

**BETWEEN                      CPA AUSTRALIA LIMITED**

**Plaintiff**

**AND                              THE NEW ZEALAND INSTITUTE OF  
CHARTERED ACCOUNTANTS**

**Defendant**

Hearing Commenced:    06 July 2015

Appearances:             A Galbraith QC and N Russell and S Jones for the  
                                 Plaintiff  
                                 B Gray QC and R Stewart and H Coull for the Defendant

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**NOTES OF EVIDENCE TAKEN BEFORE THE HON JUSTICE DOBSON**

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**MR GALBRAITH QC OPENS AND CALLS**

**DAVID RHYS JENKINS (SWORN)**

Q.    Is your full name David Rhys Jenkins, do you reside in Auckland and  
         are you the Country Manager for New Zealand of CPA Australia  
5       Limited?

A.    Yes, I am.

Q.    And you've held that role since 2011?

A.    Correct.

Q.    If you'd just like to read from paragraph 2 of your first brief, thank you.

10    **WITNESS READS BRIEF OF EVIDENCE FROM PARAGRAPH 2**

**COURT ADJOURNS: 12.57 PM**

**COURT RESUMES: 2.15 PM**

**EXAMINATION CONTINUES: MR GALBRAITH QC**

Q. Mr Jefferies, we're on paragraph 39.

**WITNESS CONTINUES READING BRIEF OF EVIDENCE FROM  
5 PARAGRAPH 39**

A. "Public practice certificate...budget for iPads."

1430

Q. Can you just pause there? The next sentence, could you just strike that out? Have you got a pen there?

10 A. Sorry?

Q. Have you got a pen?

A. Yes.

Q. Just draw, put a line through the next sentence and don't read that. And initial in the margin, thank you, and then pick it up at the following  
15 sentence, "As I've said already."

**WITNESS CONTINUES READING BRIEF OF EVIDENCE**

A. "As I've said... not good enough."

Q. Just pause there again. The next sentence, just strike that out and just initial in the margin.

20 A. "To the best of my – "

Q. No. Read the next, "This is incorrect."

**WITNESS CONTINUES READING BRIEF OF EVIDENCE**

A. "This is incorrect...Ms Patterson's statements."

Q. Just pause a moment. Just keep going.

25 A. "I remember that...Smart Accounts Receivable, and others."

**OBJECTION: MR GRAY QC – HEARSAY (14:36:56)**

**EXAMINATION CONTINUES: MR GALBRAITH QC**

**WITNESS CONTINUES READING BRIEF OF EVIDENCE FROM  
PARAGRAPH 101**

30 A. "I also attended...result of Ms Patterson's statement."

**OBJECTION: MR GRAY QC (14:39:04)**

**EXAMINATION CONTINUES: MR GALBRAITH QC**

Q. So just continue reading that Mr Jenkins and –

A. Begin at 109?

5 Q. You better start at, “I am concerned that.”

**WITNESS CONTINUES READING BRIEF OF EVIDENCE**

A. “I am concerned... the common bundle.”

**OBJECTION: MR GRAY QC (14:43:36)**

1445

10 1445jg

(no overlap – objection continuing)

**THE COURT ADDRESSES WITNESS – CHAIN OF EMAILS (14:44:40)**

**MR GALBRAITH QC ADDRESSES THE COURT – READING BRIEF  
(14:47:54)**

15 **EXAMINATION CONTINUES: MR GALBRAITH QC**

Q. Just pick up at 113.

**WITNESS CONTINUES READING BRIEF OF EVIDENCE FROM  
PARAGRAPH 113**

A. “Increased number of...into new members.”

20 Q. Now you can read your reply brief. So if you go to –  
1450

**THE COURT:**

Q. Before you put that one away, I’m sorry, I rushed you on from  
paragraph 100. You might just like to strike that one out as Mr Galbraith  
25 asked you with the earlier ones and put your initials next to it.

A. Sorry, and sign it?

Q. Put your initials, yes.

**EXAMINATION CONTINUES: MR GALBRAITH QC**

Q. And sign it. Now in your reply brief, if you just start from paragraph 3 of that brief, thank you?

**WITNESS READS REPLY BRIEF OF EVIDENCE FROM PARAGRAPH 3**

**EXAMINATION CONTINUES: MR GALBRAITH QC**

Q. Now, Mr Jenkins, if I can just try and pick up on some question that His Honour asked me, and I hope I don't misrepresent Your Honour's questions. Levels of membership within CPA, can you just explain those please?

A. Yes, so when you are completing the professional level of the programme, the CPA programme, you're an associate member in ASA. On completion of, well, I mean your degree and completing the professional level of the programme then you become a CPA certified practicing accountant. After 10 to 15 years senior experience senior experience you can be granted an FCPA fellow member.

Q. And in relation to public practice now we're speaking of, what are the requirements for a CPA member who is going to be a principal in public practice, and let's just talk about New Zealand for a moment?

A. Okay, so if you want to be a principal in a public practice in New Zealand you have to have a public practice certificate. We do recognise NZICA's or CANZ public certificate but you must have a public practice certificate.

Q. And CPA introduced a public practice certificate in 2012, is that right?

A. That is correct.

Q. Now CPA recognises NZICA's public practice certificate?

A. Correct.

Q. Does NZICA recognise CPAs public practice certificate in New Zealand we're talking about?

A. Sorry the C -, sorry does?

Q. Does NZICA or now the New Zealand chapter of CANZ recognise CPAs public practice certificate?

A. My understanding is no.

Q. In Australia, do you know what the situation is?

A. My understanding is that they do.

1515

Q. And cost His Honour asked about, just ballpark, can you give some indication of costs?

A. So for a CPA member, full CPA member it's \$770, New Zealand dollars, and if you want to have a public practice certificate, that's  
5 500 New Zealand dollars on top of your membership fee.

Q. And then there's a renewal each year, is there?

A. Correct, yes.

Q. And that's roughly?

A. The same.

10 Q. The same.

A. Yes.

Q. Without trying to get into dollar amounts, do you know roughly where NZICA's costs –

A. My understanding is that a full CA is about \$700-\$800 per year and their  
15 public practice certificate is \$1300.

#### **THE COURT:**

Q. Sorry, give me what your understanding was, I was writing something else down.

A. Sorry, so for a full CA their annual membership is \$700 and then for a  
20 practicing certificate on top of that, that's \$1300.

Q. By a practicing certificate do you mean the –

A. A certificate, yes.

Q. To be in public practice?

A. Correct, yes.

25 Q. So normally it's a CFO for a company –

A. The, yes, it wouldn't be. It's only for people providing public accounting services.

#### **CROSS-EXAMINATION: MR GRAY QC**

Q. Mr Jenkins, I just wonder if you could clarify something for me about  
30 which I've become a bit confused. It's correct, isn't it, that it's not possible to become – well, it's possible but extremely rare for a person

to become a full CPA member without having an undergraduate degree?

A. Yes, you cannot, you cannot become a full CPA member without an undergraduate degree.

5 Q. I think in your evidence you referred to one unusual case in New Zealand where that had occurred?

A. Yes, correct.

Q. So the proposition is it's possible but rare?

A. Correct.

10 Q. Is it not also possible to begin study for the professional units before a degree is completed, an undergraduate degree is completed?

A. Yes, you can take one paper, ethics and governance, before you've completed your degree, and that was introduced as of this year.

15 Q. And for some people who have no degree at all, or some but not all of a degree, the foundation programme exists to make up the difference?

A. No. You still need a degree to be able to do the foundation programme.

20 Q. Can I turn now please to the Wellington conference. You heard this morning a tape recording of the Christchurch conference. Is the tape recording of the Christchurch conference, in your view, pretty much the same as what you heard Ms Patterson say at Wellington?

A. Yes.

Q. In tone?

A. Yes.

Q. In content?

25 A. Yes.

Q. So would it be your evidence that it would be appropriate for us to really regard the speeches of the two conferences as being pretty much the same?

A. Yes.

30 Q. You've referred to the promotional material before the conferences about, and the description of "head to head" in them, and the concern that you've had about that and expressed to the organiser of the conference. You also saw information in material the session at which you spoke, or somebody else from your organisation, and someone



from NZICA as having them face off with each other. Do you recall that?

A. Sorry, can you repeat the question?

Q. Sure. Can you look at page 323 in the bundle in front of you?

5 **WITNESS REFERRED BUNDLE OF DOCUMENTS, VOLUME 2**

Q. It's in volume 2.

A. Yes.

Q. Can you see that Ms Brownrigg is saying in this electronic brochure, it's subject at the top, "NZICA and CPA face off and eyeball public practitioners."

A. Yes.

Q. So that the expectation created by the organizers of the conference is that at it the representatives of your organisation and NZICA would confront each other?

15 A. Yes but I would say that I, as soon as I knew that this marketing material which is saying the face off, was presented, I spoke to Ms Brownrigg straight away and said that we did not endorse this type of marketing and that we wished her to remove any instances around a face off between us and NZICA.

20 1520

Q. So that was your position but so far as anyone receiving the electronic promotional material was concerned, they had been told that this was a conference in which your speakers and NZICA speakers would face off with each other?

25 A. That is correct but we did not endorse, as I (inaudible 15:20:36) again, we didn't endorse it.

Q. And it's an aside, but the brochure at 323 has a number of specialist speakers, doesn't it, and they are all CA designated?

A. From my recollection actually there was, sorry, I thought there was a CPA speaker but, no, you're correct, no CA speakers, yes.

30 Q. And how many of your members were at the Christchurch conference?

A. I'm not sure, don't know that.

Q. You didn't recognise any in particular or?

A. I wasn't at the Christchurch conference.

Q. I'm sorry, the Wellington conference?

A. The Wellington conference we would have had approximately five to 10 members.

5 Q. Out of about 100 people attending so that the overwhelming majority of people present were members of NZICA?

A. You could infer that, yes.

10 Q. So the context in which these events attended overwhelmingly by members of NZICA was said to them before the conference to be one of representatives of the two bodies facing off with each other, do you accept that?

A. Is that a question?

Q. Yes.

A. Can you repeat the question please?

15 Q. So do you accept that the context of the conference within which the people attending, overwhelmingly NZICA members –

A. Mhm.

Q. – are brought along, it includes an expectation that the speakers of the two rival bodies will face off against each other?

20 A. When the marketing was first done then I guess they would have thought that, however, I can't, I can't confirm to you that all the other people if they weren't CPAs were CA members they might have had no designation.

25 Q. And what people coming to the conference would have taken from that marketing is that each of the bodies would be expected to explain what they thought were the benefits of their own organisations and membership of those organisations?

A. Correct.

Q. And that differences could be identified and discussed?

A. They could discuss those, yes.

30 Q. Disagreements could be raised and discussed within the conference?

A. They could have done, yes.

Q. But counterarguments could be made between the representatives of the two rival bodies if there were topics on which there were disagreement?

A. I guess they could have been conversations, yes.

Q. And by the time you spoke at the Wellington conference you knew because Mr Jones had told you how the Christchurch conference had gone and what Ms Patterson had said, didn't you?

5 A. Yes.

Q. So you were warned in advance what it was she had said in Christchurch and you knew what she might say in Wellington?

A. I didn't know that she was going to necessarily say the same things but she could of done, yes.

10 Q. And I think in Wellington you spoke after her so that you had an opportunity to respond to anything that she may have said?

A. No, I would not have responded to because I was purely talking about the benefits of being a member with CPA Australia so I wouldn't make any comments or of anything about any other professional body because I would deem that unprofessional.

15

Q. I asked you whether you had an opportunity to respond?

A. No.

Q. Well I think in your reply brief at paragraph 18 what you said is you chose not to respond. Doesn't that evidence imply that you had an opportunity to respond but elected not to take it?

20

A. Yes, yep.

1525

Q. And isn't that, in fact, the position? That you could have responded if you wanted to but you decided not to?

25

A. Yes I decided not to because I deemed that to be inappropriate in an open forum.

Q. Now having heard Ms Patterson's presentation to the Christchurch conference today, do you agree that most of it was about the proposed merger between NZICA and its Australian equivalent?

30

A. No.

Q. You don't hear that presentation as being principally about NZICA, about the threats faced by NZICA, and about NZICA's response to the challenges of its market?

A. Well I think it was partly that. I don't disagree that it wasn't, it was obviously that part of what was presented, but here was obviously comparisons made of the competition which was (inaudible 15:26:00).

5 Q. Well undoubtedly she identified CPAA as a threat that NZICA faced in its market, didn't she?

A. Mhm.

Q. And she talked about what NZICA thought it had to do to respond to the competitive threat that CPAA presented, didn't she?

A. (no audible answer 15:26:22)

10 Q. I'm sorry, the transcriber won't pick up your nod?

A. Yes, sorry, I'm not always asking whether – you're actually asking me a question or not, so that was a question?

Q. Yes.

A. Can you repeat that for me?

15 Q. Undoubtedly she identified CPAA as a threat to NZICA, didn't she?

A. Yes.

Q. And she talked about the things that NZICA thought it had to do to respond to the threat that CPAA presented in its market?

A. Yes.

20 Q. But your hearing of that presentation this morning, do I take it, was that the paper, the presentation was not focused mostly on NZICA and its proposed merger with Australia, but focused instead on CPAA?

A. Well as I said previously it was both, by the merger and also labelled with us as well.

25 Q. Now given the promotional material for the conference –

A. Mhm.

Q. – and given that the overwhelming majority of the people at the conference are, or were likely to have been members of NZICA –

30 A. Sorry, I, because I said that they weren't necessarily members of NZICA. They could be members of any other, I'm not sure whether they were CA members or, you know, I knew that they had five or 10 CPA members but they could have been members with no designation. I mean I can't be sure.

Q. Do you accept, given the promotional material for the conference, and the fact that there were likely to have been a large number of NZICA members, CAs, present, Ms Patterson had a duty to speak to them about what NZICA was proposing?

5 **OBJECTION: MR GALBRAITH QC** (15:28:20)

**THE COURT ADDRESSES MR GALBRAITH QC – CLARIFIES PAGE REFERENCE**

**COURT ADJOURNS: 3.28 PM**

**COURT RESUMES: 3.46 PM****CROSS-EXAMINATION CONTINUES: MR GRAY QC**

5 Q. Mr Jenkins, before the afternoon tea adjournment we were talking about the Wellington conference and we were talking about who was present and you thought five to 10% of those present were your members –

A. Right.

Q. – but you didn't know who the rest were?

A. No.

10 Q. Chances are if they were members of anything, they'd be members of NZICA, wouldn't they?

A. Not necessarily. They might not have the, have accounting qualifications or the professional qualifications.

15 Q. I said chances are if they were members of something, they were members of NZICA?

A. Yes.

Q. And the members of NZICA would have been interested in hearing from Ms Patterson about the merger proposal, wouldn't they?

20 A. I can't speak for the members. They might be, I'm, I'm not a member so.

Q. Well that's what the conference brochure told them to expect from her, wasn't it?

A. I'm not sure what the actual, what it said, that they were going to –

Q. Well do you want to have another look at it –

25 A. Yep.

Q. – so you can refresh your memory? Page 323. Can you see the top of the right-hand column, "Hear from NZICA on transforming NZICA creating a new institute for the Institute of Chartered Accounts Australia."

30 A. Yes.

Q. So the people who responded to that brochure would be interested in hearing from Ms Patterson –

A. Yes.

Q. – what is was that NZICA proposed, wouldn't it?

A. Yes.

5 Q. And they'd be interested in hearing from her why NZICA thought it needed to merge with Australia, wouldn't it?

A. It might have done, yes.

Q. And in fact what the conference organisers expected her to do was to tell them?

A. They might have done, yes.

10 Q. And as she explained in the oral presentation you heard this morning, for NZICA at the time one of the threats they faced in the market was your organisation's presence and the advances your organisation was making in New Zealand. She talked about that, didn't she?

A. She talked about us as competition, yes.

15 Q. But she also talked about the threat you posed to NZICA, didn't she?

A. She talked about competition and that we were, obviously she mentioned us as competition, yes.

Q. And I think you gave evidence that you made some notes of the things that she was saying on your phone –

20 A. Mhm, yes.

Q. – as she was talking, and 395, page 395 in volume 2 is the...

A. Yep.

Q. So are these what you noted down at the time as being the main things that concerned you?

25 A. Yes.

Q. The first of those is that CPA Australia is a threat in New Zealand. is that the very thing we've just been talking about?

Q. And you noted down the times you did talk about CPA Australia being a threat to NZICA in New Zealand and NZICA having to respond?

30 A. Yes.

1550

Q. Does she acknowledge, according to your notes, that the top talent coming out of universities now has two organisations to choose from?

A. She didn't (inaudible 15:50:24) some choices, yes.

Q. And then we get the (inaudible 15:50:27) question. And then that CPA in Australia is not the same as CPA in United States and I think you agree with her that that's correct, don't you?

A. Yes.

5 Q. And then the final point is that CPA Australia is not a member of the GAA as their education standards were not good enough. Now is that a note that you made of what she said or is it a note that you made of what you thought she said?

A. That is a note of what she said.

10 Q. Well in her brief of evidence the witness Deborah Wand records her as having said that, "The education pathways were different." That's different from what you've recorded, isn't it?

A. It seems to be, yes.

15 Q. And the pleading in the statement of claim is that CPA Australia is not a member of GAA because their education is not up to the same standard. Again, that's a little bit different, isn't it?

A. Mr Gray, as I have said, I mean CPA Australia is not a member of GAA as their education standards were not good, that was what I heard at the time.

20 Q. So it's not analysis. It's not your –

A. That is what I have.

Q. – interpretation of it, you think that's a literal statement?

A. Correct, yes.

25 Q. Can we turn now please to the growth that your organisation has enjoyed in New Zealand over the last five or six years and can I ask you please to have a look at six annual reports for your organisation for the years 2009 to 2014 which are shown to you?

A. Whereabouts are they?

Q. They will be coming to you in just a moment.

30 A. Thank you.

## **THE COURT ADDRESSES WITNESS – DOCUMENTS (15:53:17)**



**CROSS-EXAMINATION CONTINUES: MR GRAY QC**

A. Thank you.

Q. Can I ask you please to look first at the 2009 annual report and at page 32?

**5 WITNESS REFERRED TO 2009 ANNUAL REPORT**

A. Yes.

Q. And does that tell us on the top line in the left-hand column that in the financial year ended 31 December 2009 the consolidated accounts of the organisation showed revenue of \$132.523 million?

10 A. Yes.

Q. Now I'm a lawyer speaking to an accountant so I know that I could get this wrong.

A. Actually Mr Gray, I'm not an accountant.

Q. Can I ask you please to look at the next page 33.

15 A. Yes.

Q. And can I ask you to look again in the left-hand column but at the bottom?

A. Yes.

Q. And does that tell us that as at 31 December 2009 total members funds for the organisation were \$36.779 million?

20

A. Yes I understand that to be correct and this is for the whole organisation?

Q. Yes.

A. Yep.

25 Q. Now can we move please to 2010?

A. Yes.

1555

Q. And can we look please at page 79 and again in the left-hand column of para, of section 3A revenue, can we see that for the financial year ended 31 December 2010 revenue had increased to \$137.237 million? Can you see that?

30

A. Yep, I can see that, for the whole organisation, yes.

Q. And at page 69, which is the statement of financial position as at 31 December 2010, can we see again in the left-hand column at the bottom that members' funds were now \$48,320,000?

A. Yes, the whole organisation.

5 Q. And then can I ask you please to look at 2011? Can you see please on page 77 that for the year ended 31 December 2011, revenue had grown to \$139,767,000?

A. Mhm.

10 Q. And that the accumulated funds are shown in the statement of financial position on page 70, and again looking at the left-hand column at the bottom, we can see that they are now \$53,792,000?

A. Yes.

15 Q. And on page 10, for the first time revenue is broken up by country, and we can see that for New Zealand revenue was \$797,000, expenses \$943,000?

A. Yes.

Q. Can you turn then to 2012 and to page 72?

A. Sorry, just getting it. Yes.

20 Q. Page 72 we can see again in section 3A in the bottom left-hand corner that revenue for the organisation has grown to \$149,658,000?

A. Yes.

Q. And back at page 65, the statement of financial position as at 31 December 2012, total members' funds had grown to \$64,451,000?

A. Yes.

25 Q. And that on page 10, revenue for New Zealand had increased to \$1.141 million?

A. Mhm, yes.

Q. And by now you were close to break even?

A. (no audible answer 15:58:55)

30 Q. And then 2013, can I ask you please to look at page 81?

A. Yes.

Q. Can you see again under section 3(a) for revenue, that revenue has increased to \$153,640,000?

A. Yes.

Q. And then at page 73, in the statement of financial position, on a consolidated basis, total members' funds were \$71,090,000?

A. Yes.

Q. And at page 10 is the revenue broken out again, and we can see that  
5 New Zealand revenue had grown to \$1.286 million?

A. Yes.

1600

Q. And breakeven remains elusive but is getting closer. And then finally  
2014 and if I could ask you please to look at page 81.

10 **WITNESS REFERRED TO 2014 ANNUAL REPORT**

A. Yes.

Q. And again in section 3(a) total revenue has grown to \$157,279,000?

A. Yes.

Q. On page 73 on a consolidated basis and in fact it is now only stated on  
15 a consolidated basis in the right-hand column is a comparative one  
rather than a parent one, members funds were now 74,405,000?

A. Yes.

Q. And the New Zealand performance is found at page 16?

A. Yes.

20 Q. And it's \$1.52 million?

A. Yes.

Q. And just finally, can I ask you to look at page 523 of the  
bundle of documents in front of you which is in volume 3. Is that an  
analysis of the members of your organisation in New Zealand in the  
25 years from 2009 to 2014?

**WITNESS REFERRED TO BUNDLE OF DOCUMENTS, VOLUME 3**

A. Yes, it seems to be, yes.

Q. And is in each year the top line the number of members you had when  
you began the year?

30 A. Yes.

Q. And then do you have two lines which are new members who join you  
during the year?

A. Yes.

Q. And then do you have members who leave during the year which are called either controllable losses or uncontrollable losses?

A. Yes.

Q. I suppose a death is an uncontrollable loss, but does that analysis show us the membership has increased consistently –

A. Yes.

Q. – throughout that period? Does it also show us that the rate at which members have been retained has pretty much been constant throughout that period?

10 A. There's been a drop in 2011.

Q. A drop from 2010 to 2011, haven't you done better?

A. Yes, sorry, yes, correct, yep. So it's, yeah, correct.

Q. And in fact I put it to you that in fact the retention rate is broadly consistent, it varies within a percentage point or two from year to year but broadly is in a range from about 92 and a half percent to 94 and a half percent?

A. Correct, yes.

Q. And so while numbers of members leaving as increased over the years isn't it the case that they've increased while membership of a whole also has increased?

A. Correct, yes.

Q. So that the percentage of departures is pretty much constant across this period?

A. Yes.

25 1605

Q. So would you look now please at this table. Mr Jenkins, would you take a moment to read it, I'm going to ask you which it summarised – whether it summarises the statistics we've just, and the financial results we've just looked at. My question is, does that table summarise the revenue, members' funds for the organisation, and from New Zealand where it's available in the annual report, for the years ended 2009-2014 and also the number of members in New Zealand for those years?

30

#### **WITNESS REFERRED TO TABLE**

A. Seems, yes.

Q. Where in the financial statements in the membership numbers on that page do you identify loss, or likelihood of loss, caused to the organisation?

A. Is that a question or a statement?

5 Q. Question? Again with the word “where”?

A. No.

Q. In fact your financial performance suggests that you have progressed and continued to progress through the whole of this period, doesn't it?

