

In the matter of The Constitution of the Institute of Financial Advisers Inc. and its By-laws
and

In the matter of Charges referred for hearing by the Disciplinary Tribunal

Between The Institute of Financial Advisers Inc.

and Neville Ian Cant, a suspended Member

Determination of the Disciplinary Tribunal
(Dated 6 September 2010)

Disciplinary Tribunal:
Anthony N Frankham (Chairman)
Robert Narev
Karl Schweder

Determination of the Disciplinary Tribunal

- [1] Neville Ian Cant, a suspended member of the Institute of Financial Advisers (“the Institute” or “IFA”), was convicted in the District Court at Oamaru on 9 June 2010 for offences against the Crimes Act 1991 and the Securities Act 1978 that were associated with his practice as a member of the Institute. He pleaded guilty to one charge of theft and two charges of making a false document. He was also found guilty of two charges regarding offences against Section 59 Securities Act 1978 where he had pleaded not guilty. The suspended member was sentenced to a period of imprisonment, to a reparation order for \$100,000 and fines of \$80,000. He now serves his sentence.
- [2] Mr Cant was the subject of complaints to the Institute dated 15 June 2009, 22 August 2009 and 11 August 2009. The allegations made by the complainants were serious and prima facie warranted investigation and possible action by the Institute. In respect of one complaint, the Professional Conduct Committee of the Institute asked the Member three times for an explanation of the issues complained about. The Member acknowledged receiving the requests and his failure to respond, but did not provide any explanation. He promised to provide a response sometime in the future. The other complaints awaited further evidence.
- [3] On the application of the Professional Conduct Committee of the Institute and following a hearing, on 24 November 2009 the Disciplinary Tribunal (“the Tribunal”) made an order:
- (i) suspending the membership of Neville Cant until further order of the Disciplinary Tribunal; and
 - (ii) directing that after five working days have elapsed, notice of the suspension be published.
- [4] The Professional Conduct Committee has now referred further charges to the Tribunal and the Institute seeks an order removing Neville Cant from membership of the Institute pursuant to clauses 6.1 and 7.1 of the 1 June 2009 Disciplinary Bylaws. The Institute has presented evidence of his conviction through a certified copy of entry of criminal record from the District Court at Timaru dated 15 June 2010. “No fine or orders for costs are being sought”. However, the Institute indicated that it “would not oppose such orders” if “termination would not be delayed by orders for costs and/or a fine”.

The Institute has sought orders that:

- Mr Cant's general membership of the Institute be terminated, together with his designations as Chartered Life Underwriter and Certified Financial Planner, Mr Cant return or destroy any certificates or other devices signifying or denoting Membership of the Institute,
- The Tribunal's decision be published in accordance with Clause 11.2(b) of the Bylaws on the ground that it is necessary in the interests of the public.

[5] Extracts of the relevant bylaws are:

6.1 ... After completion of the hearing, the Disciplinary Tribunal shall exercise one or more of the following courses of action:

.b) find the charge or charges or matter proven; and:

- (i) terminate the membership (or any class of membership) of the Member;
- (ii) suspend the membership of the Member for a period up to five years;
- (iii) impose a monetary penalty on the Member, not exceeding \$20,000;
- (iv) order publication of its findings in conformity with bylaw 11.2;
- (v) impose any of the sanctions that can be imposed by the Professional Conduct Committee under bylaw 5.2(b)(i)-(vi)
- (vi) make such orders for costs as the Disciplinary Tribunal considers appropriate.

7.1. Disciplinary action under these bylaws may be exercised on one or more of the following grounds where a Member has

- (a) been convicted of an offence punishable by imprisonment or a fine and the conviction reflects on the Member's fitness to practice as a financial adviser and/or tends to bring the profession into disrepute;

11.2(b) Subject to bylaw 11.2(c), where any charge is proven, the Disciplinary Tribunal may direct publication of its decision in any manner the Disciplinary Tribunal considers appropriate including the Member's name, address, the particulars of the charge and a summary of the reasons for the decision and any sanction or penalty imposed.

11.2(c) The Disciplinary Tribunal shall direct publication of the information mentioned in bylaw 11.2(b) if it considers that it is necessary in the interests of, or for the protection of, the public.

