OF APPEAL

17. 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.
18. 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.



Matthew Casey QC
Chair, Disciplinary Tribunal