A. Our membership has grown, yes.

10 Q. Your New Zealand revenue has grown?

A. Yes.

Q. Your organisation as a whole has had revenue growth and growth of members' funds?

A. Yes.

15 Q. Your departure rates have broadly been constant throughout this period?

A. Yes.

Q. So why is that you come to Court saying you've suffered loss as a result of the speeches given at two conferences?

20 A. Because, Mr Gray, it's not, it's the, if we take the numbers aside, it's, you can't go back in time. So despite our membership numbers increasing, it's what they could have been if we didn't have these series of different tax, for want of a better word. So from the flier, through to the flier with the students, through to the *NBR*, um, statements from the  
25 CEO, through to the Accountants' RePublic conference, and the remarks made by Ms Patterson, and the difficulty that we have had now with the recognised employers, as I've alluded to in my evidence, or put in my evidence, despite having a recognised employer with KPMG, it's subsequently been very difficult, or harder now to form other recognised  
30 employers with the other major accounting firms. So I would suggest that you can't, without these things, our membership growth could have even – could have been substantially larger.

Q. Of the people who attended the Wellington event, the five to 10 who are your members, how many of them ceased to be members?

A. I can't tell you that. I don't have those figures.

Q. If they'd ceased to be members, how many left because of what was said at the conference?

A. I don't know that, I don't have –

5 Q. Of course you don't.

A. – those figures.

Q. Of the remaining 90 to 95 or so, how many failed to become members because of what was said at the conference?

A. I can't give you those figures, I don't have those figures.

10 Q. But you are trying to say to me that the big four accounting firms, by reason of what was said at the conference have been slower to progress their negotiations with you, about becoming an REP?

A. I would suggest that's been the case, yes.

15 Q. Surely, Mr Jenkins, the big four accounting firms can make up their own minds about what it is that the two designations offer and the quality of the qualification. Surely with the sophistication, the resource, and the knowledge, the big four accounting firms, what someone might say in a conference, in an oral not a written presentation, is just background noise to the big firms?

20 A. No I refute that, no. I don't agree.

1610

25 Q. So the basis upon which the plaintiff comes to Court today is that big four accounting firms have been influenced in their decision making about what is said at two conferences attended by about 100 people each?

30 A. No just big accounting firms because the flier was aimed at students and graduates so you've got that target market and the Accountants' RePublic conference was also aimed at small to medium sized public practitioners as well so it's not just the big accounting firms it's broader public.

Q. Mr Jenkins, you're shifting your ground. You said in evidence the loss we've suffered is that the big accounting firms have been slower to enter into REP arrangements with us?

A. That's one line, yes.

Q. What I'm saying, I'm asking you, do you really say that the big accounting firms have been influenced by what is said to conferences attended by about 100 people each?

5 A. I'm not saying it's just the big accounting firms I've just said to you it's broader than that.

Q. Well I'm asking you just about the big accounting firms?

A. So from a recognised employer perspective it has been harder and taking us longer than I suspected it would to get the other firms involved and become recognised employers.

10 Q. And I have to ask you, what's the rational basis for the view that you've just expressed?

A. Because it's taken longer and you would have thought that one, when one big accounting, one of the big accounting firms had made that decision based on all the analysis that they did you would expect that most of them to follow suit quite quickly thereafter, that hasn't been the case.

Q. Taken longer than what?

A. Longer than – so in effect it's been two years some.

20 Q. So what's the measure? What's the comparator? What has it taken longer than?

A. Time.

Q. Or is it just longer than you hoped?

A. It has taken longer.

25 Q. I have to suggest to you that the data summarised on that table suggests that your business in New Zealand and your business overall has grown at a broadly consistent rate and been unaffected by anything that's been said in the fliers, advertisements and seven are speeches that you complain about?

30 A. So I would agree that it's growing but I would disagree that it's been unaffected.

Q. Can I ask you please to look at page 523, I'm sorry, page 517? Is this the rate card for television advertising spend by CPAA in New Zealand between 1 January 2013 and 31 December 2013 as reported by its agent J. Walter Thompson International New Zealand Limited?

A. I wasn't responsible for the schedule but, and I haven't seen this so...

Q. Well it's a document produced by your –

A. Right.

Q. – company?

5 A. Yeah, but I'm not directly responsible for it, yes.

Q. So are you the head in New Zealand?

A. I am, yes, but I'm not directly responsible for the marketing schedule that goes out on television.

10 Q. Would you look at page 522 please? Does the document show that in the period between January and July 2013 there were a total of 145 advertising spots on TV with a rate card value of \$218,965?

A. It seems to show that, yes.

1615

15 Q. Through a range of shows and not limited to *C/S*, in fact I think only one or two of them are in *C/S* shows – *CSI*. But that document does suggest quite an extensive, quite a large volume of television advertising in that six month period, doesn't it?

A. It shows advertising, yes.

20 Q. Can I ask you please to produce as an exhibit the chart that I've had you look at –

A. Yes.

Q. – and on which you've commented.

A. This one?

25 Q. Yes. It's a form of question. I'm just asking whether you'll give it into evidence.

## **EXHIBIT 1 PRODUCED – CPA FINANCIAL PERFORMANCE**

### **RE-EXAMINATION: MR GALBRAITH QC**

Q. Can you just go back to that 523 again please Mr Jenkins? Have you got that?

30 A. Yes.

Q. What does the period that the free membership applied to?

A. 2013 to 2014.

Q. I'm, is it October 2013 to December 2014 –



A. That's correct.

Q. – is that right?

A. Yes.

5 Q. Now are you – well, when was it that people who joined as a free membership would then be, become liable for a paid charge?

A. From the 1<sup>st</sup> of January 2015.

Q. Are you able to identify if the numbers who resigned during the years 2013-2014, whether any or what proportion of those were people who joined on a free membership basis?

10 A. What I do know is that the number of people that joined on the free membership basis was approximately 400 and we know that 55% of those have paid membership, retained their membership.

#### **QUESTIONS FROM THE COURT:**

15 Q. The rate cards for the, for television advertising, there are columns for rate card value and then there's net value. Do you know what the difference is?

A. Sorry, I don't.

#### **QUESTIONS ARISING – NIL**

#### **WITNESS EXCUSED**

20 **THE COURT ADDRESSES COUNSEL – WITNESSES (16:18:49)**

**COURT ADJOURNS: 4.19 PM**

**COURT RESUMES ON TUESDAY 7 JULY 2015 AT 10.00 AM**

**MR GALBRAITH QC ADDRESSES THE COURT – TIMETABLING**

**LEGAL DISCUSSION (10:05:55)**

5

**MR GALBRAITH QC CALLS**

**BRIDGETTE MARY PRETTY (SWORN)**

Q. Is your full name Bridgette Mary Pretty and do you reside in Nelson and are you an accountant?

10 A. Yes.

Q. Would you read your brief please from paragraph 1? I might stop you once or twice on the way through, okay?

A. Yes.

**WITNESS READS BRIEF OF EVIDENCE**

15

**EXAMINATION CONTINUES: MR GALBRAITH QC**

A. "...obtain either qualification."

Q. Could you just pause for a moment?

**5 LEGAL DISCUSSION – PARAGRAPHS 28 AND 30 (10:26:32)**

**EXAMINATION CONTINUES: MR GALBRAITH QC**

Q. Thank you Ms Pretty, just carry on.

**WITNESS CONTINUES READING BRIEF OF EVIDENCE**

A. Alan, do I just miss the first sentence?

10 Q. No, just read –

A. Just the whole?

Q. Just keep reading as it is.

**THE COURT:**

Read it all.

**15 EXAMINATION CONTINUES: MR GALBRAITH QC**

A. Oh, read it all, right.

**WITNESS CONTINUES READING BRIEF OF EVIDENCE**

A. "My impression of...at committee level."

20 Q. Now if you just pause there, Ms Pretty. Have you got a pen there by any chance?

A. Yes.

Q. Yes, you have. In the next paragraph, paragraph 41, leave in the first sentence. Could you just put a line through the second sentence?

A. The one that started with "She"?

25 Q. Yes, yes. And could you just initial in the margin, thank you, and then if you just go back and read 41, just read the first sentence and read the last sentence, thank you?

A. Yes.

**WITNESS CONTINUES READING BRIEF OF EVIDENCE**

30 A. "On the whole...Ms Patterson's comments."

Q. “And then it felt like she was demeaning me,” read that.

**WITNESS CONTINUES READING BRIEF OF EVIDENCE**

A. “It felt like...and my business.”

Q. And just continue.

**5 WITNESS CONTINUES READING BRIEF OF EVIDENCE**

A. “Rick Jones spoke...intimated by this.”

1035

**THE COURT:**

Just before cross-examination, paragraph 25, Ms Pretty.

**10 MR GALBRAITH QC:**

Twenty-five Your Honour or 35?

**THE COURT:**

Q. Twenty-five, 25, I heard you to read, “For about five years,” at the end of the first line where it says four years. Did I mishear you?

15 A. At the start it says, “After working as a senior accountant –

Q. Yes.

A. – at Richards Woodhouse for about four years I became the firm’s Practice Manager.”

Q. It was four years?

20 A. Yes, when I became the Practice Manager but I was there for, what, five years or over five years, yep, five and a half I think it was.

Q. All right.

A. In total.

**CROSS-EXAMINATION: MR GRAY QC**

25 Q. Ms Pretty, you obviously feel you've received very good support from CPA Australia in your career as an accountant, don't you?

A. Yes, that's right, I do.

Q. And you've been pleased to serve the organisation by serving on its committees including as chair of an advisory board?

30 A. Yes, I felt like it was an honour.

Q. So you're pretty loyal to CPA Australia Limited, aren't you?

A. I'm a CPA member, yes.

Q. But beyond just being an ordinary member your loyalty arises from the fact that you've been part of the organisation structure and have been proud to serve it?

5

A. It's more about my personality, I'm a nerd and I do everything to the fullest.

Q. And you join things, you feel like you want to belong?

A. In what respect, sorry?

10 Q. When you serve an organisation you feel like you want to belong to it?

A. I want to do my best in whatever I do, it's that personality thing again.

Q. And to be committed to the organisation that you're working with?

A. Yeah, I try to commit to everything I do.

**RE-EXAMINATION: MR GALBRAITH QC – NIL**

15 **QUESTIONS FROM THE COURT – NIL**

**WITNESS EXCUSED**

**OBJECTION: MR GRAY QC – PARAGRAPHS 28 AND 30 (10:37:25)**

1040

**MR GALBRAITH QC CALLS**

**RICHARD STRUAN JONES (SWORN)**

5 Q. Is your full name Richard Struan Jones? I don't know where you live, Mr Jones. Where do you live?

A. Auckland.

Q. Auckland, right.

A. Yes.

10 Q. If you just read from paragraph 1 of your brief, thank you.

A. "Personal background"?

Q. Yes.

**WITNESS READS BRIEF OF EVIDENCE**

**EXAMINATION CONTINUES: MR GALBRAITH QC**

A. "...understood this statement."

Q. Just pause. Just pause there. Have you got a pen there?

5 A. Yes.

Q. Right, can you just strike out the sentence, "I understood this statement to be emphasising," et cetera, and initial in the margin?

A. Okay.

Q. Can you just continue from paragraph 16, thank you?

10 **WITNESS CONTINUES READING BRIEF OF EVIDENCE FROM PARAGRAPH 16**

A. "I was quite...pathway being inferior."

Q. Can I just ask you a couple of extra questions? If you go back to paragraph 29.

15 A. Yes.

Q. What you're saying is there you would have expected more people to come to your May event than came, as I understand it, to your October, sorry, December 2012 event?

A. Yes.

20 1050

Q. Can you just give His Honour some idea of how many people came to the December 2012 event?

A. I think about 15 from memory.

Q. Now I will just ask you one other question. You presented at this  
25 RePublic conference in Christchurch and I think you've acknowledged that most of the people there would have been either NZICA or CPA Australia members?

A. Yes.

Q. Why do you present to a conference where you might say everybody is  
30 already committed?

A. It's not uncommon for a full member of a professional body like a CA to become a CPA so CAs can become CPAs like they can become members of other professional bodies around the world so for us

because we'd just launched the public practice certificate one of our markets where there were new potential members were CAs who were looking to have a CPA public practice certificate. So they can become members of CPA Australia.

5 Q. And to the extent that these were principals or senior accountants within, well, would these be tier two, tier three accounting firms?

A. Yes, and even smaller, even, yep, smaller firms.

Q. And would they employ graduates?

A. Some of them would, yes.

10 Q. Are they part of your target market?

A. Yes.

### **CROSS-EXAMINATION: MR GRAY QC**

Q. Just building on the last question my learned friend asked you. Do I take it that an important purpose for which you spoke at the RePublic event was to try and attract new members to CPAA?

15

A. Yes.

Q. And you'd have accepted that Ms Patterson's purpose would have been to have retained members of NZICA?

A. Yes.

20 Q. And in that sense between the two of you there was a commercial rivalry and you were both there for the purpose of promoting your own organisations?

A. Yes.

Q. And in fact that's the way the conference had been promoted, wasn't it?

25

A. Initially.

Q. The promotional material had indicated that you would both be speaking and both promoting the benefits of your own organisations?

A. Initially with the initial advertising which was then changed, yes.

Q. And I think you spoke after Ms Patterson?

30

A. Correct, yes.

Q. So you had a chance to respond to anything that she may have said that you felt required a response?

A. Yes.



Q. And I think you accept that most of the people present who weren't members of CPAA probably were members of NZICA?

A. Yes.

5 Q. My learned friend, Mr Galbraith, then asked you some questions about the event that you held subsequently which fewer people than you expected turned up?

A. Yes.

Q. And you thought that about five attendees was a surprising, in Christchurch, was a surprising low number?

10 A. Yes.

Q. And you thought that because you'd been to Christchurch a few times, you said, and you thought you had a bit of a profile there?

A. Yes.

15 Q. Can I ask you to look please at paragraph 8 of your brief? Don't you in fact say at paragraph 8 of the brief in relation to the RePublic event, that you only knew three of four of them because you hadn't spent much time in Christchurch and you hadn't developed the public practice market in the South Island?

**WITNESS REFERRED TO BRIEF OF EVIDENCE, PARAGRAPH 8**

20 A. We hadn't spent a lot of time prior to Accountants' RePublic developing the market but I had been, I do go to Christchurch a lot as part of my job with the tertiary sector but not a huge amount of time developing the public practice market.

25 Q. Well you can't have it both ways, can you? You've either spent a lot of time developing it or you haven't spent a lot of time developing it, isn't paragraph 8 of your evidence correct?

A. Ah –

Q. That in fact you hadn't spent an awful lot of time developing your public practice in Christchurch at the time of the RePublic event?

30 A. Not a huge amount.

Q. So about three or four of your members attending an event of a hundred people was, you thought, about right at the time?

A. Probably, yes.

Q. And equally, if we look at this later event held in Wellington, Christchurch, Dunedin and Auckland, if RePublic with all their advertising can only get three or four of your members to its event, isn't about five members turning up to your own event which you've advertised yourself also about right?

A. I still would have thought more because we used the RePublic events to promote CPA brand in an attempt to then, you know, follow up, have our follow up conferences, so I was still surprised given the profile we had at the RePublic events.

10 1055

Q. And still dealing with the May 2013 events –

A. Yes.

Q. – the sessions in which you got 15 attendances in Auckland and 10 attendances in Wellington, isn't about five in Christchurch right?

15 A. Um, I'd, to be honest, personally I would still have expected more. We were aiming for more at all of those events and certainly five was –

Q. Right.

A. – was less than I had certainly anticipated.

Q. So for all of these events you had fewer people than you expected?

20 A. Yes.

Q. Across the board?

A. Yes.

Q. Including in Auckland?

A. Ah, yes, 15 in Auckland would be less than what we would have hoped for.

25

**RE-EXAMINATION: MR GALBRAITH QC – NIL**

**QUESTIONS FROM THE COURT – NIL**

**WITNESS EXCUSED**

**OBJECTION: MR GRAY QC – PARAGRAPHS 22 AND 31 (10:56:37)**

30

**MR GALBRAITH QC CALLS****DEBORAH JANE WAND (AFFIRMED)**

Q. I'll stop you at one place on the way through your brief, Ms Wand. Is your full name Deborah Jane Wand, do you reside in Auckland?

5 A. I do.

Q. Would you please read from paragraph 1, and, as I say, I'll stop you at one stage but don't worry, just go ahead at the moment.

A. Okay.

**WITNESS READS BRIEF OF EVIDENCE**

10

1105

**EXAMINATION CONTINUES: MR GALBRAITH QC**

A. "...pathway were different."

5 Q. Just pause there please Ms Wand. There's a pen there on the right-hand side, could you just cross out the next sentence please and initial in the margin.

A. Cross out my next sentence, yeah.

10 Q. That's from, "I believe," to, "Accounting profession," and just initial in the margin thank you. And if you just continue at little (c), "NZICA's competitors."

**WITNESS CONTINUES READING BRIEF OF EVIDENCE**

A. "NZICA's competitors use...been hard fought."

1110

15 Q. Now could I just take you back to paragraph 16 for a moment, and when you say there that you attended the Wellington conference as it was a good opportunity to fulfil the functions of your role and you referred earlier, I think, to CPA Australia attending 10 to 15 functions a year, can you just explain what opportunity a conference such as the RePublic conference provided for your role?

20 A. It gives me the opportunity to talk to people working in the profession who may or may not have a current professional membership to either obtain a new professional membership or if they haven't got one I can promote CPA Australia to them, and also talk to them about staff they  
25 may have within their organisations that I could also promote CPA Australia to.

**CROSS-EXAMINATION: MR GRAY QC – NIL****QUESTIONS FROM THE COURT – NIL****OBJECTION: MR GRAY QC (11:14:00) – PARAGRAPH 34**

**WITNESS EXCUSED**

**BRIEF OF EVIDENCE OF ROBERT NICOLAAS BAKKER ADMITTED BY  
CONSENT**

**MR GALBRAITH QC ADDRESSES THE COURT – TIMETABLING**  
(11:15:10)

**5 COURT ADJOURNS: 11.17 AM**

**COURT RESUMES: 2.29 PM**

**MR GRAY QC MAKES OPENING SUBMISSIONS**

**COURT ADJOURNS: 3.40 PM**

5



**COURT RESUMES ON WEDNESDAY 8 JULY 2015 AT 10.01 AM****MR GALBRAITH QC CALLS****EVDOKIA TSAHURIDU (AFFIRMED)**

5 Q. Doctor, one of the mistakes I made, I asked you how you pronounced your last name so, look, perhaps could you just state your name, would you mind, thank you?

A. My name is Evdokia Tsahuridu.

10 Q. Thank you very much indeed, and you reside in Melbourne as I understand it?

A. Yes I do.

15 Q. If you just take the written brief which is in front of you and if you would read from paragraph 1 and then at the end I'm going to ask you to produce some other documents and just talk to those. So we will just go through your brief with only one interruption, I'll stop you when we get to the interruption, all right?

A. Okay, thank you.

**THE COURT ADDRESSES MR GALBRAITH – COPY OF BRIEF (10:03:24)****EXAMINATION CONTINUES: MR GALBRAITH QC**

20 **WITNESS READS BRIEF OF EVIDENCE**

**EXAMINATION CONTINUES: MR GALBRAITH QC**

A. "...website is provided."

1015

Q. Right, now that wasn't provided unfortunately, so if I could just show you  
5 this document. Is that the document which is referred to in your brief?

A. Yes that's right.

Q. Would you produce that as exhibit 2.

**EXHIBIT 2 PRODUCED – IFAC STATEMENT OF MEMBERSHIP OBLIGATIONS**

10 Q. Right if you'd just like to keep reading from paragraph 20 thank you.

**WITNESS CONTINUES READING BRIEF OF EVIDENCE**

A. "The SMO's relate...international accounting standards."

1040

Q. Thank you doctor. Could you please just look at three documents which  
15 I am going to have handed to you. Those three documents are a letter of the 8<sup>th</sup> of February 2013 to the Auditing and Assurance Standards Board in Australia?

A. Mhm.

Q. A letter of the 9<sup>th</sup> of October 2013 to the Accounting Professional and  
20 Ethical Standards Board, which is the APES that you were talking about, is that right?

A. Yes.

Q. And of 29 September 2014 to the International Accounting Standards Board, is that right?

25 A. Yes, that's right.

**WITNESS REFERRED TO AUDITING AND ASSURANCE STANDARDS BOARD, ACCOUNTING PROFESSIONAL AND ETHICAL STANDARDS BOARD AND INTERNATIONAL ACCOUNTING STANDARDS BOARD DOCUMENTS**

30 Q. Now if one just looks at those letters they are all signed by both the, or on behalf of at least, the CPA Australia Limited and ICAA as it then was in 2013, and in respect of the September 2014 letter, CAANZ?

A. That's right.

Q. Can you just explain, because you've talked about submissions which are made, is this relatively standard practice, joint submissions made by CPA Australia and either ICAA or now CAANZ?

5 A. Yes we, I think we have a tradition of doing joint submissions with the Institute, both as ICAA but also CAANZ. I think generally we, I think our view is that we will seek to make a joint submission particularly in relation to accounting and auditing standards and it is only when we have differences in policy which is hardly ever the case, I can't think of a case when we didn't make one because of vast differences so, yes, we  
10 tend to do a few and, you know, I can tell you that my team is preparing a joint submission this month on auditing and another in accounting with what is now CAANZ.

Q. And is it a co-operative, positive relationship that your team has with the CAANZ equivalents?

15 A. Yes I would say so. We work together on a number of policy initiatives and submissions and we also work together to produce guidance and resources for members.

Q. And perhaps just on that topic, guidance. If you just look at another document which I have handed to you. Can you just explain what that  
20 document is?

#### **WITNESS REFERRED TO INDEPENDENCE GUIDE**

A. This is the independence guide, it's one of our most popular resources and it is for auditor independence requirements as prescribed by the code of ethics. It is a joint document. It is developed by CPA Australia,  
25 the Institute and IPA which is the third professional accounting body in Australia.

Q. And this was published most recently when?

A. This is the last version. It's the fourth edition that was published in 2013 but, yes, so it has been revised four times to reflect the changes of  
30 independence requirements in the code and other regulations.

Q. And again, is that your team which co-ordinates with the other two organisations to produce this?

A. Yes it is my team that works with the other two bodies to co-ordinate the production, the publication of this.

**THE COURT:**

Q. Mr Gray, before you cross-examine, when you read your brief, doctor, at paragraph 11 I may have misheard you. Can you just go back to paragraph 11 please?

5 A. Sure, Your Honour.

1045

Q. In the second sentence I heard, I think I heard you to say, "The review is undertaken by a subject matter experts," you added the word "experts". Did I hear you correctly?

10 A. I did. I did add –

Q. Should it be there?

A. Yes I think it should be, I think I've left it out.

Q. All right, well –

A. Mistakenly.

15 Q. You've got a pen there.

A. Yes.

Q. Mr Galbraith QC I'm sure won't mind if I suggest to you just add the word "experts" and then put your initials in the margin.

**MR GALBRAITH QC ADDRESSES THE COURT – EXHIBITS (10:45:42)**

20

**EXHIBIT 3 PRODUCED – THREE LETTERS****EXHIBIT 4 PRODUCED – INDEPENDENCE GUIDE****CROSS-EXAMINATION: MR GRAY QC**

25 Q. Dr Tsahuridu, can I ask you please to look at paragraph 4E of your brief, and that of course is a summary of what you say at paragraphs 50 to 56 of your brief?

**WITNESS REFERRED TO BRIEF OF EVIDENCE, PARAGRAPH 4E**

A. Yes.

30 Q. Do you intend those paragraphs to be a comprehensive description of the range of functions of GAA?

A. This is what I understand and this is what is available in the website of GAA. I wouldn't argue that these paragraphs include every single thing that the GAA is doing.

