



**In the matter of the
Institute of Chartered Accountants in Ireland
(operating under the title of ‘Chartered Accountants Ireland’)**

DECISION

of the

**Irish Auditing and Accounting Supervisory Authority
(on foot of the appointment of an Enquiry Committee under Section
23 of the Companies (Auditing and Accounting) Act 2003)**

Definitions

For the purposes of this Decision the following definitions shall apply:

“**Act**”, shall mean the *Companies (Auditing and Accounting) Act 2003*;

“**Authority**”, shall mean the *Irish Auditing & Accounting Supervisory Authority*;

“**Board**”, shall mean the Board of the Authority;

“**Enquiry Committee**”, shall mean the Committee set up pursuant to Regulation 5 of the Regulations;

“**Member**”, shall have the meaning assigned to it by Section 4 of the Act;

“**Institute**”, shall mean the Institute of Chartered Accountants in Ireland trading as Chartered Accountants Ireland;

“**Preliminary Enquiry Committee**”, shall have the meaning assigned to it in the Regulations;

“**Prescribed Accountancy Body**”, shall have the meaning assigned to it by Section 4 of the Act;

“**Regulations**”, shall mean the *Companies (Auditing and Accounting) Act 2003 (Procedures Governing the Conduct of Section 23 Enquiries) Regulations 2007*.

Background

On 18th of August, 2006 a complaint was made by a member (the “Complainant”) of another accountancy body to the Institute in respect of one of its members (the “Member”).

The indicative complaints placed before the Complaints Committee of the Institute (at its meeting of the 26th February, 2007) were that the Member¹:-

- a) Acted in breach of the ICAI Rules of Professional Conduct: Professional Standards B2, Ch2. Practice Certificate Regulations and Guidance, 2.1: This requires that members who engage in public practice in Ireland must hold a current practice certificate;
- b) Acted in breach of the Ethical Guide for Members: Fundamental Principle 5: Courtesy and Statement 6: Change in a Professional Appointment: para 3.0. This requires that a member invited to undertake recurring or non-recurring work, which is additional, and related, to continuing work carried out by another professional adviser, should notify that other professional adviser of the work she has been asked to undertake unless the client provides acceptable reasons why the other adviser should not be informed;
- c) Acted in breach of the Ethical Guide for Members: Statement 13: Giving Second Opinions: para: 1.2; That in providing a 2nd opinion on the company's financial statements, the member ought to have made enquiries of the auditor. Para 1.3: That in

¹ The text of indicative complaints (a) to (d) set out herein are extracted *verbatim* from the papers tabled before the Institute’s Complaints Committee.

providing a 2nd opinion on the company's financial statements there is the self interest threat of securing another's client;

- d) Acted in breach of the Ethical Guide for Member: Statement 12: The Names and Letterheads of Practising Firms: para 6: the member's letterhead does not comply with the regulations.

Decision of the Complaints Committee of the Institute

By letter dated 16th March, 2007 to the Complainant the Complaints Committee decided:

- i. in relation to indicative complaints (a) and (d) above that a *prima facie* case had been made out and determined that no further action was required as the Member had accepted the complaint and had expeditiously obtained her Practising Certificate and had offered her apologies; and
- ii. in relation to indicative complaints (b) and (c) the Complaints Committee found no *prima facie* case.

Complaint to the Authority

Arising from the decision of the Complaints Committee the Complainant, by letter dated 28th May, 2007, complained to the Authority and on the 24th of July, 2007, the Authority resolved to appoint a Preliminary Enquiry Committee.

On 15th October, 2008 the Preliminary Enquiry Committee found that there existed a *prima facie* case against the Institute in relation to certain matters.

On 20th of October, 2008, as a consequence of the findings of the Preliminary Enquiry Committee the Board of the Authority resolved to appoint an Enquiry Committee pursuant to Section 23 of the Act; it also resolved the composition of such Enquiry Committee on the 23rd December, 2008.