[6] Mr Cant was given notice of the charges and the hearing. He wrote asserting that he had already resigned from the Institute claiming a striking off would have no effect. The date of his attempt to resign, the letter from his solicitor dated 7 December 2009, post-dated the commencement of complaints and/or disciplinary proceedings against him and thus pursuant to Rule 10.1 of the Constitution his letter of resignation had no effect. Rule 10.1 reads:

10.1 A Member may resign from Membership at any time by writing to the Institute. Any notice of resignation given after any complaint is lodged against the Member or after any disciplinary

proceedings are commenced against the Member shall not take effect until the hearing of the complaint or the disciplinary proceedings and related appeals have been disposed of and any resulting action or disciplinary measure, fine or penalty has been settled.

- [7] At a hearing held on 1 September 2010 the Tribunal received evidence of the conviction of Neville Cant for the matters noted (see above paragraph 4) and gave the Member the opportunity to be heard on the matter of the application for his name to be removed from the register of Members of the Institute of Financial Advisers. The Member made no appearance.

Determination of the Disciplinary Tribunal

- [8] The Tribunal has carefully considered the Institute's requests regarding orders for costs and/or a fine in light of the Institute's concern not to delay the termination of membership. The Tribunal is of the view that bylaw 6.1(b) (i) empowers it to terminate the membership of a Member of the Institute with immediate effect. The clause does not stipulate any restriction in that regard.

Clauses 9.8 and 10.1 of the Constitution do not conflict with this view. The Tribunal acknowledges that Mr Cant is now deemed to be a non-financial Member (Clause 9.4 of the Constitution) whose membership has not ceased because the applicability of Clause 9.8 prevented the cessation due to the pending complaints against him. However, the purpose of Clause 9.8 as well as that of Clause 10.1 of the Constitution is to prevent Members of the Institute from bringing their membership to an end by their own initiative in order to escape the disciplinary process and to avoid its consequences. This does not apply when the Tribunal exercises its powers to terminate the membership of a Member of the Institute in accordance with bylaw 6.1(b)(i).

Bylaw 6.1 also empowers the Tribunal to exercise one or more of the courses of action specified in clause 6.1(b) which means that it can exercise several of them at the same time. The Tribunal therefore has the power to impose other penalties and sanctions when terminating the membership of a Member if the seriousness of the case requires such a course of action.

- [9] In so far as the Institute seeks an order that "Mr Cant return or destroy any certificates or other devices signifying or denoting Membership of the Institute", the Tribunal is not in a position to do so because neither the Constitution nor the Disciplinary Bylaws give the Tribunal the power to make such an order. However, the Member whose membership is terminated has an obligation to return to the Institute any certificate or

other device signifying or denoting membership of the Institute according to Clause 15.5 (1) of the Membership Bylaws, which came into operation on 1 June 2009.

[10] In so far as the Institute seeks an order to terminate Mr Cant's designations as Chartered Life Underwriter and Certified Financial Planner, neither the Constitution nor the Disciplinary Bylaws give the Tribunal the power to make such orders. A termination of membership of the Institute might, however, have consequences with regard to Mr Cant's designations.

[11] When considering its course of action in this matter the Tribunal has taken into account the seriousness of Mr Cant's offences on the one hand, but also the significant reparation and fines imposed on him by the decision of the Court on 9 June 2010.

The seriousness of Mr Cant's offences warrants the termination of membership with immediate effect, the imposition of a fine as well as an order for costs.

In the interests and for the protection of the public the Tribunal considers it necessary that its decision be published.

Orders of the Disciplinary Tribunal

The Tribunal now orders:

- (1) that Neville Ian Cant
 - (a) is fined the sum of \$10,000 this amount to be paid to the Institute forthwith;
 - (b) is to meet the costs to the Institute of the disciplinary process in the amount of \$ 3,500 plus GST to be paid to the Institute forthwith;

and

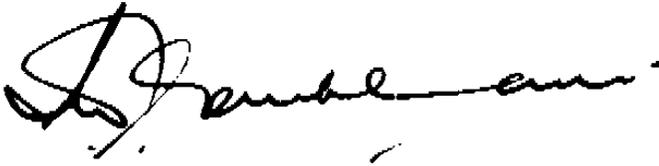
- (2) that Neville Ian Cant's membership of the Institute of Financial Advisers be and is hereby terminated.

The Tribunal also orders:

- (3) that after the expiry of 15 days this decision of the Tribunal be published on the website of the Institute in a manner that makes it accessible to members of the public and in a

daily newspaper circulating in the area where the member formerly practised in a format approved by the Chairman of this Tribunal.

By Order of the Disciplinary Tribunal

A handwritten signature in black ink, appearing to read 'A N Frankham', with a stylized flourish at the end.

A N Frankham
Chairman
6 September 2010