5 Q. Well have you seen the brief of intended evidence of Mr Stephen Harrison?

A. Yes I have.

Q. You understand that Mr Harrison is the CEO of the GAA?

A. Yes.

10 Q. And did you see paragraphs 12 and 13 of his brief where he intends to give evidence about what it is that GAA does.

A. Yes although I don't remember them.

15 Q. But you must have noticed that he laid some emphasis on functions such as providing thought leadership for the professional and providing links between accounting firms in the context of thought leadership. Did you recall seeing him saying that those were important functions of the GAA?

A. I don't recall but I'm not shocked that that may have been the case.

20 Q. And those sorts of functions aren't quite captured by the descriptions that you've given in paragraphs 4E and after paragraph 50 of your brief, are they?

25 A. No they are not because when I look at thought leadership evidence in the profession and, you know, again IFAC has developed a knowledge portal that captures a lot of the thought leadership developed by the profession and it is, you know, trying to think back. I don't think GAA is visible in key platforms of thought leadership for the profession.

Q. But doesn't Mr Harrison explain that? Doesn't he say, "Well what GAA does is co-ordinate responses among members and by members rather than by GAA in its own right?"

30 A. I would have to go back to his brief and really look at the detail of his comment because it has been a few days since I have read it.

Q. But, for example, you go on to say that GAA is not an RO, and I think RO, and really you guys have a black belt in acronyms, it's a regional organisation, isn't it?

A. Yes, that's right.

Q. Well of course the global alliance is not a regional organisation, is it, it's a global organisation?

A. Yes.

5 Q. So you wouldn't expect a global organisation to be treated as a regional organisation, would you?

A. That's right.

1050

Q. So there's not really much to be taken from the observation that the global organisation is not a regional organisation, is there?

10 A. No, but IFAC has other al – other groupings of accounting organisations that it has a close relationship to and refers to on its website.

Q. Do I take it that the main thrust of your evidence is that the global standards setting body in the profession is IFAC and that CPAA is a member in good standing within IFAC and applies IFAC's standards to its own programmes? Is that a fair summary of the evidence that you've given this morning?

15 A. I s – well, IFAC looks after auditing, education, ethics and public sector standards but it doesn't look after accounting standards.

Q. Subject to that qualification, was the proposition I put to you a reasonable one?

20 A. Can you repeat the proposition, please?

Q. It is that IFAC is the standard setting body within the profession globally, that CPAA is a member in good standing of IFAC and that CPAA adopts IFAC standards for its own programmes?

25 A. I don't want to be pedantic but IFAC makes a big fuss about saying that the standard setters are independent, so yes, there are independent standard setters and they produce the standards and CPA Australia adopts and complies with those standards to the extent that it is able to. For example, in Australia we haven't adopted the public sector accounting standards, the IPSAS, so in that sense our responsibility is to do whatever we can and provide commentary in exposure drafts and improve the standards wherever possible.

30 Q. Subject again to that, was the proposition I put to you and repeated a reasonable summary of the evidence that you give?

A. Yes, I think so.

Q. IFAC, of course, does not compare programmes offered by different bodies with each other, does it?

5 A. I am not sure. I don't, I don't know that it does but I don't know that it doesn't either.

Q. Isn't what it does set standards or co-ordinate the setting of standards by all independent bodies which it looks over and assess the extent to which the standards adopted by bodies comply with them or not?

10 A. I think, I think member bodies provide their plans in relation to the adoption of the standards, and that is the SMOs that I was going through.

Q. Yes.

15 A. So members have to report to IFAC, the compliance advisory panel, how they are going to ensure that they comply with their member obligations.

Q. And IFAC actually looks at those submissions, doesn't it –

A. Yes.

Q. – to ensure that there's compliance in fact?

A. Yes.

20 Q. So its role is to arrange for independent bodies to articulate standards, and to receive submissions by member bodies explaining how the member bodies say how they have met the standards and apply them and to check that the submissions in fact achieve that?

A. Yes.

25 Q. And IFAC's not in the business of saying that within a region or within a nation two bodies have programmes that are – one of which is better than the other or one of which is inferior to the other? That's not an IFAC role, is it?

30 A. No, and I think given that the focus is on public interest and the development of the profession I don't think IFAC would be ranking programmes.

1055

Q. No, but within a region or a nation it's possible for one or all of the bodies who belong to IFAC to adopt pathways and standards which are as good as IFAC or even a little better, isn't it?

A. Yes.

5 Q. That's an aspirational goal that bodies that might have and it's a matter for them whether they choose to have such aspirations or not?

A. Yes.

10 Q. And whether they do have such aspirations and whether they achieve them is not of itself a matter of interest to IFAC, instead as we have discussed IFAC is interested in compliance with the standards that have been set by the independent bodies that are co-ordinated?

A. I am not sure about that because I think a lot of the standards are principle based, so they are aspirational by definition and they have no upper boundary as such.

15 Q. But they have a lower boundary, don't they?

A. Not necessarily.

Q. Well you either meet them or you don't?

20 A. Well, yes, you know, if a standard says you have to have to acquire accounting and finance knowledge, yes, you can say that there is a lower boundary but I don't know if there is. Yes, I suppose if you haven't learned anything at all about accounting and finance then you haven't reached that lower boundary.

**RE-EXAMINATION: MR GALBRAITH QC – NIL**

**QUESTIONS FROM THE COURT – NIL**

25 **WITNESS EXCUSED**



**MR GALBRAITH QC CALLS**

**DESLEY YVONNE WARD (AFFIRMED)**

**MR GALBRAITH QC ADDRESSES THE COURT – REDACTED**

5 **PARAGRAPHS (10:58:07)**

**EXAMINATION: MR GALBRAITH QC**

Q. Now is your full name Desley Yvonne Ward, you reside in Melbourne, Australia?

A. That's correct.

10 1100

Q. If you'd just like to read from that brief that's in front of you, from paragraph 1 please, and then I've got one or two additional questions at the end, but I don't think I need to stop you on the way through.

**WITNESS READS BRIEF OF EVIDENCE**

15 A. "I'm employed by...ethics and governance."

1115

Q. You don't have to read that table.

**THE COURT:**

Q. No, you don't need to give me those stats. Pop on down to 46.

20 A. Good.

**EXAMINATION CONTINUES: MR GALBRAITH QC**

**WITNESS CONTINUES READING BRIEF OF EVIDENCE FROM PARAGRAPH 46**

A. "As noted previously...a licensed auditor."

25 1120

Q. Thank you Ms Ward. Now could I just take you back to paragraph 24 for a moment, you're referring to the MOU with TEQSA you see that in that paragraph?

A. Yes.

Q. Just look at this document.

**WITNESS REFERRED TO DOCUMENTS**

Q. Now is that the announcement of the MOU with TEQSA?

A. That is, yes.

5 Q. Right. And backing it is there a description of the accreditation programmes which CPA runs, just look across the pages.

A. Yes.

Q. Right, and if you go I think to the third page, it talks about the Australian Accreditation Guidelines, is that right?

10 A. It does yes.

Q. And there are agreed accreditation guidelines aren't there between yourselves, sorry CPA Australia and CAANZ is that right?

A. That's correct, yes.

15 Q. And if I could just show you this document. And are those those professional accreditation guidelines between CPA Australia and CAANZ?

A. Yes, this is a large extract from the guidelines –

Q. Sorry, yes.

A. – which are now published.

20 1125

Q. Yes. It's not the full guidelines, is it?

A. No.

25 Q. No. But – and the purpose of the guidelines is to make sure that there is a standard accreditation process and people know where they stand, is that right?

A. It is, and it is to ensure that the professional bodies can help the university sector to guide the education of professional accountants.

Q. Okay, and that's part of what the MOU's about also, is that right?

30 A. The MOU, which I can only speak generally about because I didn't work directly on that, that is actually an agreement between CPA Australia and TEQSA for information sharing in relation to providers. It's, it's somewhat different to the accreditation guidelines and doesn't form part of the actual accreditation process in terms of how that's evaluated by CAANZ and by CPA Australia.

Q. But in the – but the information sharing is for what purpose?

A. That is to assist in ensuring the regulation of higher education providers who are providing accounting education. There are instances where providers don't necessarily meet requirements and there's also a lot of documentation and work required for providers to make changes to courses, so we're trying to limit the amount of double handling of documentation and also to be receive information about institutions that may not be serving the public interest in the way that they're educating accounting students.

10 Q. And under that MOU are – is CPA Australia entitled to share that information with CAANZ?

A. We can't directly share the information to my knowledge because CAANZ is registered as a higher education provider under TEQSA so therefore that would be a conflict of interest for them to receive information that was directly transmitted.

15 Q. Right. Okay. Now paragraph 13, if you wouldn't mind going there.

#### **THE COURT ADDRESSES MR GALBRAITH QC (11:27:30)**

#### **EXAMINATION CONTINUES: MR GALBRAITH QC**

#### **EXHIBIT 5 PRODUCED – ACCREDITATION GUIDELINES DOCUMENTS**

20 Q. Paragraph 13, you referred to that comparison that was attached to Professor Van Zijl's evidence. I just want you to identify that. There's some bundles of documents there. Could you just find common bundle, volume 2?

#### **WITNESS REFERRED TO COMMON BUNDLE – VOLUME 2**

25 Q. And if you'd look at page 327 and see if that's the same document that...

A. Yes, that's the same document.

Q. Right, and were you involved in the preparation of that document?

A. I worked with one of my team to provide overview on this document.

30 Q. Right. Just, if you just go across to 329 for a moment, you'll see there's a description there under the heading "CPA Programme" of the constitution of the programme?

A. Mmm.

Q. And if we just go down under the “Elective Units” description, there’s a paragraph, a text paragraph, saying, “The advanced taxation unit,” et cetera?

5 A. Yes.

Q. Read that? I just noticed that the second sentence says, “This recognises the diverse membership of CPA Australia and acknowledges that post-graduate level studies in taxation and audit are not relevant to the roles of a proportion of the membership.” Can you just explain what that’s saying?

10

A. Yes. CPA Australia has over 150,000 members worldwide but our members work in diverse areas of professional accounting. We don’t aim to be requiring everybody to have the same knowledge where that’s not, not necessarily helping them in their profession. A lot of our members work in public sector roles. A lot of our members are academics. A lot of our members work in banking and financial services where subjects such as financial risk management which incorporates treasury management, are more appropriate to their career needs. We don’t want to lock people into a situation where they have a very tightly focused programme that requires them then to satisfy their employment needs by pursuing additional study outside of CPA.

15

20

1130

Q. And if you just go to paragraph 30 which is a little section – or it may have changed numbers now, hang on, I’m on the old version. We haven’t, okay, paragraph 30. You were talking about the difficulty of measuring the concept of exceeding IES’s, again can you just, when were the IES’s last revised?

25

A. The most recent revision project finished in 2014 for IES 1 through 7, still finalising IES 8 which is directly related to engagement partners for audit, so it doesn’t fit the programmes. The most recent standard to come into force was IES 2 which focuses on the content of programmes and that came into force effective 1 July this year.

30

Q. And is there a difference in character between the previous IES’s and the new ones?

5 A. Yes, the previous IES's were very much a high level principle base so whilst they told you the topic areas that had to be covered under a general sort of skill area such as business skills, accounting and finance, they did not provide any guidance in terms of the level of competence required by candidates by the time they had completed initial professional development which incorporates the professional programmes, nor did they set out any learning outcomes or guidance for learning outcomes but really I guess drove any significant development, so it was very much left to the professional bodies to determine what to actually incorporate in their programmes and at what level they should be incorporated.

10 Q. And the new IES's?

A. The new IES's are far more prescriptive. Very sound framework is actually created which sets out a level of competence and also guides with learning outcomes for each subject area. It's also taken how the subject areas were designed and ensured that they are actually fitting far better now with the actual needs of the accounting profession.

15 Q. So given it's now more prescriptive and does that make it possible to have an opinion as to whether a programme, a particular programme is just meeting those standards or is exceeding those standards?

20 A. It will be easier to provide an outcome of measurement but given that the breadth and depth of content and the scope of coverage can be different and maybe broader, maybe slightly narrower but still meeting most of the requirements, it's still going to be very much of a judgement call in terms of whether we're exceeding or not and whether anybody is exceeding.

25 Q. If you were to make a judgement call in relation to the CPA Australia programme what would your call be?

A. In terms of the current?

30 Q. In terms of the current IES's, the new ones, the revised ones?

A. In terms of the current IES 2 we have actually developed the programme to align with all of the requirements there. We would need to look at overall performance to make a decision in terms of whether and how much it would exceed the requirements of the IES but my

personal decision would be that it would exceed in a large number of the areas.

**MR GALBRAITH QC ADDRESSES THE COURT – ADJOURNMENT**

**COURT ADJOURNS: 11.34 AM**

5

**COURT RESUMES: 11.49 AM****EXAMINATION CONTINUES: MR GALBRAITH QC**

5 Q. Just one final matter, Ms Ward. Both – I'm right, aren't I, both CAANZ and CPA Australia issue, might be which way the initials go, certificates of public practice in Australia, is that right?

A. That's correct.

Q. Right, and so far as CPA's concerned, what attitude does it take to the CPPs issued by CAANZ and vice versa?

10 A. Both bodies recognise the other body's public practice certificates. We understand that the technical basis was already completed by those members who have actually done their professional programmes, and in terms of public practice we understand that there's certain skill sets people will have and additionally if someone were to join another member body and be in practice operating as a principal and not have a practising certificate they would become a member in breach and neither body I believe wants to do that to potential members.

15 Q. But the situation different between CPA Australia and the New Zealand chapter, if that's the right description, of CAANZ in New Zealand, is that right?

20 A. To my understanding the certificates are not recognised in New Zealand.

**CROSS-EXAMINATION: MR GRAY QC**

25 Q. Ms Ward, at paragraph 9 of your brief you questioned the appropriate programmes offered by the two bodies to compare with each other. I think we understand, don't we, that the two seminars that gave rise to this proceeding occurred in 2013?

A. Yes, that's correct.

30 Q. And do you now understand that from the beginning of 2013 NZICA offered the ICAA programme in New Zealand?

A. Yes, I know that it was a programme that was merging. The award at the end was a different award. They didn't have the graduate diploma in chartered accounting.

Q. But it takes three years to complete, doesn't it?

5 A. It can, yes.

Q. So for a person starting at the beginning of 2013 they weren't going to graduate till 2015?

A. That's most likely.

10 Q. And when they graduated in 2015 they'd get the award that's available now?

A. Yes, if they had started at that point.

15 Q. And I think it's common ground in this litigation that the target audience for these presentations is actual graduates and new people studying because professionals who've chosen a professional body to enrol with tend to stay with it and not change?

A. Yes.

20 Q. So given that it's a forward-looking focus that's the important one, and given that in 2013 people who were starting their study would graduate with the award that's now available, isn't, in fact, the correct assessment the one that's been undertaken by the experts for the purposes of this litigation?

25 A. It would depend upon the progress of people through their studies, so it is making the assumption that the only people who have heard that have not yet made the decision and have not yet commenced any study. Had they commenced studies previously then the programmes they would be undertaking would be different.

Q. But didn't we just agree that the important focus for the bodies is on students and new people?

A. That would be the bulk of the audience, yes.

30 Q. And, in fact, while nearly everyone at these two seminars already had a qualification and so already belonged to one of the bodies, it's the staff that they might employ who might become new students that was the real target audience, wasn't it?

A. That could be, yes. I –



Q. So the target –

A. – wasn't there.

Q. – audience is indirect, if you like, in some ways, or in part?

A. Yes.

5 Q. Can we just talk about multi-choice answers to exams? I always thought they were much better. Professor Van Zijl in his reply brief says that he understands from CPAA that it's got full confidence in its multi-choice answers. But he also goes on to say you do need to understand that as many as 4000 to 5000 candidates sit each of the compulsory segment exams. Is Professor Van Zijl correct when he says that?

A. Yes, and that number can be as high as 6000.

Q. So you can have up to 6000 candidates sitting an exam in any one semester?

15 A. Yes.

Q. And those 6000 candidates can be drawn from a number of jurisdictions, can't they?

A. That's correct.

Q. Do I take it then that one of the factors which is in your mind when designing your exams is the ability for the exam to meet the cultural needs of people sitting the exam from different jurisdictions and the needs for there to be consistence of marking, answers given across jurisdictions and in big numbers?

20 A. Those are some of the considerations in the ultimate design of the exam but the measurement phase overlays that and it's through advice from psychometricians that we establish a common set of anchor items to establish the ability level required for the exam.

25

## **THE COURT ADDRESSES WITNESS – AUDIBILITY (11:55:01)**

### **CROSS-EXAMINATION CONTINUES: MR GRAY QC**

30 Q. I must confess when I read the brief of intended evidence of the two experts it seems to me that whether or not a higher proportion of

multi choice questions is better or worse is a matter on which reasonable people can differ. Is that an appropriate conclusion?

A. Opinions do differ as to the value of different types of testing yes.

5 Q. Am I right in thinking that actually for CPAA an important outcome of this litigation is that the Court accepts that CPAA's programmes and designations is the equal of that of CAANZ?

A. Sorry, I'm not clear what you're asking.

10 Q. Am I right in thinking that one of the things that CPAA is seeking to achieve in this litigation is a finding that it's programmes, it's education programmes and designation is as good as that of the defendant?

A. I would say that what we are seeking is affirmation that the programmes are both of high quality.

Q. Do you want them to come to be seen as being broadly equal, or is it enough that they're both of high quality?

15 A. If both, this really needs that they're both of high quality.

Q. But while they're both of high quality, possible that one could be a little bit better than the other?

20 A. Personal judgment will always make people consider one item or one product better than another, and as you mentioned earlier, people can differ on opinions about various things, so.

Q. Right. So you're not asking the Court in this litigation to say, "They're both as good as each other." Instead you're asking the Court to say, "They're both good."

A. Yes.

25 Q. Because if you did wish to have a comparative assessment between the two programmes, then actually a Court populated by lawyers is not the best place to go to get it is it?

A. Probably not, no.

30 Q. No, but there are specialist bodies that do those sorts of assessments aren't there?

A. There are, yes.

Q. And it would be within the capacity of the Australia Tertiary Education Quality Standards Agency or TEQSA with another acronym, to do such an assessment?

A. Well TEQSA accept the application that is provided by each higher education provider, so they don't necessarily assess each and every course that comes through to them, and it needs to be part of an application to be a higher education provider.

5 Q. But they can say, "This one's a 2 and the other one's a 3", or "This one's a 9 and the other one's a 15."

A. They say that based upon what the applicant provides to them.

Q. And for reasons that you've already explained, CPAA has elected not to be a higher education provider, and to have its course assessed by  
10 TEQSA?

A. We've elected not to become a higher education provider and apply to TEQSA or registration accreditation.

Q. But CAANZ is?

A. That's correct.

15 Q. And CAANZ has been assessed as being at level 8 hasn't it?

A. They have on the outcome of their own, of their application, yes.

Q. And level 8 is postgraduate study, postgraduate diploma?

A. That's correct.

Q. Level 7 is a level of undergraduate degree isn't it?

20 A. Yes.

Q. And you've self assessed, and you give yourself about a seven and a half to 8 –

A. Correct.

Q. – some components at 8, some components at 7 to seven and a half?

25 A. Yes.

Q. I think in your brief of evidence you say that you think there'd be an element of self accreditation in the assessment of the CAANZ programme.

A. Yes.

30 Q. But that's not really what the legislation provides for is it?

A. I'm not fully conversant with the TEQSA Act, it's not an area that I work in but the information provided in the applications to TEQSA by higher education providers is provided in a similar format to what's provided by

those seeking accreditation from the professional bodies and it does come out of information from the individual organisation.

1200

- 5 Q. Can I ask you to look in volume 3 at page 642? Can you see that that's a decision from TEQSA on an application for renewal of course accreditation?

**WITNESS REFERRED TO BUNDLE OF DOCUMENTS, VOLUME 3**

A. Yes.

- 10 Q. It sets out the purpose of the report and then can you see over the page at 643 is the background?

A. Yes.

Q. And the reference to the legislation?

A. Yes.

Q. Can you see at 644 –

- 15 A. Yes.

Q. – that the process that's been followed is the receipt of an application and then a check of the completeness and then a substantive assessment?

A. Yes.

- 20 Q. And what that describes, doesn't it, is that TEQSA made its own assessment of the application?

A. Yes.

- 25 Q. And then if you go to 645, can we see the letter written by TEQSA requesting the evidence that it wanted in order take that substantive assessment?

A. Yes.

Q. So that the renewal is based on an assessment by TEQSA rather than a self-assessment by CAANZ, isn't it?

- 30 A. It's based upon a review of the documentation provided to TEQSA by any of the higher education providers, in this case CAANZ, and where their review is undertaking the review of the documentation provided, identify queries they request additional information from the higher education provider as in this case.

Q. I think you've said that one of the reasons CPAA has chosen not to become a higher education provider and to be accredited by TEQSA is that where it's necessary to discipline a member it's more convenient to be able to do that where there is no accreditation and conferral of the diploma?

5

A. Yes.

Q. And do I take it the thinking behind that is where we need to discipline somebody and in fact suspend or remove their accreditation, CPAA thinks it's cleaner to be able to remove the designation entirely so that consumers of services can't possibly be misled?

10

A. That is correct.

Q. And what they can't be misled about is whether the person remains a member?

A. That's correct.

15 Q. But that's a consequence, isn't it, of the designation being the product of the education pathway?

A. Situations where an award is provided occur in a lot of professions. Where someone receives an award it cannot be taken away unless there has been fraudulent incidents which we've all heard of. You can remove a designation but if you award somebody a graduate diploma of chartered accounting and you were to take away their membership as a chartered accountant, they are still legally permitted to display the graduate diploma of chartered accounting which would therefore mislead the public to believe that they still had a membership of that group. We made the conscious decision not to have the higher education award, therefore, when we remove the CPA designation from a member who has been in breach or in misconduct they are not permitted, there is nothing showing them as a CPA that they can display and, therefore, and essentially trick members of the public into believing they still have the designation.

20

25

30

1205

Q. But they are deprived of the recognition of the knowledge they have?

- A. Our argument would be that through misconduct people show that they are not able to use and apply the knowledge that they have taken, therefore we don't believe that we are depriving them of knowledge.
- Q. But if what your programme leads to was both a qualification and a registration, then it would be possible to discipline by removing the registration while leaving the qualification in place wouldn't it?
- A. It would.
- Q. In the same way as a lawyer who breaches the terms of its discipline, the legal disciplinary code, keeps their LLB degree, keeps their enrolment as a lawyer but loses their practising certificate?
- A. That's correct.
- Q. So again all we really have is a choice, but a choice partly determined by the nature of the qualification or the designation that is offered by the body?
- A. Sorry, I'm not clear what you're asking.
- Q. You have a choice not to become a higher education provider, you have a choice not to be TEQSA assessed, and in part that's because the programme that you offer leads to a designation which is both a qualification and a registration?
- A. That's correct.
- Q. Can I ask you please to look at the press release about a memorandum of understanding with TEQSA?
- A. Can you give me the reference for that?
- Q. It's exhibit number 5, I think we might have to ask Madam Registrar. This is a CPAA document isn't it?
- A. This is an extract from our website, yes.
- Q. And what it does it asks that you've signed some sort of agreement with TEQSA, but it doesn't describe the nature of the relationship arising by reason of the agreement?
- A. I don't directly work on the memorandum of understanding or with the relationship with TEQSA that's outside my remit. I know that the purpose of the agreement was to promote information sharing and to also simplify the documentation for some of the higher education providers in others, but that's the extent of my knowledge.