Work of the Enquiry Committee

The Enquiry Committee in carrying out its Enquiry considered the initial complaint made to the Authority and reviewed the findings of the Preliminary Enquiry Committee. The Committee then sought certain documents and explanations from the Institute, which it considered germane to its Enquiry.

In the course of carrying out the Enquiry certain admissions have been made by the Institute to the Enquiry Committee by way of letter dated 25th May, 2009 from the Chartered Accountants Regulatory Board² ("CARB") to the Enquiry Committee.

² The Enquiry Committee dealt with CARB (an unincorporated board set up by the Institute) from an administrative point of view on receiving written confirmation in a letter dated 16 July, 2009 from the Institute which stated, *inter alia*, 'For the avoidance of any doubt, [the Institute] and its Council re-confirm that CARB has been delegated the necessary powers and authorities to correspond and deal with Section 23 Enquiry Committees'. On this basis the Enquiry Committee regarded any admissions made by CARB as if they were admissions made by the Institute.

Findings of the Enquiry Committee

Having reviewed the information and the documentation provided and the admissions made by CARB on behalf of the Institute, the Enquiry Committee wrote to the Institute advising it, subject to any submissions that the Institute might make, of its initial findings as follows:

- (a) The Complaints Committee letter of 16th March, 2007 to the Complainant advising of the Complaints Committee's decision in relation to the four aspects of her complaint tabled at its meeting on 27th February, 2007 failed to give sufficient reasons for its decision, in breach of Bye-Law 74.4.
- (b) The Complaints Committee letter of 16th March, 2007 to the Complainant advising of the Complaints Committee's decision in relation to the four aspects of the complaint tabled at its meeting on 27th February, 2007 failed to give sufficient reasons for its decision, in breach of Bye-Law 74.5.
- (c) In exercising his jurisdiction to review the decision of the Complaints Committee, the Independent Reviewer in his letter to the Complainant of 8th May, 2007 failed to set out the reasons for forming his opinion that the decision of the Complaints Committee was fair and reasonable in all of the circumstances and that there were insufficient grounds which would merit remitting the matter in writing to the Complaints Committee for reconsideration, in breach of Bye-Law 75.4.

By letter dated 27th October, 2009 CARB, on behalf of the Institute, wrote to the Enquiry Committee accepting, *inter alia*, these findings.

As a consequence, the Enquiry Committee do formally make the above findings against the Institute.

Considerations of the Enquiry Committee

As a further consequence of the above findings the Enquiry Committee went on to consider what action, if any, it should take against the Institute. In this regard submissions were also sought and obtained from the Institute.

Having regard to the submissions made by the Institute, and all the circumstances of the matter including that, in advance of the Enquiry Committee making its initial findings, the Institute, in its letter dated 25th May, 2009, accepted the findings of the Preliminary Enquiry Committee made on 15th October, 2008.

With regard to sanctions, the Committee's view is that it would be pointless to direct the Institute to conduct a fresh investigation given that the Enquiry Committee has been made aware by CARB that the Member is no longer a member of the Institute.

With regard to a monetary sanction, such sanction should be proportionate to the findings but should also be of dissuasive effect. The Enquiry Committee has decided that a monetary sanction should be imposed. In arriving at this figure the Enquiry Committee took into account that it had expended the sum of €9,325 in respect of costs and expenses between the date it came into existence and the 25th of May, 2009 (the date on which the Institute accepted the findings of the Preliminary Enquiry Committee).

Decision

It is therefore the decision of the Enquiry Committee that the Institute be and is hereby advised of its failures to comply with its bye laws as set out in paragraphs (a) to (c) above. The Enquiry Committee also requires the Institute to pay the sum of €11,325 to the Authority within 14 days of the High Court making an order confirming this decision.

GERARD SCULLY
CHAIRMAN OF THE ENQUIRY COMMITTEE