

Dear Members,

I have talked to many members recently who have asked me about the future of our new disciplinary process and what it might mean for their practices or for themselves personally. The trigger for these questions is the recent disciplinary committee findings that the prosecution had failed to establish a case against an accounting firm or its audit engagement partner concerning the audit of a listed company.

The case reflected the new regime and was heard in public with majority lay representation on the disciplinary committee. The decision threw new light on the evidential burden carried by the prosecution and clarified, for upcoming cases, what the prosecution needs to do to prove its case.

In this regard, the findings may prove a watershed. This is the first time an investigation committee case has come before a disciplinary committee since the investigation provisions were introduced to the Professional Accountants Ordinance. It is now apparent that disciplinary proceedings will be comparable to a court hearing and that the investigation committee's work will need to be much more substantive. It may not be sufficient for the investigation committee to simply collect evidence to establish a prima facie case. It would need to collect sufficient evidence to prove a case for the prosecution at the disciplinary hearing.

Taking this opportunity, I would like to highlight three points arising from this new approach. First, the Council remains committed to its statutory function as the profession's regulatory body. In a profession with such a diverse profile as ours, it is essential to apply common standards across the board. The Council is determined to adhere to this basic principle and has demonstrated its resolve by applying for the judicial review of the decision of the disciplinary committee. There is absolutely no question that there can be "one law for the big and another for the small," or "one law for the rich and another for the poor." All members and member firms are treated the same.

Second, the Council will continue to fulfil its regulatory role without fear or favour. The Council's resolve can be seen in that the Institute remains the prosecuting body even with the establishment of the proposed Financial Reporting Council.

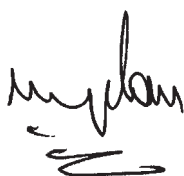
Proceedings under the new disciplinary system are now more formal. The prosecution now bears a greater evidential burden, so the duration, and therefore the cost, of disciplinary proceedings will be proportionately greater. This is a challenge all professions have had to face. The Council is conscious of the fact that there may be cases where the offence is relatively minor and the disciplinary costs will outweigh any likely penalty. With the amendments to the Professional Accountants Ordinance in September 2004, the disciplinary committee is given the power to deal with such cases by consent order. The effectiveness of the consent order system is yet to be seen. In the meantime, the chance of success in a prosecution must be taken into account when the Council considers commencing proceedings against a member or member firm, and the Council is seeking to learn from other regulators how best to handle this.

Finally, the Council is looking at the likely consequences of the recent case on our disciplinary process and is committed to looking at all aspects of the process and deal with any changes and improvements required, including those situations that may require new legislation.

As we explore the best solutions to our regulatory regime, I am again grateful that in Hong Kong, unlike some jurisdictions, we are a self-regulated profession. Self-regulation is in the best interests of our community and is a vote of trust in our profession. I know the Institute, and all of its members, will work to preserve this trust and to demonstrate that we deserve it.

Let me close by sending to you and your loved ones my very best wishes for a happy, healthy and prosperous Year of the Dog.

Sincere regards,



Paul M.P. Chan

President, Hong Kong Institute of CPAs