Q. You don't suggest in your evidence that the memorandum of understanding that's identified in the release is the equivalent to a TEQSA assessment –

A. No.

5 Q. – of the programme?

A. No, this is not.

**RE-EXAMINATION: MR GALBRAITH**

Q. Perhaps just on that last topic, and only if you know the answer to this.  
If CPA had as CAANZ did obtain an acceptance of its programme by  
10 TEQSA could it have become involved with TEQSA in sharing  
information about accreditation programmes of other providers?

A. No, that would be a clear conflict of interest.

**QUESTIONS FROM THE COURT – NIL**

**WITNESS EXCUSED**

15 1210

**DEFENDANT:**

**MR GRAY QC CALLS**

**KIRSTEN PATTERSON (SWORN)**

**5 MR GRAY QC ADDRESSES THE COURT (12:12:09)**

**EXAMINATION: MR GRAY QC**

Q. Is your full name Kirsten Patterson, are you the New Zealand Country Head for CAANZ and do you reside in Wellington?

A. Correct.

**10 Q. Would you read your brief of evidence, please, starting at paragraph 1?**

**WITNESS READS BRIEF OF EVIDENCE**



**EXAMINATION CONTINUES: MR GRAY QC**

A. "...CEO Craig Norgate." My apologies.

Q. Take your time. Perhaps I could ask you to move straight to paragraph 2.

5 **WITNESS CONTINUES READING BRIEF OF EVIDENCE FROM PARAGRAPH 2**

A. "Prior to joining...and Ms Brownrigg the" –  
1230

**THE COURT:**

10 Q. You don't need to give me the ABD references.

A. You've got those?

Q. You can just go past them, thank you.

**EXAMINATION CONTINUES: MR GRAY QC****WITNESS CONTINUES READING BRIEF OF EVIDENCE**

15 A. "I thanked Ms Brownrigg...and her team.

Q. And I'll just ask you to pause, please. Were you asked to provide the presentation at the Christchurch and Wellington events?

A. Yes.

1235

20 Q. Would you continue reading please at paragraph 31.

**WITNESS CONTINUES READING BRIEF OF EVIDENCE FROM PARAGRAPH 31**

A. "In the lead-up... May 2013 file note."

Q. Can I ask you to pause please and take volume 3.

25 **WITNESS REFERRED TO VOLUME 3**

Q. And turn to page 464. Is that the file note you're referring to?

A. Yes.

Q. When did you make it?

A. I made that file note, some of it was made during my phone call with  
30 Mr Jenkins on the 8<sup>th</sup> of May, and the balance of the phone call, of my

file note was made at the request of our general council and by Craig following the letter from Alex.

Q. Thank you. Would you continue reading your brief please, paragraph 32 at the second sentence.

**5 WITNESS CONTINUES READING BRIEF OF EVIDENCE FROM PARAGRAPH 32**

A. "That file note...CPA Australia in the market."  
1255

**THE COURT:**

10 Q. Can I just ask you to pause, did you read systemic or do you mean systematic?

A. Systematic.

Q. Thank you, would you continue please.

**EXAMINATION CONTINUES: MR GRAY QC**

**15 WITNESS CONTINUES READING BRIEF OF EVIDENCE**

A. "I don't accept...chartered accountants ANZ."

Q. Could I ask you to pause there for a moment, please.

**THE COURT ADDRESSES MR GRAY QC**

**COURT ADJOURNS: 1.01 PM**

**COURT RESUMES: 2.14 PM**

**EXAMINATION CONTINUES: MR GRAY QC**

Q. Ms Patterson, would you resume reading your brief please at paragraph 66.

**5 WITNESS CONTINUES READING BRIEF OF EVIDENCE FROM PARAGRAPH 66**

A. "In relation to...believe that now."

1425

10 Q. Well now can I ask you please to look at the second to last sentence at paragraph 86, that contains two propositions –

A. Yes.

15 Q. One is that CPA Australia's not a member of GAA because it's education standards are not recognised as being the same, and the second is that the CA designation is better. Which of those do you now genuinely believe to be true?

20 A. The latter. I now understand that I had made a mistake with regards to the GAA entry requirements around education, and that there is an educational, a jurisdictional restriction around only one member body per country, but at the time of my presentation I had understood it was related to education standards. But I still believe that the CA designation is the better.

Q. Have you signed that copy of the brief that's in front of you?

A. I have signed a copy, I'm not sure – yes I have.

25 Q. Thank you. Now can I ask you just to get a pen please, turn to page 1 of your brief and just put a line through the final sentence of paragraph 1 and initial on the side.

**CROSS-EXAMINATION: MR GALBRAITH QC**

30 Q. Ms Patterson, in paragraph 5 of a quite lengthy description of your background, you refer to speaking at a conference in Fiji recently, Mr Jenkins being present and Mr Jenkins not being a speaker or panellist, can you just tell me why you thought it was relevant to refer

either to your presence at the conference, or the fact that Mr Jenkins wasn't a speaker or a panellist?

A. Given that these proceedings are relating to presentations that I have been giving where Mr Jenkins has been present in the room, I felt that it was appropriate that I record fully occasions where that has occurred.

1430

Q. So that's a full account of all occasions upon which you and Mr Jenkins have been present, is it?

A. Where I have given presentations at the time that I'm aware of, yes.

10 Q. If you just go to paragraph 7 of your brief, as I understand you joined NZICA as COO in August 2012, is that right?

**WITNESS REFERRED TO BRIEF OF EVIDENCE**

A. Correct.

15 Q. And are those functions or responsibilities you set out there the responsibilities you took over on joining?

A. Correct.

Q. As I read them they don't include any education function?

A. Correct, education and ICT.

20 Q. Well just sticking with education for the moment, at the time you joined there was a, as I understand it from your brief, a Trans Tasman activity going on to create a Trans Tasman between ICAA and NZICA, is that right?

A. Correct.

25 Q. And that was being managed by did you say a Trans Tasman executive and a Trans Tasman committee, have I got that right?

A. There is, there's a committee of type, yes, but that was managed by Adelle Evans.

30 Q. Right, okay. So in paragraph 22 I think it is you take up or you describe your functions as current role of New Zealand Country Head, that's under the merged entity, is that right?

A. Correct.

Q. And again just looking at that list of functions, you don't seem to have an education role?

A. No, to be clear, education excluding professional development so, but so when we use education the term of people entering the profession, that's correct.

5 Q. Professional development, you have some function in organising conferences and things like that?

A. Yes, ongoing professional development.

Q. So is it fair to say you've got no particular expertise in professional education for accountants?

A. Correct.

10 Q. So you're not in a position actually to express any expert opinion as to what programme would be better or not so good, are you?

A. No I don't believe I have expressed any expert opinion.

15 Q. So do I take it from your answers that when you went to speak at the RePublic conferences in early May 2013 you didn't actually have any personal knowledge of either the existing NZICA programmes or the being developed programmes or the CPA programmes?

20 A. I had personal knowledge in the fact that I had spent the time in the organisation getting to know and understand those programmes. If you mean personal knowledge by having gone through those programmes then, no, I'm not a chartered accountant and nor am I a CPA member.

Q. Now I see in paragraph 13 you've made some comments about audit functions in Australia with ASIC and the company's auditors board, again you've got no personal knowledge of that, have you?

25 A. I haven't worked at either of those locations but my knowledge comes from my work having worked with this organisation and exposure to FMA and talking to other people who have worked at those organisations.

Q. So you've got no direct personal knowledge, have you?

A. I haven't worked at either of those organisations, no.

30 Q. You haven't worked within that environment, have you, in Australia?

A. I – the organisation in Chartered Accountants Australia and New Zealand has exposure to those markets so my colleagues have provided me with that background.

Q. You haven't worked –

A. In Australia in those markets? No.

Q. Thank you. Paragraph 24, I just want to talk to you about. You talk in paragraph 24 about a message to actively seek to promote the NZICA designation, do you see that?

5 A. Yes.

Q. Now there's various ways of promoting designations and one is to be very positive, isn't it?

A. Yes.

1435

10 Q. And would you agree that generally in the professional arena that professionals would regard being positive as entirely professional?

A. Yes.

Q. But not regard being negative about other professionals as being at all professional?

15 A. I don't agree. Depends on the circumstances.

Q. I see. All right, well, we'll look at the circumstances in due course. So in 25 you go on to list some activities of CPA Australia to which you apparently or – is it your word “aggressive” that's used there or is it...?

A. Yes.

20 Q. So you've read Mr Jenkins evidence, haven't you, about the iPad KPMG?

A. Yes.

Q. He says happened once, not pursued, not cross-examined on that evidence. Regard that as aggressive?

25 A. The – which component, sorry?

Q. The fact that a suggestion was raised –

A. Are you –

Q. – with KPMG and not pursued by either organisation.

30 A. Well, my understanding is that actually the, um, as I've outlined elsewhere in my evidence that those offers have been reconsidered or discussed elsewhere but in terms of the KPMG offer I think that's a, that's a fairly strong action on their part to be encouraging people to select a programme based on a reasonably expensive technology item.

Q. So are you saying you don't accept Mr Jenkins' evidence as being truthful?

A. In relation to the KPMG point, I, um, I don't have any further knowledge of that. I assume that it was just the once but I understand from what  
5 I'm hearing in the market that the offer has been considered before.

Q. So I put it to you again, you don't consider Mr Jenkins' evidence to be truthful?

A. No, I don't, no.

Q. Sponsoring of university commerce student associations. What's  
10 aggressive about that, Ms Patterson?

A. Well, the – as we've, as I've highlighted, that the competition for students can be quite robust in those environments so the advertising in that space is highlighting the, the battle for the student, student market.

Q. Well, isn't that what you would expect of a competitor, that you'd both be  
15 putting yourself out in the marketplace?

A. Well, I think the, um, "aggressive" can mean strong.

Q. Well, what did you mean by "aggressive" when you used it in your brief?

A. I think that it is very strong and overt.

Q. I see. So free assessment fees, you're saying, well, similarly strong and  
20 overt, would you say?

A. And in terms of, ah, free fee, free fees, or a waiver on fees, I think that is aggressive action.

Q. So that's aggressive? That's not just strong?

A. Strong, overt, aggressive.

25 Q. Well, no, let's get our words right. What's "aggressive" and what's "strong"?

A. I can u –

Q. Your words.

A. I consider those terms interchangeable.

30 Q. I see. So, in fact, you actually meant "aggressive" about university commerce students association funding?

A. There's been a very marked increase and a very strong marketing presence in a very short period of time.

Q. Right, what you describe as aggressive?

A. Yes.

Q. All right. Offering to sponsor conferences that NZICA had previously sponsored, again aggressive?

A. Strong and overt, yes, aggressive, still my views.

5 Q. Approaching major accountancy practices with support programmes, the CPA pathway, aggressive?

A. Their mark – their introduction has been very strong.

Q. Well, what do you expect them to do? Sit at home and knit and hope that people come and find them, Ms Patterson?

10 A. Well, the subject –

Q. This is absolutely normal activity in a market, isn't it?

A. Some activity in terms of marketing is normal. I don't, um – not all of those marketing options would be ones that I would consider or have implemented myself.

15 Q. So, what, are you critical of sponsoring commerce student associations?

A. No.

Q. All right. Increasing their presence on tertiary campuses. You're critical of that?

20 A. It's when taken in totality in terms of the presence and the speed at which they went to market. So there was a very strong increased presence in a short period of time and that created the impression of the, to use my term, aggressive marketing.

1440

25 Q. Mhm. Protecting, promoting sorry, their designation as internationally portable, you think that, you're critical of that are you?

A. That was one of the very strong advertising marketing components in relation to the student market, as I said, so taken in totality all of those pieces together at that time.

Q. And you're critical of that are you?

30 A. In terms of all of the pieces that went together, as I've said, they were very strongly aggressive marketing response.

Q. I see. And you've talked about the media print et cetera before. So as you say in 26, you realise from this that CPA Australia were intending to try and build their market presence in New Zealand?



A. Yes. Well I expect so, I wasn't aware, I didn't know that, but I expected that that was their intended desire.

Q. Well it would be pretty obvious from those matters you've described wouldn't it?

5 A. Yes.

Q. And that would be in fact what I think's expressed in your paragraph 24 that you were to compete?

A. Appropriately, yes.

10 Q. Yes. And the purpose of competing was to either stop, slow or mitigate the activity which CPA were undertaking to increase their market share, isn't that right?

A. To maintain our market share, but also to grow our market share, because the remembering that not all students necessarily choose to do our programme, and not all accountants in New Zealand are currently  
15 chartered accountants.

Q. Sure.

A. But yes, to mitigate and to grow.

Q. But your paragraph 24 talks about competing with CPA Australia?

A. Yes.

20 Q. Yes. So I'm right aren't I that the purpose of the message you received was to compete and to promote your designation against the activity, with CPA Australia were undertaking?

A. In relation to my brief of evidence on these points, yes.

Q. Right.

25 A. But we also had a very clear growth strategy –

Q. Oh yes.

A. – that was across other designations or accountants who were not chartered accountants.

30 Q. Right. I just see later on in your brief, 49.2 when you're discussion a conversation with Mr Jenkins, you said, last sentence, "I reiterated the issue was not about CPA Australia, but rather the CA brand." Now that's not correct is it because in fact the reason that what you set out in paragraph 24 and what you'd explained the motivation was in paragraph 25 was all about CPA Australia wasn't it?

A. No.

Q. I see.

5 A. The paragraphs you asked me about before were specifically referenced to CPA Australia activity, the competition piece is much broader than CPA membership which is why I've outlined, it's also competing to get students to choose to do commerce and accounting degrees in the first place.

Q. Mhm

10 A. The best and brightest choosing to become chartered accounts, or chose accounting at university and then the battle to get them to be chartered accountants. So the competition piece is also much more global than just NZICA versus CPA Australia.

15 Q. Right, well let's just have a look at the advertising campaign you refer to in paragraph 27. You were chief operating officer of NZICA at that time weren't you? And part of the senior executive team, which would've been a very small team?

A. Yes I was chief operating officer at that time, yes.

Q. Yes. And senior executive team, a very small team?

A. I think some 10 of us approximately.

20 Q. Right. But you were part of it?

A. Yes.

Q. And you would've been aware of this advertising campaign wouldn't you?

A. Yes I was aware,

25 Q. Discussed by the senior executive team?

A. Yes.

Q. Saw the proofs of the adverts before they went out?

30 A. I'm not, I don't recall whether I did, I may have done, I remembered seeing the advertisement since, I'm not sure of timing as to when I saw them.

Q. Be likely that the senior executive team would've seen them before they were published wouldn't they?

A. Not necessarily. Not all matters would've necessarily gone through. I may well have seen them at around that time, I'm not sure of the exact dates of when placements were made.

1445

5 Q. Well Mr McDougall –

A. But I may have done.

Q. Mr McDougall is, I think, going to tell His Honour that it was part of a campaign where the advertising agency was given a brief and they came up with these advertisements. It would be normal for the senior executive team to have seen the scope of a brief like that, wouldn't it?

10

A. We would have had a discussion around it. Again, I'm not sure on the detail of the brief. I don't remember specifically reading through any of the detail but we would have discussed it at the time.

Q. Sure. So if you just – there's bundles there.

15

A. Yes.

Q. If you just go in volume 1 to page 194.

A. Page one?

Q. Nine, four.

A. Nine, four.

20

**WITNESS REFERRED TO BUNDLE OF DOCUMENTS, VOLUME 1**

Q. Have you looked at that advertisement recently or do you want to have a read of it now?

A. Let me just have a quick read. I read it a couple of weeks ago but let me just quickly read it now.

25

Q. Well, just have another read.

A. Mhm.

Q. Very bold top half of the page, isn't there, about best practice and second best practice?

A. Yes.

30

Q. I guess without reading any further, if you're an accountant you wouldn't want to fall in the second best practice category, would you?

A. We believe the chartered accountant is the pre-eminent designation.

Q. That wasn't the question I asked you. If you're an accountant, professional accountant, you wouldn't want to fall into the second best practice category, would you?

A. No.

5 Q. So it goes on, doesn't it, accountants may appear similar so they have all got professional accounting qualifications, is that right?

A. Sorry, they all?

Q. They've all got professional accounting qualifications, is that right?

10 A. Depends on how you define professional accounting qualifications because some people can call themselves accountants having a tertiary qualification not necessarily done any further study. So but, you know, 'cos there's not the same restrictions around calling yourself an accountant.

15 Q. But it certainly encompasses those who have professional accounting qualifications, doesn't it?

A. Sure, yes.

20 Q. And it goes on to say, your business can tell them apart, the difference is in the training, the support and the professional standards they follow. Now I just want to ask you about that term "professional standards". Are you talking about ethical standards there?

A. Yes, partially, as well as rules and CPD requirements, et cetera. So it's a broad range.

25 Q. Right. Well again you wouldn't want to be, if you're a professional accountant, in the second best practice for ethical standards, would you?

A. No I think in most circumstances people would like to be in the top category.

30 Q. Yes. "It's something best appreciated sooner rather than later." Well, that speaks for itself. "Only a member of the New Zealand Institute of Chartered Accountants have been exposed to the highest level of industry training and development." Well I suppose the good thing about that statement is that – perhaps it isn't when you look above. That seems to suggest that the reference to training above and the

ethical standards is something that only chartered accountants have been exposed to. Is that your reading of it?

A. The advertisement is about chartered accountants and about the New Zealand Institute so it's referencing the standards at which, you know, they've been exposed.

Q. It says "only", Ms Patterson. You're saying, "Only members of the Institute have been exposed to that higher level of training, support and professional standards that are referred to above," that's what the advertisement says, doesn't it?

10 A. That's what the advertisement says.

Q. That's not right, is it?

A. But that's not what I said so –

Q. No I'm not asking –

A. – you know, you said, "Only," and I said, "Only," there. That's not the case so, as I said to you, I didn't, I didn't draft the advertisement but in any event I know my opinion is that the chartered accountants are pre-eminent in the market and that they do, they are exposed to the very high levels of industry training and development.

20 Q. Well I wouldn't quarrel about that for a moment, Ms Patterson, that's not what the advertisement says. It says, "Only a member of the Institute meets those standards, including ethical standards," that's simply untrue, isn't it?

A. Well I'm not sure if that is true or not.

1450

25 Q. I see, so you think that it's only chartered accountants who meet a high standard, professional standards of ethics?

A. No, it says the "highest standard".

Q. I see, so as far as you're concerned anybody who's not a chartered accountant doesn't meet the highest standard of ethics?

30 A. No, that's not what I'm saying. You've asked me a question in relation specifically to this advertisement, which I, I, you know, as I outlined, I didn't draft or, um, so you've asked me a question about –

Q. Sure.

A. – one particular sentence.

Q. No, that's a fair comment. The advertisement says that though, doesn't it?

A. The advertisement says that.

Q. Yes, and the advertisement goes on to say, "That's why top CFOs and  
5 CEOs only employ chartered accountants."

A. Yes.

Q. So this reason that it's only the chartered accountants who have the high level is the reason why CEOs, et cetera, only employ chartered accountants. That's what the advertisement says.

10 A. The advertisement says, "Top CFOs and CEOs," yes.

Q. So that's not true either, is it? It's not correct?

A. Well, I don't know if that is correct or not because –

Q. I see.

A. – it's in a statement of opinion about the top CFOs and CEOs.

15 Q. So are you seriously sitting there and saying that top CFOs and CEOs only employ chartered accountants?

A. I, I know a number of CEOs and CFOs who –

Q. That's –

A. – only – so there's a matter of opinion about who are the top CFOs and  
20 CEOs but, again, that's what the advertisement says.

Q. No, I asked you what – but you started to say you believed that. Now do you seriously believe that top CFOs and CEOs only employ chartered accountants, seriously?

A. In New Zealand I believe that the top CEOs and CFOs that I'm aware of  
25 have, very clearly have a preference for chartered accountants.

Q. That's not what the advertisement says and not what you said. "Only" it says. Only?

A. It's – no, it is what I said. I did not say, and again I did not draft the advertisement, but, in any event, I believe that the top CEOs and CFOs  
30 have a preference for chartered accountants.

Q. Ms Patterson, the advertisement says "only employ". That is incorrect, isn't it?

A. I don't know if it's incorrect or not.

Q. I see. And it goes on to say, "You might interpret this as a bit of free advice concerning the accountant you hire." So it's an attempt, isn't it, to deter employers from hiring anybody who isn't a chartered accountant?

5 A. It's to encourage people to choose a chartered accountant. You know, that's the purpose of the marketing campaign as well, you know, the tag line business does better with an NZICA member.

Q. Because they've got highest ethical standards and other people don't?

A. It's a broader range of skill sets that chartered accountants bring.

10 Q. Mhm.

A. Not just you've – you're pulling out an example of the ethical standards but it's a broader range.

Q. Now you wanted to say, "Well, this is what the advertisement says." Did you raise any concerns internally when, when you saw this advertisement before or after it went out about what it was saying about other accountants?

A. The – it's not – it wasn't something that I was responsible for signing off, so...

Q. That wasn't what I asked you. Did you have any concerns about the nature of this advertisement which, to put it bluntly, quite clearly denigrates a lot of other professional accountants? Did you have any concerns that you've expressed internally?

A. I'm trying to recall at the time. Um, no, not that I dir – did – direct – I wasn't directly involved to the extent that I would've, would've been passing comment on it, so...

Q. But you were – one of your responsibilities was brand and communication so this is part of a brand and communication activity, isn't it?

A. Yes, but as I said, the then CEO was taking the lead on, on the advertising on this particular point so, as I said, I was aware, around the edges and associated with it, but, um, I didn't sign off the, all of the material, but I didn't express any concern at the time that I can recall.

Q. So you thought this was appropriate, did you?

A. I must have done at the time and the fact that I don't remember any significant concerns at the time. You know, there was some debate about, um, timing of advertising and other things that were under way. Again, you know, is it necessarily something that I would have, um,

5 advertised in that way if I was the, you know, the advertising company, perhaps not, but I wasn't sufficiently concerned to take action at that time.

Q. So you didn't regard it as unprofessional?

A. No.

10 Q. A lot of people would. You disagree?

A. We – you've made a statement, you said, "Some people would", so perhaps they would.

1455

Q. A lot of people would, and I asked if you disagree.

15 A. Well people have to make a decision that's a point of opinion. So some people may, you know, some people do have years of advertising and don't necessarily agree with, or like particular ads from time to time.

Q. But that's how you would treat this ad, just sort of shrug your shoulders and, "Doesn't really matter". Seems to the attitude you're displaying in the witness box, is that your approach to it?

20

A. No, it's, you asked me a question about whether some people would disagree with it, I said "Perhaps they would".

Q. So that was late 2012 wasn't it?

A. I'm not sure of the date, sorry, I think it's dated on the top October is it?

25 Q. Yes. And was, the nature of that advertisement was that really the nature of the attitude which was being taken within NZICA at the time to so called promotion of its designation?

A. I think, I mean this advertisement was one of the more overt advertising pieces in place, NZICA didn't normally place direct advertising around that time other than perhaps the business does better, particularly web campaign, so most of our advertising was around member examples, so this was one of the more overt pieces, I don't think that it's representative of activity that's occurring at the time.

30

Q. Mhm. Now you go on to talk about your role in the republic events –



A. Yes.

Q. And I don't want to take you through all the emails leading up because there was a huge number of them, but if you just look at a couple of them. You refer in your brief to I think Mr Owen, his was the initiating email I think wasn't it, and if you take up volume 2, I think you'll find it at page 258.

A. 258?

Q. 258.

A. Sure mhm.

10 Q. Right. So Mr Owen's on your side NZICA and Ms Brownrigg emails him, sorry it's an email about two-thirds the way down the page. 25 February 2013, you got that one?

