

18 February 2011

Representatives of the Institute of Chartered Accountants of NZ:

	2010 role	Via email
Dinu Harry	Immediate past President	<a href="mailto:dinu@bhwl.co.nz">dinu@bhwl.co.nz</a>
Terry McLaughlin	Chief Executive	<a href="mailto:Terry.McLaughlin@nzica.com">Terry.McLaughlin@nzica.com</a>
David Barker	Chair Professional Conduct Committee	<a href="mailto:David@davidbarker.co.nz">David@davidbarker.co.nz</a>
Jim Hoare	Chair Disciplinary Tribunal	<a href="mailto:hoare@birniecapital.com">hoare@birniecapital.com</a>

Dear Sirs

## Jeff Owens resignation

On 3 February 2011 the Institute issued its decision in relation to a complaint I lodged against two members in January 2009.

On 7 February I offered my resignation from my 21 year old membership of the Institute of Chartered Accountants. The handling of the complaint was a significant factor but not the only reason for my resignation.

The resignation was accepted by letter dated 16 February.

This letter is addressed to the office bearers during processing of my complaint:

I invite you to circulate to others as you see fit. If you have any comments I would appreciate them by end of Friday 4 March 2011.

Yours sincerely

**Jeff Owens**  
Director

## **Resignation from NZICA**

On 7 February 2011 I offered my resignation from my 21 year old membership of the Institute of Chartered Accountants. The resignation was accepted by letter dated 16 February.

The Institute also requested:

*“Please advise us the reason/s why you are requesting to resign as the institute is keen to know why our members are choosing to resign”*

I do so with great disappointment.

## **Accountancy training, membership and business**

From 1984 to 1986 I completed a Bachelor of Commerce at Canterbury University, and graduated in May 1987.

I joined the (then) NZ Society of Accountants in February 1990 and have always been a proud supporter of my profession, including over 8 years as Tax Director for the (renamed) Institute of Chartered Accountants [NZICA].

I set up in Public Practice in 2002 and since then provided tax consultancy services to other accountants, lawyers and taxpayers. I have continued to contribute to many issues of interest to members.

## **Service to public practice**

For a number of years I have been concerned at an apparent deterioration of service and support by NZICA to members in public practice. I have also observed what appears to be quite harsh and nitpicking treatment of members undergoing their regular ‘practice reviews’ by NZICA. I have raised my concerns with various NZICA representatives including chief executive and office bearers, but have achieved little traction. I will leave it to other public practitioners to comment in other forums.

## **Complaint against IRD employees**

The final straw for me was NZICA’s handling of a complaint I lodged against two of its members who are not in public practice – in fact they are employees of the Inland Revenue Department.

I alleged that in handling a submission on behalf of one of my clients, the two members had committed a number of significant breaches of both IRD standards and the NZICA code of ethics, being:

- Failing to take into account a technical analysis of transactions

- Failing to quantify alleged penalties
- Imposing taxes of more than three times the actual amount due
- Issuing my client a document purporting to be an agreement to the above, when there clearly was no agreement
- Imposing response timeframes that were far less than IRD published standards, while taking far longer to respond to our correspondence
- Forcing us to prepare a significant legal analysis ["Notice of Proposed Adjustment"] when it was actually IRD who should have been doing that
- Issuing hundreds of pages of conflicting assessments and statements which did not reflect either IRD's or our calculation of tax due.
- A formal complaint to the inspectors superiors led to a response being written by the inspector himself
- In total imposing tens of thousands of dollars in unnecessary costs

Attempts to get recompense from IRD largely failed, and since two of the key players were members of NZICA, I chose to lodge a formal complaint.

### **NZICA handling of complaint**

After 14 months of correspondence and meetings, NZICA found one member (the inspector) guilty of some charges but no mention to be placed on his record. After a total of two years NZICA found the other member (the inspector's ultimate boss) not guilty on the substantive charges, guilty of failing to attend the final determination by the Professional Conduct Committee, but then given permanent name suppression. There is no doubt I disagree with those outcomes but they are NZICA's prerogative.

I am however particularly concerned at the process by which NZICA got there.

In very brief summary:

- NZICA initially told me the complaints process was only directed at the (less than 3,000) members in public practice, and did not apply to the 28,000 members not in public practice

- NZICA required the members and also me as complainant to respond to various items of NZICA correspondence in 14 days, while itself taking several weeks to reply to my correspondence and refusing to provide even estimated timeframes. This is particularly ironic given that one of the complaints was that IRD required responses to significant issues in 14 days, breaching its standard of 28 days. The Institute's General Counsel told me a couple of years ago that he would initiate a review of the 14 days response time, but it seems he hasn't actually done anything. Perhaps this is one of the reasons NZICA chickened out.
- NZICA whittled the actual complaints down one by one so what was presented to the members was only a watered down version of my original complaints
- Part way through the process, the Institute's 'General Counsel' told one of my colleagues that my complaints were 'minor'
- NZICA allowed the two members to repeatedly delay attendance at meetings – one member in particular managed to drag the process out for two years and 8 meetings by
  - Twice requiring more time to prepare
  - Once being on holiday
  - Once simply refusing to attend (ultimately being found guilty of that infringement)
  - Upon referral to disciplinary processes, twice requesting more time to prepare
  - Once sending IRD and Crown Law to argue that IRD could not say anything at a hearing due to 'taxpayer secrecy' provisions (this argument was twice rejected by NZICA)
  - Finally turning up to a hearing more than two years after the original complaint
- NZICA failed to keep me informed of progress, so that I repeatedly had to rearrange my diary (including cancelling travel) to attend meetings only to find out at the last minute that they were postponed
- Throughout most of the process, NZICA allowed the two members to be represented by their employer - by comparison if NZICA investigates a member in public practice it will not enter into any dialogue with an authorised representative other than a lawyer

- Astonishingly, as well as explicit support from IRD management and Crown Law, one of the members stated that if the Disciplinary Committee pursued the complaint:
  - IRD is the largest employer of accountants, and
  - the IRD might not encourage its staff to join the Institute,
  - The Institute should “consider the risks it is taking in this matter”.

I have a strong suspicion that NZICA is afraid of upsetting a cosy relationship with IRD and the majority of members who are not in public practice, and consequentially any negative impact on funding from members who have little interaction with NZICA

- Incurring enormous costs throughout the process – apparently \$30,000 for each of the last two meetings, some of which was on charged to the member, with the balance funded by NZICA members, and cost of all the other deferred meetings no doubt being incurred by the membership more widely.

## **NZICA relationships with members in public practice**

While (touch wood) no one has ever lodged a complaint against me or my consulting practice, I compare the handling of my complaint with how NZICA deals with its members in public practice, both through the regular practice review process and through handling complaints against such members, either from clients or from NZICA’s own staff.

I firmly believe NZICA imposes much more rigorous and in some cases overly harsh treatment of members in public practice than it does to the balance of its members. Last year I even read about a member being fined \$8,000 being the cost of NZICA determining he was bankrupt – a school leaver could have done that in ten minutes, and I envisage those costs would never be recovered anyway.

## **Professional associations moving forward**

I continue to be a member of several other professional bodies - CPA Australia , the Tax Agents Institute of NZ , International Fiscal Association, and in all honesty consider they provide much better support for their members, and provide the necessary codes of ethics, supervision, complaints and disciplinary services that NZICA provides but in my view poorly.

I continue to be a proud member of my profession, but regrettably not as represented by the Institute of Chartered Accountants of NZ.