A. Yes.

Q. Yes.

15 A. 25<sup>th</sup> of February yes.

Q. 25<sup>th</sup> you're quite right.

A. Yes.

Q. And it invites, it asks whether NZICA's keen to participate, and it says they've been approached by CPA Australia and be great to see some participation from yourselves. It was copied to you –

20 A. Yes.

Q. – so you were on the page from early on?

A. Yes.

Q. Now as I say, I don't want to take you to, there's an awful lot of them, but if you go across to 289.

25 A. 289.

Q. Now if you want to refer to any emails along the way Ms Patterson don't hesitate to say so –

A. Sure.

30 Q. – and you find them. But briefly if I could just say, along the way there was an exchange about whether the chief exec could make the presentation, you were nominated because he was tied up.

A. Craig was unavailable.

Q. Yes. And then trying to identify the topic because the topic of merger had been raised early on right?

A. Yes.

5 Q. And so we get to the one on 289 which is 4<sup>th</sup> of March about three weeks later, and from NZICA the suggestion is that the speaking topic for you would be, "Transforming NZICA creating new institute within the, with the Institute of Chartered Accountants Australia" right?

A. Correct.

10 Q. And pretty much that did stay the topic, the wording might have changed a wee bit –

A. Slightly perhaps, I'm not sure.

Q. – but that's the substance of it isn't it?

A. Mhm, yes.

1500

15 Q. Now 308 is, where a slight (inaudible 14:59:55) in the whole thing. 308 and 309 because these emails are bandied around under the same subject heading. Perhaps look on 309 is the best page to look because that's the email from Ms Brownrigg to Mr Prasad. Now perhaps if you can just identify who Mr Prasad is for me?

20 A. Yes, Michael Prasad is a school medium practitioner in Auckland. He has since that time been, he's just recently been elected onto our regional council, is one of our regional councillors but wasn't at that stage.

Q. Somehow or other –

25 A. An Auckland practitioner.

Q. – the email to Mr Prasad found its way to NZICA and it sets out a copy of a circular that was presumably going to go out from RePublic and the first item in the circular was that item which is headed NZICA and CPA Australia address public practitioners on their relevance, is that right?

30

A. Correct, my understanding is that actually is the advertising that went out so Michael Prasad is a member in practice in Auckland which is how he received the email so that email I understand is actually the

marketing email that was received by him from the Accountants' RePublic.

Q. It's on the 12<sup>th</sup> of March and it's got under its subject and heading at the top, "NZICA and CPA faceoff and eyeball public practitioners?"

5 A. Yes.

Q. That's the reference you've given to a faceoff?

A. Yes, correct.

Q. Now if you go across to 312, that's an email from Mr McDougall to yourself and Ms Ingram who's been involved in this. What's  
10 Mr McDougall's position?

A. Director of Marketing I think his title was.

Q. So did he report to you?

A. No, he reported to Rebecca Ingram I believe.

Q. Okay, and did Rebecca Ingram report to you?

15 A. Correct.

Q. So he says he's discussed the RePublic Days with Pippa russells, that's somebody at RePublic, is that right?

A. I'm not sure, I assume so.

Q. Then he sets out the key points and you see them there, one through  
20 seven, do you see that?

A. Sorry, what was that?

Q. The key points –

A. Oh, one through seven, yes.

Q. – he says, and then one through seven, right.

25 A. Yes, correct.

Q. And the theme is, under one is, "CA challenges for the future?"

A. Yes.

Q. Two, "While CPA's there as a sponsor they've got no exclusive opportunities there on an equal basis?"

30 A. Yes.

Q. "CPA talking about the advantage of being in a professional body, we're talking on the merger, sell the process, sell the benefits?"

A. Yes.

Q. Four, "Told RePublic favours NZICA they're CA heavy." It seems to be reflected in the, you get three to one complimentaries?

A. Mhm.

5 Q. "Speaking duties allocated, right to have a stand, RePublic looking for a promotion." And then he makes the comment, "While the faceoff promotional approach was unexpected we need to be present and aggressive at the days. They represent another communication," I think that probably means, isn't it, "communications channel?"

A. Comms, communication, yes.

10 Q. Yes, "For merger discussion." There's reference to aggressive, we'll ask Mr McDougall of course when he comes along, but his reference to aggressive is not in relation to the benefits of the merger, is it, it's in relation to, well you took it to be in relation to CPA's presence?

A. Having a strong NZICA presence.

15 Q. And then if we look at 323 and I'm sure you're right what you said about 309 having gone out but we will confirm that with Ms Brownrigg but the actual brochure for the conference with the programme and with the registration, is that at 323 through 325?

A. I assume so, yes.

20 1505

Q. And, as Mr McDougall said, he'd, I think, raised the concern you had about the face-off reference, and I think you've referred to that in your evidence.

A. Yes.

25 Q. And Mr David Jenkins also said in his evidence the same thing, that he was concerned about that and raised it also with RePublic and there's absolutely nothing, is there, in this brochure at 323 through 325 which in any way suggests a face-off at all, does it?

30 A. No, and my understanding was that they changed that from the email that went out so this is the – this looks like it's the printed collateral that was either available on the website or sent out as a brochure.

Q. Yep.

A. But the email, I understand, went out to their database, but no, there's no – doesn't appear to be any reference without reading that closer.

Q. And so if you look on the top right-hand side where it's got, "NZICA and CPA Australia update you", it says, not a face-off, "update"?

A. Yes.

5 Q. That's right? And first bullet point, going to hear from NZICA on that topic we looked at before, and second bullet point, CPA speaking on the relevance of belonging to a professional membership body in 2013, is that right?

A. Yes.

10 Q. Happy with that? And if you go across the page to the presenters, Mr Jenkins looks to be a lonely identity on that page. Everybody else seems to be, except Robert Simon who's coming from a different background, seems to be a CA and a member of NZICA, is that right?

A. Yes, with the exception of myself obviously being an NZICA –

Q. I'm sorry.

15 A. – representative but not being a chartered accountant, yes.

Q. I'm sorry, yes. That's quite... So it looked like a pretty friendly conference that you were going to be updating, didn't it?

A. Friendly, yes. I hope they all are, but yes.

Q. Largely members of your organisation?

20 A. In the New Zealand market when you're speaking to a large group of accountants you can usually assume that, um, that they are, the majority of them in the room are chartered accountants, yes.

Q. Yes, and it looks like the other speakers were mainly –

A. Yes.

25 Q. – chartered accountants, so that's why I was a little surprised in your – well, perhaps let's look at something else for a moment. Still in that volume, just go across a few more pages, you spoke to a series of PowerPoints, didn't you?

A. Yes.

30 Q. If we go across –

A. At this particular event, yes.

Q. Yes.

A. Yes.

Q. So if we go across to 339, perhaps just look through the following pages through to – it starts at 338, I'm told. I'm trying to find out where it finishes?

A. Is there a title page, is there, as a –

5 Q. Sorry?

A. Yeah, 338, title page.

Q. 338 through, looks like 348, is that right? Yep.

A. Yes.

10 Q. Right, and those PowerPoints are all matters of positive information you wanted to provide to the audience in respect of the opportunity of the merger and what was about to happen with consultation?

A. Yes, absolutely. We were about to commence consultation so trying to get as many of the members as possible engaged in that process and come along and provide feedback so that the Board and Council could make some decisions about whether to proceed to vote.

15 Q. Yes, and that was entirely consistent with what was in that document we looked at at 323 about updating members on the proposed, see the wording, on transforming NZICA and creating a new institute, that's what that was all about?

20 A. Correct, yes.

1510

25 Q. So a little bit surprised in paragraph 31 of your brief of evidence where you suggest in the last, second last, line that because of that earlier communication, the one we looked at at 309, you say, "From any perspective accept the tone for the speaking events." Now Ms Patterson with great respect, 323 and an update on transforming NZICA in your PowerPoint were exactly what you were asked to speak about and exactly what you prepared your PowerPoints in respect to weren't they?

30 A. Yes I believe that's what I did speak on.

Q. Right.

A. And in relation to the tone point, you know, that email had been circulated, there was, that's why I had express concern about it.

Q. You didn't have to rise to the, to rise to that email at all did you, to carry out the, I'll put it this way, the job you'd been asked to do on the 6<sup>th</sup> of May and I think the 8<sup>th</sup> of May?

5 A. I believe I did do that. I believe that's what I did. I don't believe I, to use your terminology, rose to anything, I believe I delivered the presentation and addressed the points that I was expected to.

Q. Well what did you mean when you said in your brief, "And from any perspective I set the tone for the speaking events."

10 A. I know that having listened to the recording now, also I made reference to the, going head to head, and the fact that we were and Ms Brownrigg has kind of referenced that putting the two together.

Q. Well it seems to have been the tone that you took at the speaking events, because as you said right at the start of your presentation which we've heard, you talked about the head to head, but there's nothing in the 323 registration brochure which should've set you off down that path is there?

A. The 323 registration brochure does just make reference to the two competitive bodies.

Q. Right. Well that's certainly a perspective isn't it?

20 A. Yes.

Q. Right. Well you tell us in your brief that you prepared yourself for these speeches, or these presentations by talking to others and perhaps if we go back to your paragraph 28. What you say there is that you talk to people who have been briefed when you first joined, and then you say in the second sentence, "Before I spoke at the republic events I was aware from these briefings other discussions of the following differences, which inform my statements and presentation at those events." Now just stopping there for a moment, and then you go on to talk about some NZICA matters, but always in the next four items in relation to CPA Australia so a comparison, right?

30 A. Yes.

Q. Now again just going back to what I was asking before. Why did you think it was relevant to be considering a comparison with

CPA Australia's position when you were simply going to update members on transforming NZICA and that stopped there for a moment.

A. When you listen to the tape and as you go through the slides, you'll clearly see that one of the areas for one of the strategic drivers for the merger is the increased competition in the market, and how does NZICA compete with the legacy NZICA as it was then compete. So understanding the competitive threat that was one of the topics I spoke on.

Q. Wasn't in your slides at all was it?

10 A. I think when you reference the, the slides were not a speech. You know the slides are there as an aide to provide you with some visual aids on a range of issues that I was discussing and to cover some key information like dates and things and other things as takeaways, and if you reference –

15 Q. I think 342 has got a reference, is that 342?

A. To competition, there is reference to competition, for example, in, um, on there. 341 talks about the on – to ensure, ensuring the ongoing pre-eminence. You know, so there is a range of references or – and the slides, the slides were a fairly generic pack on some of those topics which were there as a visual aid for the –

20 Q. Well, we'll –

A. – for the attendees.

1515

Q. Sorry, I didn't want to interrupt you. Have you finished? Didn't mean to – so 342 has got that reference to competition, that's where that is, isn't it?

25 A. 342, yes, yeah, yep, correct.

Q. And it talks about strengthening the value of the chartered accountant designation, et cetera?

30 A. Yes.

Q. But, we'll come to what you said in a moment, but going back to what I asked about before, you can strengthen and promote a designation, a professional designation, without bagging the other side, can't you?



A. Yes, but the references that I made to any of the competition under CPA Australia specifically I was talking to a group of chartered accountants and CPA Australia members who knew the difference and knew the different, um, the different members in the room, so when we

5 talked about competition and competing designations they knew who that was, so...

Q. Well, there was no doubt about that. They knew who you were talking about.

A. Yes.

10 Q. The point I was making to you is that you're talking to professionals it would be professionally usual to be positive about what you wanted to assert but not bag the other side.

A. Well, I don't think I did bag the other side, to use your terminology.

Q. I see.

15 A. But I made references and comparisons.

Q. Mhm.

A. Um...

Q. Well, that's really what you're trying to set out in 28, isn't it, the knowledge you thought you had at the time that informed the references

20 and comparisons you made in your speeches?

A. Yes, it was a range of those issues, yes.

Q. Now had you got anybody to go away and prepare an information schedule for you before you made your speeches?

A. Information schedule on...?

25 Q. On what these differences actually were.

A. On those, on those matters specifically, no. I didn't have a written document. What I had, um, been briefed on is I'd had briefings from the people in the CA programme in terms of what they believed the differences to be so I'd had an executive briefing.

30 Q. From – but the education, the education segment of the activities was now being run out of Australia, wasn't it?

A. Ah, there w – we had trans-Tasman staff. So some of the staff were located in the New Zealand.

Q. All right.

A. Adelle Evans resides in Australia but spends a portion of her time in New Zealand. Bruce Bennett, who was one of her two ICs in the – had previously been the lead for education in New Zealand before the joint programme was domiciled in Wellington and also I spent a lot of time in Australia.

5

Q. All right. Well, 28.1, what you set out there, was that the sum total of your knowledge at the time on that topic?

A. At 28, or 28.1?

Q. 28.1, sorry.

10 A. Well, no, 'cos I go on further to some...

Q. No, no, but just on that topic about whether it was required that a commerce degree be held and whether candidates could potentially hold any degree, even no degree at all, was that, that all you knew?

15

A. Yeah, that was my understanding at the time, absolutely, you know, so – and some examples had been given to me which I think I even referenced in there when you referenced back to the speech about, um, non-commerce degrees potentially being an entry pathway and that our, um, our own entry programme required specific papers to have been completed but that, um, the CPA programme didn't necessarily require that to be so.

20

Q. So did you know anything about the CPA foundation programme?

A. Foundation programme? So, yeah, I was aware that there's also some bridging or linking things but not, not to the extent that I am now obviously having read through all of the papers that have now been presented so...

25

Q. Right. So this is just what's, well, somebody or somebodies told you that you've now summarised as well as you can in this brief, is it?

A. That's what I understood at the time, not –

Q. But you –

30

A. – what I've become to know, to learn subsequent to that, because remembering in terms of timeframe of when I was there at the time.

1520

Q. You now understand there's a lot more to it, don't you?

A. I understand there's a lot of differences between entry pathways and those sorts of things, but I understand it's still at a high level through the, to enter the CA programme you need to have completed specific papers, and that's not the case with the CPA programme necessarily, that you know there are some exceptions on both sides.

Q. There are exceptions on both sides aren't there?

A. Yes.

Q. Yes. And indeed exactly what you said there, could happen under exceptions under the CA programme?

10 A. Not sure there's a number, but there's been the occasional exception I understand.

Q. That's right. Now that you know that it's actually a lot more complicated than what you thought then, you agree it was unwise of you to start down this path with your speeches?

15 A. When you reflect back two and a half or three years down the track, I don't think there's many executives who have given speeches that are then recorded and played back to them two or three years down the track that perhaps wouldn't have phrased things in a different way from time to time, but at the time I consider that those were kind of a fair summation of the major differences between them.

Q. If you go across the page, I guess you'd say pretty much the same about 28.2 and 28.3 and 28.4, is that fair?

20 A. Yes, I understand that that is still the case for tax and audit. And 28.3 I understand, look I understand there's been some exchange of documents that indicates there's some concern, or potentially with that statement, but that was my understanding and how it had been described to me by the education team, so that the CPA, the American CPA recognition with the CPA Australia was no longer. And 25 28.4 with the exception of the New Zealand jurisdictional tax, the programmes were shared, one programme and that the ICAA programme is equivalent to a postgraduate diploma or equivalent in Australia.

30 Q. Yes. Just back to 28.2 for a moment, in fact tax and audit I think you probably understand now in one form or the other, is required under the

CA, sorry under the CPA programme as well, either in the foundation programme or in the, well sorry, either in an undergraduate programme or it can't be an, sorry start again. The tax and audit is a required, requirement of the CPA programme, do you now understand that?

5 A. I understand that there's an introductory tax and audit and there's a debate about the level at which that study is completed –

Q. Yes well, either in the foundation programme or in the, well sorry, either in an undergraduate programme or it can't be an, sorry start again. The tax and audit is a required, requirement of the CPA programme, do you now understand that?

10

A. I understand that there's an introductory tax and audit and there's a debate about the level at which that study is completed –

Q. Yes.

A. – but I now understand that there is some reference to tax audit for those people who haven't done that at university, but regardless of that, the CA programme requires an additional level of tax and audit studies to be concluded.

15

Q. Yes, and there are different reason under the two programmes because, oh you weren't present, but in any event, it's been explained here that audit isn't necessarily something which all professional accountants aspire to, I think your evidence probably confirms that.

20

A. I suspect that tax is not something that all professional accountants would aspire to either, but in any event that's one of the components in the foundations that we consider make the CA designation that much stronger is that you know, they do have those strong foundations but yes, I'm not, not all professional accountants would choose to be auditors.

25

Q. Well it looks like less than 2% on your figures. Right. So I suppose that raises the question of relevance, but we don't go down that now.

30

A. In relation to the 2% I should be clear that that's in relation to licensed auditors who are doing work as for issuers we have a much greater proportion of our membership who would but I wouldn't know the number off the top of my head who conduct audit in the normal sense of

the word. In fact you know most members in practice would undertake some audit activity.

Q. So that was, shall we take it that what you've got in paragraph 28 was pretty much the sum total of what you thought you knew at the time?

5 A. Those were the key matters. Look there was a, you know, there may well have been some other factors but, you know, if you're looking for key high level summation of differences.

1525

10 Q. You didn't feel any hesitation that you mightn't know enough to venture into that area in your speeches?

A. No I was, you know, the briefings that I had had from the team I felt had provided me with the background given I was speaking at a very high level about differences. So it was an executive level briefing and I felt comfortable that was, that was the case and that I stayed at that level.

15 Q. Do you agree if you don't know a topic well that there's every chance that you may not represent the factual position accurately to an audience?

A. Certainly, absolutely.

20 Q. Well let's just have a look at the transcript which again you will find in volume 2. Starts at page 356.

**WITNESS REFERRED TO BUNDLE OF DOCUMENTS, VOLUME 2**

A. 356?

Q. Yes. Again, have you read this recently?

25 A. Yes I have, I've also listened to the transcript 'cos it's I think provides a – a little bit easier to listen to sometimes.

30 Q. All right, well I don't think – the first paragraph seems to be you're talking about your background and we needn't dwell on that. And then you go on in the second paragraph to talk about the, start talking about the merge proposal, don't you, and that you're going to be coming out to spread information in the nearest future?

A. Yes.

Q. And across on page 357, last paragraph, explaining why the proposal has been put forward?

A. Yes.

Q. And in that paragraph you're talking, among other things, about the significant changes which are happening in the market place generally?

A. Yes, yes, 'cos linking back to those slides around the changing demographics and other components remembering that they were, the slides were playing at the same time.

Q. And is the foot of page 358 that you start on competition, you see there's a, round about line 36, and it's here you pick up the head to head which is your interpretation of the faceoff?

A. Face to face, yes my recollection at the time, obviously said head to head, yes.

Q. So it was obviously in, excuse me for saying so, it was obviously in your head at the time because you're the person who has introduced it here, so you were, you had it in your head that you were going to say something about facing off with CPA?

A. Well in te – I'm not sure – instinctively to that but clearly I have so in terms of the programme we were, you know, two competitors on the same stage so, and I think when you listen to the tape you will see that it was delivered in a reasonably light hearted way at that particular point in the recording.

Q. Well the first point about the arm wrestling we agree with that but it was your introduction of this topic and head to head it wasn't, nobody else prompted this, this was what you had in mind before you made your speech?

A. I can't recall all of the Brownrigg's invitation – introductions or whatever but, yes, it appears that I have, yes.

Q. I mean although you didn't have, as I understand, speaking notes you had planned this speech out in advance?

A. I had the slides that I was speaking to.

Q. All right, so towards the top of 359 you make the, or give the interesting information that there really isn't a preference for CAs anymore and 62% of corporate are saying they don't care whether you have a CA designation or a CPA, is that right?

A. I understood at the time that that information came out of Australia, it was Australian research that had been conducted on behalf of the ICAA that they'd shared with us.

5 Q. And then if you come down to around about line 18 or a bit before that, you are talking about scale and you're saying that Alex, and by that no doubt you mean the Chief Executive of CPA Australia?

A. Sure.

1530

10 Q. He's got about 90-odd thousand members, but then you say he also doesn't have to offer the same education offerings. Now that's a surprising thing to say, Ms Patterson, isn't it?

15 A. Well, it's in relation to, if you look at the context, the, in relation to the CPA America connection and our cousinhood, brotherhood, whatever the term is, in terms of that comparison so – and I've even said that, brothers or cousins – so in reference to that it's around, you know, my view that the chartered accountant designation was, um, was the pre-eminent one –

Q. Well, that's what –

A. – around the education offering.

20 Q. That's really what the comparison is you're making, isn't it, that it's between chartered accountant designation, despite the fact you talk about cousins and brothers, and the CPA designation. That's really the message you're...

A. Australian CPA, yes.

25 Q. Yes, because nobody cares about – well, sorry, shouldn't say nobody cares, but to the audience, what the audience is concerned about is their designation, chartered accountant, as against the CPA designation. That's really what you're setting up.

30 A. In that sentence, yes, it's what I was speaking to but then other places I speak about other competition generally, but in that sentence specifically I have referenced CPA Australia.

**COURT ADJOURNS: 3.31 PM**

**COURT ADJOURNS: 3.45 PM**

**CROSS-EXAMINATION CONTINUES: MR GALBRAITH QC**

5 Q. So do I take it, Ms Patterson, staying with page 359, that this reference to CPA not having to offer the same education offerings is justified on the basis of what you thought and you set out in paragraph 28 of your brief?

A. Yes.

10 Q. Now you go on to talk about, a couple of lines down, about 23, about some members of the GAA, see that?

A. Ah...

Q. Over – so obviously Australian –

A. Yes.

Q. – Institute –

15 A. Yes, mhm.

Q. Just for my information, I was slightly surprised that you didn't refer to the Hong Kong Institute there. Is there any reason for that?

20 A. Again, I wasn't speaking from notes so it was, you know, again, recollection, so – which has been a summary that I was giving verbally. I don't remember – you know, in terms of the context of when you – the recording – you know, I was speaking for 30-odd minutes or so on a – um, and again, I wasn't providing a comprehensive or complete list.

25 Q. So those organisations that you're referring to in those countries are all – well, I'm asking – are they all the chartered accounting organisations that traditionally at least have been legislatively protected in those countries?

A. I'm not sure.

30 Q. All right, okay. And then you said CPA Australia is not a member of the GAA because their education standards are not recognised as being the same as the one you've worked so hard to achieve. Now that's the statement I think you earlier acknowledge is –

A. Correct.



Q. – is incorrect.

A. That was a mistake, yes.

Q. Wouldn't have been hard if you'd asked (inaudible 15:47:19) what you'd been told to find out at the time that that was incorrect, would it?

5 A. I had understood at the time that it was true but I understand now that it's, that it was a mistake and that, um, I had that information.

Q. So was there nobody in NZICA that had an understanding of the relationship between the members of GAA and the entity or the organisation?

10 A. The d – the briefings that I'd had had, um, I, you know, whether the, whether that item was covered specifically or whether I'd merged that into two separate items I'm not sure. I can't really recollect now. But there were a, um, there, you know, existing education team but I obviously, um, had made a mistake on that particular point.

15 Q. Because, what, the briefings are pretty high level?

A. Yes, as I've said earlier, yes.

Q. Okay.

A. Generalised in nature. I didn't go into, um, you know, lots of detail. It was very generalised yes.

20 Q. Right.

A. Summary level.

Q. In those briefings, I mean, what were you asking people to tell you in those briefings? Were you asking them to tell you about good things about NZICA or bad things about CPA?

25 A. Differences, so... Remembering that I'm, you know, I wasn't a chartered accountant so, you know, trying to understand the, understand the differences and components of the respective offerings.

Q. And why would you have to know that for presenting your slides about transforming NZICA? Why would you have to know about the differences with CPA?

30

A. When we talked about, in the slide pack, as a reference, there was, ah, competition was one of the issues strategically that the organisation was needing to address that was giving rise to the discussion around the merger.

Q. Okay, so you then go on to talk about marketing budget –

A. Yes.

5 Q. – you see, and you say, “I can’t offer new graduates a free iPad if they choose my programme over their programme.” Now would you agree with me that somebody just hearing you say that, the implication would be that that in fact is what was being done by CPA?

A. I think the inference was that potentially that was the case, so – I understand now that, um, from the information that they haven’t – that they didn’t proceed with that offer but...

10 Q. All right, and –

A. But the offer – but I understand that it’s been confirmed the offer was made to the, to the employer.

Q. Well, the possibility was raised with the employer, I think is –

A. Sure.

15 1500

Q. – is probably putting it a bit more accurately. Just staying on money for a moment, if we go across the page, and we might have to come back, if we just go across the page to 360 around about line 18, you talk about, “You don’t have the money to take up sponsorship for the entire series of CSI”?

20

A. Yes.

Q. Do you accept that CPA never took out sponsorship of the entire series of CSI?

25

A. I understood that they did. I’m not sure, so my understanding at the time was that they’d sponsored or one of those advertising campaigns that said, “CSI bought to you by CPA Australia” you know sponsorship of the series in Australia.

Q. Is that what somebody told you?

A. Yes that’s what I understood yes.

30

Q. But you didn’t see it yourself?

A. No. I had – I was advised that that was the, that had occurred in Australia.

Q. Now you go on at the foot of page 359 to say, "Fewer and fewer" I'm putting words in your mouth now so correct me, fewer people are doing an accounting degree is what I think it boils down to, is that right?

5 A. We've still got good numbers coming through studying accounting, but it's, whether they necessarily are choosing all of the right papers, but you know, and they've got much greater choice of qualifications than perhaps we had in our day.

Q. Yes.

10 A. You know, so yes, it's, we work very hard to try and attract students to study commerce.

Q. Right. So that's what that's about, and you're talking about scale I think across the page, as being a justification for the merger?

A. Scale yes was one of the drivers, absolutely.

15 Q. And you do I think in 360 down towards the end of that long paragraph, I'm not suggesting you spoke in terms of a long paragraph, but any case it's recorded in that way.

A. Yes.

Q. That without that scale you were and NZICA was really short on delivering on some of the desirable areas of support for its members?

20 A. Yes, in terms of the size of NZICA the ability to be able to spread costs across a larger organisation would've been beneficial, so the membership size in comparison to what the merged organisation has now delivered, and the Synergy savings have borne that out.

25 Q. And in questions and answers part, the, on the next page, and on 362 one of your answers, around about line 5 or 6, "So trying to get them to study accountancy because they're starting to have difference choices, under the CPA models, CPA Australia you can do a few modules, I'll give you a piece of paper saying that you're an accountant." Now that's a pretty gross gloss isn't it?

30 A. Mmm, it's a very high summary absolutely, and yes and slightly flippant at the time, I accept that, but that was my understanding that you, with the modules can become –

Q. You actually had to do more under the CPA programme than under the NZICA programme, six against five.

A. Not without the entry qualification, so I think there is a difference there, and again I know you're going to have, you'll hear evidence from the experts with regards to our programme, I'm not the person to ask the specifics of that, other than to say that the, again going back to my earlier evidence around the entry requirements, before the modules are completed and that's what I was referencing there.

Q. Well you're not, you're talking about when you get the, what you call the piece of paper saying you're an accountant, so that's the end of the whole process and you're suggesting just CPA a few modules and I hand you out a piece of paper, that's pretty derisory comment isn't it?

A. It's flippant, I accept that, yes.

Q. Derisory?

A. Look you know, would I frame that question, or frame that statement again, as I said you know, going back two or three years later when you have those things replayed to you, it's not how I'd probably frame it now, but I made a flippant comment and, but my understanding is that you can do modules, don't necessarily have to have the degree at the time.

1555

Q. But you know, don't you that –

A. So a pretty high, pretty high level summary.

Q. You know that before the so-called piece of paper is handed out that whatever other arguments you want to have there has to be a degree obtained?

A. I didn't understand that at the time and I'm not – now I understand that's not necessarily the case with the foundation's programme or whatever it's called so, my understanding very clearly at the time was that you didn't necessarily need to have a degree to be able to complete your CPA qualification, that's as I understood it.

Q. You understand now that that you may be incorrect in your understanding?

A. Now I understand now that, yes, the CPA evidence is that the majority of people do have a degree.

Q. And I think Mr Jenkins' evidence is there's only one that he knows of that didn't and those were special circumstances?

- A. I understand the foundation's programme is in place and I don't know the numbers in terms of how many people go through their foundation's programme to do that but the information that I had was that there would, that people didn't necessarily need to have a degree and that's how it was explained to me.
- 5 Q. That's how it was explained to you, so –
- A. Yes.
- Q. – His Honour can decide what's right or wrong on the evidence?
- A. Correct.
- 10 Q. So again, is the problem that, well the possible problem that you had a very high level briefing and didn't really understand the detail of the CPA position?
- A. Yes I did have a very high level briefing, I accept that.
- Q. Now, well I don't know if it was a gentleman or not, that's a very wrong presumption to make these days. On page 363 you'll see there's a person identified as "Q" at around about line 26?
- 15 A. I think "Q" means question.
- Q. Yes, I appreciate that.
- A. Sorry.
- 20 Q. I just didn't know whether it was a male questioner or a female questioner that was all.
- A. Right.
- Q. Now really the thrust of this question, and you might just like to read it for yourself, is that, "Look, the world has changed, you don't have to have a chartered accounting focus qualification to actually give advice in relation to the general market area of business and finance," do you see that was really the thrust of the question?
- 25 A. On 363?
- Q. On 363 –
- 30 A. The question around why the Australian body, what's their driving force?
- Q. No, no.
- A. Sorry.

Q. Towards the bottom, about line 26, "Yeah, and I look at that from my business point of view who is the market for those people that are trusted to advise us the business and finance you'd been talking about?"

5 A. "Did you have on your first slide something about what was the new vision for NZICA?" Oh, yes, mhm. Sorry, I was looking at the wrong question, yes.

Q. Hang on, you've got me lost now.

A. So the bottom of the page 363.

10 Q. Oh yes, just below that then (inaudible 15:58:00) say, "Trusted leaders in business finance," and the next question is, "Yeah, and I look at that for my business point of view, who is the market for those people that are trusted to advise us the business side of things, you don't necessarily have to be a chartered accountant to be able to be a good business advisor and so the 33,000 (inaudible 15:58:16) limited the size and scale," et cetera, et cetera.

A. Yes.

20 Q. "Whole new realm again of specialisation market. Much broader base for the training and qualification, all those things led to being a CA is not only, is not the only way to actually be one of those trusted advisors in business finance." Do you see the question?

A. Yes.

25 Q. So in essence, that questioner is saying, look, accounting is probably too narrow an approach to, or a focus on accounting is too narrow an approach to what the new market is, is that a fair shorthand of what is being put?

A. Well I don't know if they're necessarily saying that it's too narrow, they're saying that there are a range of other entry or a range of other people also who provide business advice.

30 Q. So you go on and you answer that in the next question and, sorry, in the next answer and then across the page 364 there is another question, "Do you think your educational requirements is one of the things that has made it no so attractive for people at the moment?"

A. Yes.

Q. You said, "The education component question the new and I suspect –

- A. The new CA programme, I, you expect shorthand. Again, listening to the tape provides that context (inaudible 15:59:32)
- Q. And then your answer, "Look you know students are changing their approach to (inaudible 15:59:38) some students, the lazy ones, they will be concerned about that, they will be looking to make some easier choices. If they are not plan to go, ongoing in public practice, you see that's the bit we are concerned about but people are saying that because they can now go into corporate I don't need to do that information anymore." Now I just need to ask you, are you suggesting that because people are going into corporate that they're lazy students and, is that –
- 10 A. No, that's not what I was saying but, you know, I mean, um, as we, as I gave my evidence, the, um, there's a perception by some students or candidates that the CA programme is harder. So in reference to –
- 15 Q. Well, is it –
- A. – another programme being easier, that is the reference why I used that, used that term.
- 1600
- Q. Well, isn't it in the context as a question on the previous page, at least in part, a perception that the CA programme is unnecessary in terms of its focus on accounting?
- 20 A. No, I don't agree that that previous question was about that at all, and I don't agree that it's unnecessary. I believe the previous question was in relation to, um, competition coming from a range of sources, not just from within accounting, um, but, um...
- 25 Q. But here you're answering in terms of people not planning to go into public practice so going into corporate, well, those are people, for example, who wouldn't gain any advantage from a double audit requirement, would they?
- 30 A. No, I think they do, and this is one of the foundation stones in terms of the programme in the CA designation. Those are good skills for them to be having in that space anyway, and so whether they undertake a career in audit or not we believe that those are really strong foundation

stones for them in the advisory space, and similarly with the tax components.

Q. Well, the substitute, or more than substitute in the CPA programme course is a broader approach to global business strategy being one of the electives. Are you aware of that?

5

A. I'm aware through having read the documents that that's the title of one of the programmes. I can't comment on whether it's broader or not in comparison to some of the work that we do through the other modules.

Q. Okay, so it's fair comment. And you are talking at the foot of the page about some change in going online content. Am I right also that more recently you're introducing something similar to the foundation programme so that people who don't hold an accounting or commerce degree at entry can still enter upon the CAANZ programme?

10

A. I understand that they are looking at something. I don't have the detail of that programme but I know that's one of the topics that gets raised from time to time and has been looked at particularly in relation to other entry pathways.

15

Q. Right.

A. And, you know, we, ah, as you know, we have the differing colleges within, within the organisation, remembering that not only do we have the chartered accountant but we have the ACA, associate chartered accountant, and the accounting technician, who have different entry pathways and standards.

20

Q. So that – I mean, you enough about it to know that that's a response to the fact that there's a variety of choices that people have, as you say in your speech, going to university, about what people might want to study is leading them into this wider space of business advice or business finance, et cetera?

25

A. Yeah. We, I mean, our intention is to try and grow the accounting technician college and, um, but the both of those colleges are still very small.

30

Q. Yes. All right, now I just wanted to ask you briefly about what happened after. You made the speeches in Christchurch and Wellington and –

A. Correct.



Q. – there was a response, wasn't there, to your initial speech in Christchurch from a CPA representative?

A. A response. No, there – so Rick Jones spoke after me.

Q. Yes.

5 A. So yes, he – but didn't address any of my, um, any of the issues now complained of.

Q. And – I'm just trying to find the document – and – so in Mr – did you stay for Mr Jones' presentation?

A. Yes, I did.

10 Q. All right. He didn't –

A. In Well – in Christchurch, yes.

Q. Yes. But you didn't stay for Mr Jenkins' presentation in Wellington? You had another –

A. Correct, I didn't, no.

15 1605

Q. But it's right to say, isn't it, neither Mr Jones or Mr Jenkins responded to what you'd said in your presentation about CPA?

A. That's true of Mr Jones. I understand that's, that's, um, I've been advised that that was the case with Mr Jenkins –

20 Q. Right.

A. – by those present.

Q. Yes. But a letter was sent, or Mr Jenkins in fact rang you after the Wellington conference and you had a phone conversation with him.

A. Correct.

25 Q. And you've given evidence about that. I think you said in your evidence that you'd made a handwritten note of that conversation but that it got destroyed subsequently?

A. Yes, so I made a handwritten note of my conversation with him as we were talking and then I got my executive assistant to type that up as part  
30 of, um, which – and then I added to that on the basis of the, those, um, the summary of those two speaking engagements at the request of Richard and Craig.

Q. Right, now if we just look at – sorry, still with that volume 2, I think, page 402.

A. So that's a repeat of 403, is that right, yes?

Q. Yes, I think it is.

A. Yes, okay, fine, yep.

Q. So first warning sign was you got an email from Mr Miller saying –

5 A. Gavin.

Q. – Mr Jenkins wasn't happy about the pot-shots from your presentation?

A. Yes.

Q. And your response was...

A. "Oops."

10 Q. "Oops," yes, and I take it not long after that Mr Jenkins rang you, is that right?

A. Ah, yes, I'm not – I think there's a time on that note. I'm not sure if there was. It was in the afternoon anyway because I had gone back.

Q. All right, and both –

15 A. I think in terms of timeframe he had – it was after his presentation.

Q. All right, and both he and you have given evidence about the telephone conversation?

A. Yes.

20 Q. But if we go to 409, that's a direction from Rebecca Ingram, who I think you said reports to you, to the management team, et cetera.

A. And the Board, yes.

Q. Yes, and it says that there has been a CPA reaction and a recommendation that, first bullet point, "Be careful about the assertions you make with regard to CPA. Stick to the facts only."

25 A. Yes.

Q. Good advice?

A. Yes.

Q. And Ms Hickey, I think, presented the – made the presentation in Auckland?

30 A. No, I don't – um...

Q. Didn't she come in?

A. No, she didn't in the end because of availability. I understand it was actually my general manager of members, Tony Mitchell, I think, but I wasn't present for his –

Q. Okay.

A. – presentation but I think Tony stepped in because, um, Fred Hutchings, the then vice president, now president, and Liz, were unavailable. So I think Tony stepped in at short notice.

5 Q. And it would seem he did stick to the facts because there's been no, there was never any complaint about what he said in Auckland, was there?

A. Ah, n – there's no complaint that – in relation to –

Q. No.

10 A. – that presentation.

Q. And then if you go to 421, that's the letter which Mr Malley sent making a complaint –

A. Yes.

15 Q. – which you would have seen at the time, and if you go across to 440 you'll see that's – Mr Malley obviously sent that letter by email. You passed on to your chief executive that you spoke on those issues, "But they have misquoted me," and you say, "as you would expect."

A. Yes.

Q. What do you mean by that?

20 A. Well, given the, ah, tone of the letter and the tone of the, um, the, ah, approach, um, it was, um, seemed reasonably aggressive and I think as I was, um – sorry, I'm just turning the page. There's a photo of Craig on that page. Um, as I was speaking to, ah, Craig, given the, um, some of the previous conversations, given that that came from, um, off the back of my conversation with Mr Jenkins, we didn't agree over what I said or  
25 how I said it –

Q. So –

A. – on all – on – not on, um, necessarily on all matters.

1610

30 Q. And the response from your Chief Exec was, "Yep, and reasonably held belief and this is just a premeditated campaign on their part." They didn't know that you were going to stand up at those two conferences and bag the CPA education offering, did they?

A. The premeditated campaign reference, in terms of the timing around these particular events specifically related to the merger consultation road shows and the member consultation before we went out to vote. So that's a reference to what we expected would be activity from a competitor when we were about to go out to the membership with a fairly significant business issue.

Q. Well they didn't choose when the conferences were going to be held and they didn't stand up and say anything to do in anyway frustrate the road shows, did they?

A. The complaint letter from Mr Malley referred to a range of issues and in terms of the timing of the complaint the organisational assessment or view was that it was partially to distract or cause attention or at the time of the consultation or maybe to, at that stage, cause our Australian colleagues who we were in discussions with to merge to be concerned because they, because of –

Q. So what are you suggesting –

A. – their relationship with CPA, so that was, that was the organisational view in terms of the premeditated campaign.

Q. Okay, could –

A. That's my assessment and, of what I, Craig was referring to.

Q. Well it's a pretty paranoid assessment, isn't it, given that you'd provoked it?

A. Well I don't – no. I, I, well firstly I don't think that it was paranoid given that this was a major piece of, a major event that we were about to go out to the members with and the timing of these particular complaints, given that my presentations in May were not the sole basis of the complaint letter and that there were matters referred to from the two previous years as well as gave the organisation pause to consider whether the timing of the complaints was actually related to other reasons. Now that was a matter for internal comment.

Q. Now could we just look at your file note in volume 3 at 464.

A. 464, volume 3?

Q. Yes.

### **WITNESS REFERRED TO BUNDLE OF DOCUMENTS, VOLUME 3**

Q. Now you said in answer to a question from my learned friend that this file note was part, about the time of the call from Mr Jenkins and part done in response to a request from NZICA Council as I understood it. I'm not sure if anything turns on this but, with respect, that's not correct, is it? This is a file note that was prepared after the CPA letter of 13 May as is quite clear from the first page of it?

A. The, this said it was, it's a combination of or an expansion of that original one. So the components of my file note related to my telephone conversation with Mr Jenkins based off my handwritten notes that I took during the call with him. The other components, as I said, were my recollection once I was asked to record those after the, we were, there was the complaint letter had been received around that time, around that time, so I wasn't sure when that timing was.

Q. And it was after you completed this file note that you destroyed or somehow disposed of your handwritten note?

A. The – yes, so my EA typed up my notes, um, of my conversation with, or the notes that I'd made with Mr Jenkins and then they were discarded.

1615

Q. Well, this read to me, with great respect, as if it's something that you have dictated, this file note, rather than your PA having drafted it. Am I right or wrong?

A. Dictated, no, I don't, as in Dictaphone?

Q. Yes.

A. No, no, no. So they're definitely hand notes that I took with, in my conversation with Mr Jenkins, and I recall that because my desk area has a high-standing area similar to this so I recall writing the notes and the handwritten notes for that.

Q. Yes. No, I –

A. And in relation to the other components of the file note, um, once they'd been sent through I, um, I, my practice, I would have typed those myself.

Q. All right, so that's what I'm – it reads as if it's been something that somebody's typed.

A. Yes, I would've –

Q. Yes.

A. Yes, absolutely.

Q. It would've needed your input to –

5 A. Yes, I typed –

Q. – type the content.

A. I typed those components, yes, absolutely.

Q. Yes, yes, yes, and so you would have typed the bit on page 466 towards the bottom where you talk about the telephone call from  
10 Mr Jenkins?

A. Ah, one or other of us would have typed the – so my PA would have typed up my notes as the base which I then added to, so I'm not sure which sentences she's typed and which ones I have, for example.

Q. Well –

15 A. But both of us –

Q. – I'm not sure –

A. – would have worked on the same document.

Q. Yes, I'm not sure it matters. Okay. Now just briefly, when you talk in paragraph 74 –

20 A. Of my brief?

Q. Of your brief, yes, sorry. And I think you agreed with me before about this but let's just confirm, when you start referring to the New Zealand Bookkeepers Association or the Association of Finance Professionals, et cetera, I mean, you're not suggesting for a moment that when you were talking about the CPA-related matters or those matters where you didn't specifically name CPA by name that you were in fact expecting  
25 people to or intending to refer to the New Zealand Bookkeepers Association or the...?

A. In some places there it was a much broader definition of competition during both my presentations, but clearly I have referenced CPA Australia in, um, by name during my presentation, which you can hear in the recording, so I've, some places I've been specific and others I've been talking about competition in a more general sense so, um...

30 Q. But the matters which I was talking to you about –

A. The matters, correct, which –

Q. Yes.

A. – are the ones that you've highlighted –

Q. Yes.

5 A. – specifically reference CPA Australia by name.

Q. No, that's fine. Now you corrected, or at least my learned friend had you just clarify, paragraph 86 so we know what the position is there.

A. Yes, correct.

10 Q. And that – and your continued assertion that the now CAANZ designation is a better designation is simply your opinion, is that...?

A. Correct, yes, I believe it is the better designation on a range of fronts. That's my opinion.

Q. But without you having any educational expertise to make a judgement on those aspects of both programmes?

15 A. The, um – my opinion about it or the chartered designation being pre-eminent or the better designation's based on a broad range of issues, not solely the education offering, so it's also based around, um, its brand presence, it's based around the training they do, it's based around the networks, the support that they have, et cetera, so it's a  
20 broad range of things but I believe that the chartered accountant designation is the better designation and it is pre-eminent.

Q. And just how do you reconcile it with that material you gave to the conference back in 2013 that 62% of prospective employers actually don't care whether it's a CA or a CPA or – well, let's stop there in case  
25 we go too far.

A. So the – as I said, that material I saw was p – is Australian data and it is an indication of the Australian market and they have a much more diverse or divergent offering in the Australian market, so, um, it's still my belief that the chartered accountant designation is the better.

30 Q. Is the – it's the incumbent designation here, isn't it, in New Zealand?

A. We have the greatest market share currently, yes.

Q. And can I just ask, again, you probably didn't hear the evidence, but in Australia between CAANZ and CPA there's mutual respect and

reciprocity for each organisation's certificates of public practice. Do you know – did you know that?

A. I don't – I'm not aware of how they – um, I accept that there is respect between the organisations. I'd – I'm – I don't know enough about the

5 CPP offerings or equivalent in Australia to be able to comment on the –

Q. Right.

A. – on the other components.

**RE-EXAMINATION: MR GRAY QC – NIL**

**QUESTIONS FROM THE COURT – NIL**

10 **WITNESS EXCUSED**



**MR GRAY QC ADDRESSES THE COURT (16:21:00) – TIMING AND WITNESSES**

**COURT ADJOURNS: 4.21 PM**

**COURT RESUMES ON THURSDAY 9 JULY 2015 AT 10.00 AM**

**MR GRAY QC ADDRESSES THE COURT – WITNESSES AND BRIEFS**

**MR GRAY QC CALLS**

**5 IAN McDOUGALL (SWORN)**

Q. Is your full name Ian McDougall, do you reside in Wellington and are you the founder and head strategist of the company BusinessGenetics, a research-based strategic marketing service that focuses on professional services firms?

10 A. Yes, I am.

Q. Before founding BusinessGenetics, were you the Director of Marketing at the New Zealand Institute of Chartered Accountants, NZICA?

A. Yes, I was.

Q. And do you, have you attached your resume to your brief of evidence?

15 A. Yes, I did.

Q. Would you read your brief of evidence, please, beginning at paragraph 2?

A. Yes, I shall.

**WITNESS READS BRIEF OF EVIDENCE FROM PARAGRAPH 2**

20

**EXAMINATION CONTINUES: MR GRAY QC**

A. "...was published either."

1015

Q. Thank you. Mr McDougall, is the copy of evidence you have signed by  
5 you?

A. Yes it is, it's dated the 8<sup>th</sup> of June.

**MR GRAY QC:**

Your Honour, then follows the resume, are you content for that to be taken as read?

10 **THE COURT:**

Yes I am.

**EXAMINATION CONTINUES: MR GRAY QC**

Q. Mr McDougall, just one or two more questions. Can I ask you please to look in the bundle of materials to your right hand for volume 1.

15 **WITNESS REFERRED TO BUNDLE OF DOCUMENTS, VOLUME 1**

A. Volume 1, yes sir.

Q. Can I ask you please to look at page 194?

A. Yes I have that.

Q. Can you tell me first please, who invented the name Project Ambush?

20 A. I, I did in order to put a title onto a one page brief that went to the advertising agency. It was purely an internal title.

Q. What was the ambush the title was intended to refer to?

A. It was intended to refer to the timing around the placement of the advertising which was to coincide with the CPA conference in Auckland.

25 So the context of ambush was clearly intended to designate timing of appearance of advertising.

Q. Looking please at the advertisement itself which is page 194 in front of you.

A. Yes.

Q. In your experience, how does an ordinary reader of the advertisement read –

**OBJECTION: MR GALBRAITH QC (10:19:23)**

**LEGAL DISCUSSION**

5 1020

**EXAMINATION CONTINUES: MR GRAY QC**

Q. Mr McDougall, for how long have you worked in the general field of advertising?

A. About 40 years.

10 Q. Where did you start? Where did you start in advertising?

A. In Wellington, New Zealand with an advertising agency.

Q. What was the name of the agency?

A. Then it was called Wood & Mitchell and it became Grey taken over by an American company.

15 Q. And what was your role?

A. I was client services director responsible for producing and researching advertising.

Q. And what was the production of advertising that you undertook?

20 A. We would undertake research with consumers of a particular product and then determine a strategy that most effectively reached them.

Q. And when you say “we would undertake research”, what role did you personally play in the research that was undertaken?

A. I, I would lead the research product, the re – I'm sorry, I would lead the research project usually with an independent research company.

25 Q. And once you had received the results of the search, what role did you then play in a response to it?

A. That research would then allow us to develop a communications approach, how the headline was constructed, what it said and what the body copy or the body text referred to. That's fairly standard practice for advertising development.

30

Q. And were you a writer?

A. I'm not a copywriter, no, I, I'm a writer of strategy so therefore I would direct it but I would not actually write the text itself.

Q. And what study or other qualification did you have for this role that you first took on?

5 A. The – I describe, I describe my own, my own learning as, is that of an autodidact because when I started in the business, there were no, there were no educational qualifications around marketing or advertising so I'd learnt through internships that were conducted by different advertising agencies, and it was actually through that practical research experience  
10 that I learnt, I think, what advertising, what makes advertising work or fail and I think that over a period of time that experience is reflected in what you see in front of you on this ad.

1025

Q. And after your first job, where did you move to then?

15 A. I moved to work for a company called Saatchi & Saatchi which was the beginning of a New Zealand and international career.

Q. And is that the first part of your CV that, the office you had from January 1984 to December 1992 –

A. Ah, no, actually that was –

20 Q. – or did you join –

A. That was with a company called BBDO, then Saatchi. I stand corrected on that so...

Q. And what role did you have at BBDO?

A. I was Senior Account Director through to a director of the company, so I was essentially responsible for looking at the marketing strategies and advertising strategies of different clients.  
25

Q. In that role, did you have any occasion to be part of a team that conducted and analysed market research?

A. Ah, that was, that was essentially the role. The role builds from a consumer research base of data in order to develop a defensible strategy and communication. That could be researched after the advertisement had appeared to understand its effectiveness.  
30

Q. And what role did you personally play in those teams which were conducting and analysing market research?

A. I would direct the research but not actually conduct it. I would analyse the results and then interpret those results in the form of an advertising strategy.

5 Q. And what part did you personally play in taking the results of that research and expressing them in further advertisements?

A. I would write the brief to the advertising people that prepared the physical work. I would, ah, then take that finished material to a client for approval and then we would run it in media. When it had appeared in media we would almost always post-analyse the results of it.

10 Q. And then as the years went by – well, then you shifted to Saatchi?

A. That is correct.

Q. And what was your role initially at Saatchi & Saatchi?

A. General Manager of the Wellington office.

15 Q. Did you have any particular clients for whom you worked while General Manager of the Wellington office?

A. Yes, we had two – I personally worked on two of the largest in the country which were Telecom New Zealand, as it was then, and the Lotteries Commission, Lotto and Instant Kiwi.

20 Q. And I'm sure both of those would have conducted market research to inform future and past advertising campaigns?

A. On a constant basis I can't recall any major campaign or any intermediate level campaign that was not conducted without research before or after.

25 Q. And what part did you personally play in respect of the research that you've just described?

30 A. I would commission it. I would analyse it and then represent the analysis to a client. I would also use the resulting information to drive the development of future advertising for the client because each piece of research is actually a, a learning stage or a learning step, and, um, it enables you to become more efficient in the way that advertising is conducted over time.

Q. And how were you personally involved in expressing the results and analysis of research in advertisements like the one which is in front of you at page 194?

A. The advertisement would be taken to a, a random group of people selected from the target market and we would then understand their reactions to the advertisement. How they, how they perceived the information, how they interpreted it and whether they had any inclination to take action from the ad. That information was then aggregated by myself and taken back to the client as a post-analysis report, if you will.

1030

Q. So when you personally aggregated the results of the discussion within groups of advertisements did you learn anything about how it was that people who read an advertisement, like the one in front of you, might come to understand the words and the layout?

A. Yes, what happened over many years and many different product categories was the research establishes learnings that show you what is read and what is probably not read in any given print communication and it is that information that then is used to develop more effective advertising over time. So the research, for example, and this work is not peculiar to me it's conducted by most major advertising agencies, but it will show you very clearly how the construction of advertising can be varied to improve its performance: what people read or don't read in any given piece of communication.

Q. And then as you remained at Saatchi's you became more senior within the firm?

A. Yes, I reached a position of Chief Executive Officer in the South-East Asian market but that success didn't actually change the fundamental role which is the subject we've been discussing, that role never changed it just got more senior.

Q. For how long in your career did you retain clients for whom you worked that required you to participate in market research and the preparation of advertising campaigns?

A. For my whole career, they were inextricable.

Q. So that, for example, for a time you were in London?

A. Yes.

Q. Were you working for clients in London?

A. Yes.

Q. For those clients were you participating in market research?

A. Yes.

Q. What role were you personally playing?

A. Commissioning research, analysing it and reporting on it.

5 Q. And then in reflecting that research and advertising campaigns, what part were personally playing?

A. I would direct the creative development of advertising along the lines of what we had been learning by the research. So the research was literally being applied to a particular task, for example, this specific advertisement and to ensure that the creative teams who wrote and art directed the ad were actually honouring the learnings that we had gathered from the market place. I controlled that personally.

10

Q. Now in fact in your career we've only reached 1990 and there are all the different engagements you had between then and now, but in order to save time is it the case that you remained with Saatchi's in various roles until 2000?

15

A. Correct.

Q. And then did you go to a different firm in 2000?

A. I went to another international company called Young & Rubicam.

20

Q. And what role did you play there?

A. I was head of business development which involved literally growing the market share of that agency.

Q. Did you have clients for whom you were specifically working while there?

25

A. Yes I did, I had one major client.

Q. Did you continue to perform a role in relation to market research and advertising and response –

A. Yes.

Q. – for those clients?

30

A. Yes and it mirrored the, it mirrored the pattern of work that I've already described.

Q. When you say “mirrored” was it the same or different?

A. No it was the same, the principles were the same.

Q. And then in 2004 did you start your own business?



A. Yes I did.

Q. What was that business called?

A. Ah, in 20014? No I'm sorry, I can't actually remember. It may have been Marketing Support Services.

5 Q. Right, but where was it located?

A. Auckland.

Q. And what was the actual work that you were doing in that role?

A. I would use market research to develop competitive strategy for clients and that strategy would be taken through from business strategy to communication strategy. So very, very similar to what I had been doing my whole career.

10

1035

Q. Did you conduct the market research yourself at this time?

A. In some cases I did. If it was qualitative research I conducted it. If it was quantitative research which is far more complex it was done through an independent company.

15

Q. For the quantitative research what part would you play in, in designing the research objectives and designing the deliverables that you were looking for?

20 A. We would alw – we would always determine exactly what outputs we required from the research. The research company was responsible for determining how they got those outputs, but I would determine the results that we required. I would then interpret that research into a strategy both a marketing strategy and communication strategy.

25 Q. And then in 2008, you came down to Wellington?

A. Yes.

Q. And I think according to your resume the entity that you worked there was called Brand New?

A. Yes, correct.

30 Q. Was that an existing company or was that another new one?

A. No, that was an existing company that I, I joined as a co-director.

Q. And what was your role there?

A. Was, it was a sta – it was largely the same as the other roles I've had in my whole career, business development, the application of research to

developing business and marketing strategy, post-analysis of the work, client relationship management.

Q. And when did you begin your relationship with NZICA?

A. In, in the first half of 2010.

5 Q. And how long were you there for?

A. Four years, I left in December of last year.

Q. And at present you've got your own business?

A. I have, yes.

Q. And what role are you performing there?

10 A. I describe myself as head strategist which sometimes amuses me because there's only me in the company, but I operate using the application again of market research to the development of business strategy for small to medium companies and the purpose of that strategy is to build their market share and lift their profitability, so it has  
15 very practical commercial outcomes.

Q. Among them is, is advertising included, comm – among the outcomes and the strategies that you develop is communication included?

A. Yes, it is.

Q. So do you remain current in the skills that are required to produce  
20 advertisements like the one at page 194?

A. I believe so, absolutely.

## **MR GRAY QC ADDRESSES THE COURT – QUALIFICATION (10:38:10)**

### **EXAMINATION CONTINUES: MR GRAY QC**

Q. Looking at paragraph 194 and I'm not asking you to tell me the meaning  
25 of the words. How does, in your experience, a reasonable reader read the advertisement?

A. A reasonable reader would look primarily at the headline and interpret that to mean that there are different tiers of practice or expertise within the accounting market. There I would then naturally go to the top right,  
30 which is where the then NZICA logo type appears, so they would associate the headline statement with the brand NZICA, if I may put it that way. The headline is then amplified and this is a common discipline

in the body text or body copy which elaborates on what is meant by the headline. I think that, I think it's absolutely fair to say and there is research that would support this that the, the average reader would reflect on the headline momentarily. The incidents of the reading of the body copy would be very slight, and that is common to a lot of print advertising, not specifically to this, but I don't see why this would be any different.

1040

Q. Are you able to quantify what, in your experience, "very slight" means?

10 A. In advert – we need to understand that, um, regrettably or otherwise, accounting is what is considered to be a low interest category. It's not like cars or cosmetics which are considered high interest categories. So the readership of the ad would have been comparatively low in the first place. Of those that saw the advertisement, if it follows the general pattern of research, probably about half of those that actually saw the ad would have read the headline, but probably only somewhere around 5% would have read the body copy, and that again, if I may repeat, that is not peculiar to this ad. It is the general way a normal reader looks at print advertisements.

20 Q. Within the spectrum of possibilities for headlines, are you able to say whether the headline in this case is a positive message or a negative message or something else?

A. I would say it's a positive message because it comes from a position of understanding that there are different tiers of expertise and experience in the accounting marketplace. So we span a variety of accounting skills from, um, I would argue, the chartered accountant level down to what is colloquially known as table-top accountants who have no designation whatsoever. So in that sense the message is positive in explaining to a reader that there, yes, there are different levels of expertise and presenting for their consideration that NZICA accountants are at the higher level. That, that was the intention.

30 Q. In the text in the bottom half of the page there's a reference to employment of chartered accountants by top CFOs and CEOs.

A. Yes.

Q. What was the basis for that statement?

A. Ah, it came, it came from research that was conducted by our sales team and it was in existence at the time. They interviewed or observed the top 50 companies in New Zealand – I apologise, I'm, I'm very convinced it was the top 50, I may have that wrong but it was 50 or less but it was a considerable number – and looked at the hiring practices of CFOs and CEOs, and it was very marked at that – it was matrixed out, from my observation, and it was very obvious at that time that almost all of the hiring policies were exclusive to chartered accountants. So, for example, even today I believe this to be true, companies like Fonterra and Air New Zealand are principally dominated by accounting roles that are chartered accountant roles. But there was market evidence to suggest that there was, that it was factual statement.

**OBJECTION: MR GALBRAITH QC (10:44:14) – DISCLOSURE AND DISCOVERY**

**LEGAL DISCUSSION**

**WITNESS STOOD DOWN**

**LEGAL DISCUSSION (10:46:08)**

**WITNESS RETURNS: 10.53 AM**

**THE COURT ADDRESSES WITNESS – DISCLOSURE AND DISCOVERY AND CASE DISCUSSION REMINDER**

**WITNESS STOOD DOWN**

**WITNESS INTERPOSED**

**MR GRAY QC CALLS**

**ALLEN WALTER NEWMAN (SWORN)**

Q. Is your full name Allen Walter Newman? Do you reside at Masterton in the Wairarapa and are you a chartered accountant?

5 A. Yes.

Q. Would you read your brief, please, beginning at paragraph 1?

**WITNESS READS BRIEF OF EVIDENCE**

1100

**EXAMINATION CONTINUES: MR GRAY QC**

A. ...or downgrade CPA Australia.”

**CROSS-EXAMINATION: MR GALBRAITH QC**

5 Q. I take it that you don't now have any particular recall of the detail of what Ms Patterson said in her address on the 8<sup>th</sup> of May?

A. Correct.

Q. You do, though, from your brief of evidence obviously have recall that she said something about GAA?

10 A. Yes I do. That's partly from the presentation papers that were given out on that day.

Q. From the PowerPoints?

A. PowerPoint.

Q. Right, okay. So do you have any recall of what she said in relation to CPA's relationship or non-relationship with GAA?

15 A. That they weren't members.

Q. Do you have any recall whether she gave an explanation as to why they weren't members?

A. No, the comments were as, you know, as I've said, that the organisations were in CPA, not CPA, GAA were the same as the designations and membership that the New Zealand Institute has.

Q. Hang on, start –

A. I'll and the comment I made in my brief that it's a worldwide group of professional organise – training organisations and those organisations have similar member designations and similar educations as NZICA, that's the recollection I have.

25 Q. So you don't have any recollection of what she said about why –

A. No.

Q. – CPA wasn't a member?

30 A. No.

Q. That's fine. Whatever Ms Patterson said on that day about CPA, did you have any reason not to regard as accurate?

A. I considered it accurate.

Q. And would you have expected it to be properly researched before it was stated?

A. Would have done.

5 Q. And would you be concerned if it turns out that in fact some things which were said about CPA were not accurate?

A. I would have some concerns. I think I expressed that in my comments as well that had I heard her say something that alarmed me or was not correct I believe, based on the information and the knowledge I had as  
10 an Institute board member and as a member of the organisation, that the facts were stated.

**RE-EXAMINATION: MR GRAY QC – NIL**

**QUESTIONS FROM THE COURT – NIL**

**WITNESS EXCUSED**

15

**MR GRAY QC ADDRESSES THE COURT – WITNESS AND BRIEFS**  
(11:05:19)

**THE COURT ADDRESSES MR GRAY QC – EXHIBITS (11:07:30)**

5

**EXHIBIT 6 PRODUCED – FLASH DRIVE COPY OF PRESENTATION OF  
KIRSTEN PATTERSON**

10 **EXHIBIT 7 PRODUCED – FLASH DRIVE COPIES OF PRESENTATION OF  
RICK JONES**

**COURT ADJOURNS: 11.08 AM**



**COURT RESUMES: 12.00 PM**

**MR GRAY QC CALLS**

**VIV BROWNRIGG (SWORN)**

5 Q. Is your name Viv Brownrigg, do you live in Mount Maunganui, and are you an account with both an FCA and an FCPA?

A. Correct.

Q. And you appear today under subpoena?

A. Correct.

10 Q. Would you read your brief of evidence please beginning at paragraph 2.

**WITNESS READS BRIEF OF EVIDENCE FROM PARAGRAPH 2**

**EXAMINATION CONTINUES: MR GRAY QC**

A. "...Fellowship from CPA Australia."

**THE COURT ADDRESSES WITNESS – COPY OF BRIEF (12:02:44)**

**EXAMINATION CONTINUES: MR GRAY QC**

5 A. "In 2002 I founded...unable to resolve." My last page is missing.  
1205

**THE COURT:**

Q. You're in good company; so is mine.

A. I do know what I did say though. "To resolve their differences and" –

10 Q. Well, let's just –

A. Shall I wait?

Q. Yes, just let's wait, thanks, Ms Brownrigg.

**MR GRAY QC ADDRESSES THE COURT (12:09:52)**

1210

15 **EXAMINATION CONTINUES: MR GRAY QC**

A. I do have my draft sitting in my handbag over there.

Q. Can I just ask you, Ms Brownrigg, to complete what you under – well, what you recall the paragraph to be. What is it that you're unhappy about?

20 A. I'm unhappy that this matter has found its way to the High Court at considerable expense to members of both organisations and feel it should've sorted out well and truly before it got to this point.

Q. Right and is that the conclusion of your evidence?

A. It is.

25 Q. Would you date your brief, please, with today's date and answer any questions.

**CROSS-EXAMINATION: MR GALBRAITH QC**

Q. Ms Brownrigg, thank you. If I could just ask you a couple of questions. In those bundles next to you, could you find a volume which says "common bundle of documents volume 2"?

**5 WITNESS REFERRED TO BUNDLE OF DOCUMENTS, VOLUME 2**

Q. And if we just go to page 309.

A. 309?

Q. Yes.

A. Are we talking at the bottom or the top? There doesn't appear to be a  
10 309. It starts at 442.

Q. I'm sorry at the top, at the top on the right-hand side?

A. Yes, it starts at 442.

**THE COURT:**

You might then have volume 3?

**15 CROSS-EXAMINATION CONTINUES: MR GALBRAITH QC**

Q. No, you need volume 2.

A. It says – I'm looking at, oh, right, thank you, sir.

Q. No problem.

A. 309?

20 Q. Yes. Right, is, that's the flier, isn't it, that you're speaking of in paragraph 11 of your brief?

A. Correct.

Q. Yes, and it was just in that subject heading that there was a reference to a faceoff, an eyeball, is that right?

25 A. Correct.

Q. And if we go across to 323, that's the registration brochure?

A. Correct.

Q. Right, which doesn't refer to anything about a faceoff or eyeball, does it?

A. No.

30 Q. Were there any other fliers between those two that you can recall?

A. Ah, no, there were no, no, there were definitely no other fliers, this was the official flier.

Q. Right.

A. It's very common to have, to be developing the final programme as speakers are finally producing their materials to you –

Q. Yes.

5 A. – whilst you're in, in progress with your marketing material.

Q. Yes, no, I understand because on 324, for example, you've got the speakers and some photos –

A. Correct.

10 Q. – and a bit of a description of the speakers, yes, I understand. Now, am I right also that while obviously people who it was primarily targeted at were people who were accountants whether members of NZICA or CPA that anybody was interested in the topic was able to buy a ticket and come along?

15 A. We only targeted our member firms who are members of the Accountants' RePublic and so we only targeted practitioners in New Zealand.

Q. Sure.

A. Most of those who attended, the vast majority of them were CAs as opposed to be CPAs.

20 Q. Yes, I was going to ask about that but, for example, there was a Mr Bakker that worked for Sterling Accountants, I think they call themselves, who wasn't either a CA or a CPA. He was a person who worked for an accounting firm so –

25 A. Yes. It was common for firms to bring maybe one or two people, maybe not, and their support team. They maybe senior associates or they maybe the practice manager, for example –

Q. Right.

A. – who has a general interest in the innovation and improvement of an accounting firm.

30 1215

Q. And provided they paid their money they are welcome to come along?

A. Yes, we have actually declined people to attend the event where we've had, I would describe, random individuals and we felt it was totally inappropriate that they attend.

Q. I won't ask for any names. Now you also helpfully attached or referred to in paragraph 19 the spreadsheet in which you've got the names of the attendees which you will find in that same volume at, starting at page 349 if you wouldn't mind just having a look. So from 349 to 350 do I take it those are the attendees at –

A. Christchurch.

Q. – Christchurch and then from the following pages through to 353, are those at Wellington, that's right?

A. Correct.

10 Q. And you've already said most of the, the majority of those attending were members of NZICA subject to the qualification you just expressed that sometimes it's a practice manager or something like that?

A. Correct.

15 Q. I take it, at this time you wouldn't be able to be more precise that it was a certain number that were NZICA and a certain number that were CPA?

A. I couldn't be precise but I have a very good gut feel for this. Very few in the room were CPA members.

Q. And more or less so in Christchurch or Wellington?

20 A. I wouldn't think they would be any different.

Q. And is it fair to say that that may reflect the fact that CPA in any numbers as a relatively new feature of the New Zealand market?

25 A. Absolutely. The CPA Australia has marketed in New Zealand from time to time over the last several years, however, they were making, you know, their presence more felt in New Zealand and there was, they had a marketing campaign that was going on at the time and it's true to say that there is always a level of dissatisfaction in a professional membership body. It's actually a difficult and onerous task to provide members with value when you have to be a member because that's, 30 you know, it's not a voluntary thing. So it seemed a really relevant time to bring both organisations into the room because the changing nature of our industry, there is so much change happening at the moment that practitioners are sometimes struggling to discover the relevance of belonging to a professional organisation anymore. The knowledge and

ongoing education is somewhat fragmented now and firms do struggle from time to time and question the value and express that to me regularly and it was a very good opportunity for both organisations to express that value, particularly in the continuing education.

5 Q. And your own expertise in your consulting role is very much focused on that activity?

A. The coaching that we do of accounting firms is very much focused on improving the efficiency in their own businesses and also at the same time improving the skill set so that they are better equipped to coach and develop and improve small business New Zealand and that's the end game for me personally, that's what excites me –

10

Q. I was going to say, that's your passion?

A. – is chartered accountants or CPA's helping New Zealand businesses to flourish and grow and to do that they need to step beyond compliance where fundamentally they are not adding enough value presently.

15

Q. Right.

A. And so many of our coaching programmes and CE programmes are about how they specifically take that step from compliance to businesses development where they are actually going beyond the numbers and helping their businesses, their business clients improve. So that's very much where – we don't provide a compliance content or development, we're not providing technical content or continuing education, the professional bodies do that very well as well as other external providers.

20

25 Q. I understand. Now you've said, obviously very accurately, that you don't now recall the detail of what was said by either the CPA representative or the NZICA representatives at those conferences. There is a transcript and I'm not inviting you to read the transcript but there is a transcript in that same bundle. I just want to take you, and you will see

30 if you go to page 356. Perhaps I'll explain why there is a transcript. One of the attendees at the Christchurch conference had a very, and I think to use the right word, a smart pen and his pen actually records. Now, it's beyond my technical imagination even to understand how that happened, but he managed to recall that fact and so there's been a

transcript made of what was said by Ms Patterson in Christchurch and also Mr Jones in Christchurch. Now, Ms Brownrigg, I don't want you, unless you want to, I don't want to take you through all that, but just because you've made the comments about you were surprised that in some part Ms Patterson strayed, I just want to see if you can identify if this is the sort of thing you're referring to. If you just go across to page 362. Ms Patterson's transcript starts at 356, but three, in 362 you'll see about, one, two, three, four, five, six lines down there's a sentence starting, "Under the CPA model, CPA Australia you can do a few modules and give you a piece of paper saying you're an accountant," see that? Is that the sort of comment that, an example of the sort of comment you're talking about in your paragraphs 14 and 20?

A. Correct.

**RE-EXAMINATION: MR GRAY QC – NIL**

**15 QUESTIONS FROM THE COURT – NIL**

**WITNESS EXCUSED**

**LEGAL DISCUSSION – VIDEO LINK EVIDENCE (12:25:05)**

**THE COURT ADDRESSES COUNSEL – TIMING (12:26:35)**

**COURT ADJOURNS: 12.27 PM**



**COURT RESUMES ON FRIDAY 10 JULY 2015 AT 10.01 AM**

**MR STEWART CALLS**

**GAVIN MILLER (SWORN)**

5 Q. Your name is Gavin Miller?

A. Yes.

Q. Do you reside in Wellington?

A. Yes I do.

10 Q. Mr Miller, you have prepared a brief of evidence for this proceeding, do  
you have that in front of you?

A. I have it right here, yes.

Q. Could you read it into evidence please from paragraph 1?

A. Sure.

**WITNESS READS BRIEF OF EVIDENCE FROM PARAGRAPH 1**

15

1015

**CROSS-EXAMINATION: MR GALBRAITH QC**

Q. Mr Miller, you have said that you weren't responsible for creating the flier, right about that, do you know who was?

5 A. From recollection I don't know who exactly what responsible for it. At that point in time I was reasonably new so I didn't really know the process.

Q. And so in a sense the flier arrived down in Wellington and you took it along to – did you take it along to the student –

10 A. I never distributed it.

Q. Never actually got up to that stage?

A. No, I was, I was instructed to destroy it before it got distributed here.

Q. Did you have a read of it before...

A. Yes.

15 Q. You've said at paragraphs 5 through 8 that from your experience there were misunderstandings about, you're particularly talking about the CA designation I think. At the time there were, there was this choice that students had between going with NZICA or going with CPA, is that right?

20 A. Correct.

Q. And in your view was it important that in making that choice the students were fairly informed about each of the organisations?

A. I think misinformed would be the right term in a lot of cases.

25 Q. Yes but what I'm really suggesting to you, it's desirable that before students make a choice, one or the other, they should be properly informed so they're making an informed choice –

A. Absolutely, correct.

Q. – is that fair?

A. Yes that's fair.

30 Q. Look can you just, you'll find there's some volumes there, if you could just try and find common bundle of documents volume 1? It's one of those ones, I'm afraid. Probably one of the ones at the front.

**WITNESS REFERRED TO BUNDLE OF DOCUMENTS, VOLUME 1**

A. One of these?

Q. Yeah have a look, yeah. The one that says volume 1 there. If you just go across to page 133? Now does that look like the flier that you saw at the time?

A. Yes.

Q. And you'll see the heading, "Comparing NZICA and CPAA" and that was the, that was the choice which students had, wasn't it? One or the other if they were going to get a professional accounting designation.

10 A. Two of them, yeah, two of the main ones.

Q. Look I don't want to take you through the whole of this flier because you weren't responsible for it but if you just look at the – you haven't seen this for some time, I take it, have you? No, okay, look just quietly read to yourself, you see the fifth box down towards the bottom, there's a box saying, "Points of difference"? If you just have a look at both sides of that for a moment?

**WITNESS REFERRED TO FLIER**

A. Mhm. Sure.

1020

20 Q. You will see in the left-hand box what it says. It says, "About four years of academic study and face-to-face training," and I don't want to ask about that, but you see the third bullet point, "CA qualification is recognised internationally," and that's an unqualified statement there, isn't it?

25 A. Can you explain in what way?

Q. It suggests, it certainly doesn't limit where it's recognised, it's internationally, it could be the universe in that statement?

A. Sure, okay.

Q. And then the next little bullet point is, "International reciprocity through the global accounting alliance," which we understand is important to NZICA. "The network that allows you to work overseas in countries like the UK with ease," so that's more targeted, isn't it, it at least identifies the UK?

A. Mhm, yes.

Q. But then you look on the right-hand side, what it says is, third bullet point, "Australian based qualification," so that's the extent that we'd accept Australia is international, that's the limit of any international recognition, isn't it?

5 A. No, well it says it's Australian based.

Q. Yes, well then the next bullet point says, "Not part of an international accounting alliance," doesn't it?

A. Correct.

10 Q. Now would you agree with me that a student might well read this, come along to you and say, well, "Gosh, it looks good, CA qualifications recognised internationally, that CPA designation that doesn't look much use to me?"

A. They, yes.

Q. They could have said that based on reading that, couldn't they?

15 A. They potentially could have.

Q. And what would you say to them then when they said, "Gosh it looks like CPA doesn't have an international presence," what would you say to them?

20 A. Ah, my job is not to compare the two, my job is to just speak to NZICA's or Chartered Accountants CA designation and how to get that. I, if I was asked to compare the two I never would.

Q. Well this does, doesn't it?

A. I'm not responsible for the document.

Q. Don't worry, I'm not holding you responsible for this –

25 A. Yes.

Q. – Mr Miller I promise you, but this document does compare the two, doesn't it?

A. Yes, clearly.

30 Q. And what I'm asking you is that if you handed out this flier and the woman or the chap stood there and read it and then they said to you well, "Gosh," you know, the opposite of the misinformation you were talking about before, "Gee the CA designation looks great I can use that internationally but this CP one it looks like I can't." Wouldn't you try and correct that impression?

A. My job is not to correct the CPA designation and what it can and can't do. My job is just to communicate Chartered Accountants designation and the qualification and how they get it and what they can do with it.

5 Q. So would you agree that a student left in that limbo could well walk away misunderstanding the respective scope of the two designations in respect of their use overseas?

A. I can only speculate on this but in a scenario where they would ask me to more explain the CPA designation my response to them in all cases was you should seek out a CPA representative and discuss it with them.

10 Q. Well that's an appropriate, absolutely appropriate response.

A. Yes, and that's how I conducted at all times.

Q. But if they didn't ask you and you didn't tell them that and they just worked off the flier then they would be stuck with what the flier has told them, wouldn't they?

15 A. If they did, yes, yes.

Q. And I see at the bottom left of the flier it has this exhortation, "What are you waiting for? Sign up it's free." Was that part of your approach that you were instructed to take to try and get them signed up on the spot?

20 A. Well, no, because the, "What are you waiting for? Sign up it's free," comment only refers to the student, the free student affiliate membership where they could gain more information. They were not asked for any money, they were not asked for any – they were not pushed any training at that point, that was merely a student affiliate membership which was free to them to gain more information and  
25 engage in the chartered accountants' community to find out more about the profession.

1025

Q. Yes, and that what it says, you'd join NZICA as a student affiliate –

A. Yep.

30 Q. – doesn't it?

A. Yep.

Q. But getting back to my question, was it part of the instruction in your role to get people to sign up to that –

A. Sure.

Q. Yes.

A. Sure.

Q. And if you can on the spot, otherwise to go into the website and –

A. Sure.

5 Q. – sign up.

A. Yep.

Q. Okay.

A. Yep.

**RE-EXAMINATION: MR STEWART – NIL**

10 **QUESTIONS FROM THE COURT – NIL**

**WITNESS EXCUSED**

**MR GALBRAITH QC ADDRESSES THE COURT – EVIDENCE (10:26:17)**

**LEGAL DISCUSSION – COURT AS CHAMBERS**

1030

15

**MR GRAY QC CALLS**

**ADELLE EVANS (SWORN)**

Q. Is your full name Adelle Evans, do you reside in Sydney, Australia, and are you the General Manager Admission Programmes of CAANZ?

5 A. That's correct.

Q. Would you read your evidence please from paragraph 1?

**WITNESS READS BRIEF OF EVIDENCE FROM PARAGRAPH 1**

**EXAMINATION CONTINUES: MR GRAY QC**

A. "...explanations are in red."

Q. Would you pause there please? Ms Evans, is that document now shown to you the document referred to in paragraph 10 of your brief of evidence?

**WITNESS REFERRED TO CA V CPA ADMISSIONS TABLE**

A. That's correct.

Q. Do you now produce that document?

A. Yes I do.

**EXHIBIT 8 PRODUCED – PAGE OF AMENDED CA V CPA ADMISSIONS TABLE**

Q. Can I ask you to continue reading your brief please at paragraph 11.

**WITNESS CONTINUES READING BRIEF OF EVIDENCE FROM PARAGRAPH 11**

A. "Key differences. Whether...renewal and approval."  
1055

Q. Can you please look at the three volumes on the table in front of you, find volume 3, and turn to page 642?

**WITNESS REFERRED TO BUNDLE OF DOCUMENTS**

Q. Is that the beginning of the documents referred to in paragraph 14 of your brief?

A. That's correct.

Q. In fact, can I ask you to look back two pages to 640? Do you recognise pages 640 and 641?

A. Yes I do.

Q. What are they?

A. They're our TEQSA accreditation, our ID number and provider.

Q. And then looking forward please to page 645? Do you recognise that document?

A. Yes I do.

Q. What is it?

A. It's our letter of renewal of registration.

Q. And then to 647? Is that – do you recognise that document?



A. Yes I do.

Q. And what is it?

A. Again, it's renewal of registration, the background and main reasons for the decision to re-approve.

5 Q. Thank you. Would you continue reading your brief please starting at the last sentence of paragraph 14?

**WITNESS CONTINUES READING BRIEF OF EVIDENCE FROM PARAGRAPH 14**

A. "ICAA has been...to the IESs."

10 1105

Q. Can you pause please and look into the fourth volume in front of you. It's got, "Confidential," on it.

**WITNESS REFERRED TO CONFIDENTIAL BUNDLE OF DOCUMENTS**

A. Thank you.

15 Q. Would you turn please to page 180. Are the pages from 180 to 187, sorry, to 184 the pages you've just referred to in your brief?

A. No.

Q. What are the pages you've referred to?

A. I'm referring to the CAG work papers that we produced that actually detailed the IES comparisons.

20

Q. All right, well I ask you please to put a line through the first three and a half – do you have a pen?

A. Yes.

Q. Can you go back to your brief please at paragraph 24? Can you put that volume away for me or put it up to the side? Thank you, now can you put a line with your pen please through the first three and a half lines of paragraph 24? Can you continue reading and can you sign beside that on your brief and in fact through the whole of paragraph 24. Can you continue reading please from paragraph 25.

25

30 **WITNESS CONTINUES READING BRIEF OF EVIDENCE FROM PARAGRAPH 25**

A. "The CAG framework...their respective electives."

1110

Q. Can I ask you to pause there please? Can I ask you to look at the second line of that paragraph? You read, "University pre-requisite subjects that meet IFAC requirements." Does your evidence include the word, "Minimum," or not?

5 A. It does

Q. Right, can I ask you please just to re-read that second line?

A. "University pre-requisite subjects that meet minimum IFAC requirements."

10 Q. Thank you. Would you continue please over the page at the heading before paragraph 33?

**WITNESS CONTINUES READING BRIEF OF EVIDENCE**

A. "CA programme requires...in quality reviews."

1115

15 Q. And again if I could just ask you to pause. The third line from the bottom, the first word you read is "admission". Did you mean "admission" or "submission"?

A. "Submission".

Q. Thank you.

A. Apologies.

20 Q. Not at all, thank you. Please continue at paragraph 35.

**WITNESS CONTINUES READING BRIEF OF EVIDENCE FROM PARAGRAPH 35**

A. "The CA technical...at a time."

Q. Thank you, Ms Evans. We now go to page 12 and paragraph 75.

25 **WITNESS CONTINUES READING BRIEF OF EVIDENCE FROM PARAGRAPH 75**

A. "Comments on CPA...13 line 28."

Q. Just continue, thank you.

**WITNESS CONTINUES READING BRIEF OF EVIDENCE**

30 A. "I also note...across modules and –"

**EXAMINATION CONTINUES: MR GRAY QC**

Q. In giving the evidence that you just have, have you considered components of the programme that CPA offer?

A. Yes.

1120

Q. Is one of them financial reporting?

5 A. Yes I've compared the outlines provided in the CPA comparison to make this analysis.

Q. Are there any parts of the CPA programme – and can I perhaps ask you not to glance down at your brief while we're having these questions? Are there any parts of the CPA programme that you've looked at that you think are not present but are present in the CAA modules?

10 A. I think in looking across with the CPA modules, it's in, say, the financial reporting module, it's narrower coverage. So it's not got the level and depth that we have in the CA programme.

Q. Are there any particular areas that you would find in the CAANZ programme but not in the CPA Australia programme?

15 A. It's been difficult to make a comparison from the limited information provided in the comparison document that is provided by CPA, and they've compared it to our New Zealand tax module in the list. However, I don't believe CPA have a tax New Zealand module.

20 Q. Right, can I ask you please to put a line through paragraph 80 and to sign by the side? And then can I ask you to resume reading please at paragraph 81?

**WITNESS CONTINUES READING BRIEF OF EVIDENCE FROM PARAGRAPH 81**

A. "The mutual recognition...our body and membership."

25 **MR GRAY QC ADDRESSES THE COURT – ADJOURNMENT**

**COURT ADJOURNS: 11.26 AM**

**COURT RESUMES: 11.42 AM**

**EXAMINATION CONTINUES: MR GRAY QC**

- 5 Q. Ms Evans, can I direct your attention please to paragraph 24 of your written brief which we deleted. Can I ask you please to look in the confidential bundle at pages 35 to 42? Are those pages 35 to 42 of the confidential bundle the review work papers that you intended to refer to in paragraph 24 of your brief of evidence?

**WITNESS REFERRED TO CONFIDENTIAL BUNDLE OF DOCUMENTS**

- 10 A. They are.
- Q. Would you therefore please read paragraph 24 of your brief of evidence.

**WITNESS CONTINUES READING BRIEF OF EVIDENCE FROM PARAGRAPH 24**

- A. "To demonstrate that...to the IESs."
- 15 Q. And is the ABD reference C35 to 42?
- A. Sorry.
- Q. Thank you.

**WITNESS CONTINUES READING BRIEF OF EVIDENCE**

- A. "Areas included are...extracts of commentary."
- 20 Q. Would you now please date your brief of evidence, write the date on it. Have you signed that copy Ms Evans and if you haven't I will get you to sign it as well.

**THE COURT:**

- Q. Have you still got the page 35 open of the confidential bundle?
- 25 A. Yes I have.
- Q. The heading at the top of it says, "Referred to in paragraph 20 of the brief," should we ignore that now?
- A. It should be the paragraph I just read which was 24.
- Q. 24?
- 30 A. Correct.
- Q. It isn't referred to elsewhere?

A. Correct.

**CROSS-EXAMINATION: MR GALBRAITH QC**

5 Q. Ms Evans, you refer, I think, in paragraph 6 to CAANZ having a reputation for high quality and premium qualifications, et cetera, there's no challenge to that Ms Evans, that's absolutely accepted. And you go on in paragraph 11 to say, well, what's better or not quite so better, that's not a very grammatical expression, well to some extent lie in the eye of the beholder, is that really what you're saying there?

10 A. I'm saying that there is a lot of facts to be taken into consideration when making such an assessment.

Q. And CAANZ regards its designation with the backing of the aspirations which the CAG framework gives you as being, as you said, a high quality premium programme?

A. Our higher education provider status.

15 Q. As well?

A. As well as the CAG framework of which we have to meet the requirements of our CAG framework for GAA membership.

20 Q. And there are quite a large number of other professional organisations throughout the world and you've just – who are members of IFAC, for example, and some of those will have different weightings in their programmes to those which you have in yours, is that right?

A. That's correct, so we, it's 175 members in IFAC of varied levels.

25 Q. But it's not just the different levels, some of them will see different needs that they have to meet or prefer to meet in their programmes, is that fair?

A. Yes.

30 Q. Now you go on, you made the point a moment ago and you've made it in your brief about the Grad Dip qualification which you have with the Australian Qualification Authority and you've had that I think for your, what was the ICAA programme since 2001, is that right?

A. Yes.

Q. In 2013 which is when some of this issue arose and some of it arose a bit earlier, ICANZ was still running its own programmes?

A. We were running with NZICA and ICAA, we were running joint programmes for the CA programme commencing in the beginning of 2013. So it's identical programme across Australia and New Zealand from that time.

5 Q. From that time. An ICANZ member though could not graduate under that programme until 2015, is that right?

A. That's correct, it takes on average about 18 months to two years to graduate.

10 Q. So any ICANZ member as at 2013 or commencing the programme pre-2013 wouldn't obtain the Australian Grad Dip qualification?

A. Prior to 2013, no, they would've gone through the PAS programme.

1150

Q. Yes.

15 A. And from 2013 they had the opportunity to undertake the joint programme in CAANZ.

Q. Can I just ask, I mean, a New Zealand member of CAANZ now undertaking a programme, CAANZ programme, Trans Tasman programme, does that give them an Australian Grad Dip qualification?

20 A. It's an Australian qualification issued by – registered by TEQSA, Australian –

Q. Yes.

A. – qualifications framework, but we – it's a programme that is offered in New Zealand. It's registered in New Zealand as well as Malaysia and Singapore.

25 Q. Sorry, I – just a query I was making was does that mean that the person living in New Zealand doing that programme –

A. That's correct.

Q. – gets an Australian – right, okay, I'm with you.

30 A. But can I just say it's internationally recognised qualification under the framework as are the AQF of TEQSA.

Q. Yes, just like if you've got a university postgraduate qualification in New Zealand that would be –

A. That's correct.

Q. – I hope internationally ranked.

A. That's correct.

Q. Right. Now just going back a step, in your paragraph 9 you referred to the tables that were completed internally within NZICA, you see your paragraph 9?

5 A. Yes.

Q. And we could just find the volume. It will be in volume 3.

**WITNESS REFERRED TO VOLUME 3**

A. 3.

10 Q. Now, sorry, those volumes are next to you there so you need to find common bundle volume 3, and you've got two references there, and if we could just go to 442 to start with. Now that's an email from a Logan Mudge at NZICA. Now you weren't part of this at the time, were you?

A. No, that's correct.

15 Q. Because NZICA and CAANZ hadn't – sorry, NZICA and ICAA hadn't merged at that stage, is that right?

A. Correct.

20 Q. Yes. If you go across the page, that's where this comparison is first set out, and that's the document or the precursor of the document to which you added your red comments more recently, is that right?

A. Yes, I had no input to the original document. I have gone through and was asked to mark up what I thought should be on that document, but I didn't find any material change.

25 Q. Yes, okay. And so if we just go forward to 452, you'll see that's a more widely distributed email, again from Logan Mudge, which again seems to refer to that document we were looking at a moment ago where he had made that comparison. Do you see that? I think it's a he, it may be a she.

A. I see it. I wasn't part of it though.

30 Q. Right, yes, and so I guess if we look across to 453, which is a comment by Mr Paviour-Smith who is probably known to the Court. Again, have you read that document yourself previously?

A. I haven't, no.

Q. No, okay, that's fine. No point asking you. Now again going back to the Grad Dip designation, you make the point that the designation means, well, one you get a designation from CAANZ and two, you get the Grad Dip from the Australian Higher Education Authority, that's how it works doesn't it?

A. That's correct.

1155

Q. And if somebody ceases to be a member of CAANZ for good reasons or bad reasons, then they lose their designation with CAANZ but the point you make is they retain their qualification with the Higher Education Authority?

A. That's correct, Grad Dip CA.

Q. And you're not on the disciplinary side of CAANZ so I shouldn't ask you about those issues, should I?

A. No we have a special team that does disciplinary.

Q. That's right. Now just in relation to – you then to get on to talk about the GAA and CAG. Do you know when the CAG framework was first established?

A. CAG has some history, as you know, from the evidence that will be given by Stephen Harrison. It was established as a CAG executive with the original organisations, England, Wales, Scotland, so some of those are core CAG bodies. It became GAA, I think, in 2005.

Q. And did the framework exist when it was the original organisation after – from what I've read of his evidence, that was 1994, or was the framework developed subsequently?

A. There was always a framework that was abided by with those core CAG bodies but it's evolved over time and obviously accounting's got a lot more complex, so has the framework's evolved, and our level of how we've defined our competence in those has evolved over time.

Q. And because there are a number of organisations within what's now the GAA, is it fair to say it was seen as important to have a, a standard framework, an aspirational framework so that there was cohesion between the bodies?



- A. The CAG framework's essential to us being able to have a standard which is, as I've demonstrated here, higher than the IFAC standard. To hold ourselves out to be a GAA member, we are externally reviewed by the GAA to comply with the CAG framework. So some of the bodies, as
- 5 in AICPA are not part of the CAG framework, but they are part of the GAA.
- Q. So how is that review – you mention the review there and, sorry, in your brief and you say that that's done by other GAA members. Can you just briefly explain how that review is done?
- 10 A. That's correct, so I've actually, we work through the CAG framework which is very extensive and it's in the papers and we document how in fact we meet those extensive requirements across the whole of the CAG framework which is rules, regulations, assessments, the competence areas, so right across the whole CAG framework and how we meet that
- 15 across the CA programme and our practical experience and prerequisite academic requirements.
- Q. But that's what you do internally yourself.
- A. That's –
- Q. When I say yourself, I mean CAANZ.
- 20 A. That's what the basis of – the review will pull all the papers together, our whole programme, all our assessments, all our learning outcomes, our materials, our online materials, so the whole lot including our practical experience and our logbooks, how we audit that, how do that through the quality review. So it is about them assuring that in fact we have met
- 25 the CAG framework as defined.
- Q. So what do you do with that? Do you just send that off to the other GAA members or is there some formal process which takes place?
- A. There's a formal process and we, where – we have been allocated who will be doing reviews which is rotational. When there's a significant
- 30 review in the programme that, you know, signals that we do have to undertake a new review, even if it's before the, you know, the expiry within the MRA which is our memorandum of reciprocal agreement.
- Q. And how often do those full reviews take place?

A. Every five years or as a change, a major change within the programme, which is most of the time, actually, in the accounting so we have a lot of change.

1200

5 Q. So when was the last full review so far as CAANZ was concerned?

A. We've got one coming up this year at the end of the year. The previous one to that, I think, was three years ago.

10 Q. You go on to describe the CAG framework and I think you agreed with me that a large part of the justification for it is so that you have cohesion within the GAA members but that doesn't apply to the Australian, sorry, to the American organisation, it doesn't have, it's not a signatory to CAG?

15 A. Their education programme with the extensive multiple choice and their programme being very much driven by the regulation, yes, but in their regulators in NASBA. No they don't fall within the CAG framework and they don't have a multidisciplinary module like we do and their assessments are primarily multiple choice, so don't meet the requirements of CAG framework.

20 Q. So that the CAG framework from just what I've read and in the document and also looking at the review document, well, you said in paragraph 23. Some of the wording is, I think as my learned friend said, aspirational rather than prescriptive in terms of you must do one, two, three, four, is that fair?

25 A. Well I think for one that reads and analyses the CAG framework it is quite prescriptive in that we have to meet those levels of all of those detailed learning outcomes. We have a very detailed taxonomy which drives the verbs and, that we use within the taxon – within the framework. There's examples provided on how we would apply those so in fact it's quite structured and I think fairly clear as one of the GAA CAG bodies what we need to do in our programme to comply with those high standards.

30 Q. Yes, I was only smiling a little because you referred to the taxonomy and lawyers tend to argue about the meaning of words a lot and it seemed that the wording used in the review are quite a focus on the, as

you say, the verbs which are used or the adjectives which are used, is that, have I put it fairly?

A. They are quite clear if it's the difference between something at a contextual level in our CAG framework that says "list" or "explain" distinct from "develop", "make a judgement". So the words are very, you know, they indicate what the level of knowledge and the application we require in the framework.

Q. But your organisation, CAANZ, for example, will have aspirations to have as high a quality a programme as it can sensibly achieve. I mean, there's got to be some parameters obviously, don't there, and you would apply those individual aspirations that CAANZ has to that framework and those words?

A. We just, we meet the requirements for CAG.

Q. Yes, and you'd expect CPA to have aspirations also to meet whatever it identifies as being the professional requirements?

A. Yes.

Q. Now you did say in your brief, paragraph 26, is, "One of the places, that the CPA programme wouldn't meet all GAA requirements as defined in the CAG framework including entry pathways." Now is that, when you talk about entry pathways, is that really what you're talking about in your evidence that CPA will allow somebody to commence their programme without having completed a degree. I'm putting it at the highest level at the moment?

A. Without a degree and also the pre-requisite for the audit and tax components.

Q. You haven't acknowledged in your brief the foundation programme with CPA has but you are aware of that?

A. I am.

Q. And that, at least put into undergraduate level, is used by CPA to satisfy that audit and tax, initial audit and tax prerequisite?

A. My understanding is it's to meet the subjects that your students haven't completed in their degrees already.

1205

Q. And I saw in your exhibit 8 this is, Sir, that you'd added in red under the "Academic Study" head that a small number of CAs do complete a conversion postgraduate course on top of a non-accredited Bachelor degree, is that right?

5 A. They do. They can complete. They must have a degree when they come into the conversion and then they complete usually three or four subjects required to complete our subject prerequisites and our requirements come into the CA programme.

10 Q. And that would, as it's your required subjects, that would be things like tax and audit?

A. No, they're required in our undergraduate, but for somebody coming across that's, say, an engineer that does not have those subjects, they would cover them in there, yes.

Q. Right, that's what I thought I was putting to you.

15 A. Sorry.

Q. So if you've got an engineer coming over, they won't have done tax and audit, so you have a, it's not called a foundation programme, but you have a programme which they can undertake tax and audit, is that right, to –

20 A. With a university, yes, we do.

Q. And how long's that possibility been there?

A. We've had a programme in place for some time. We've just introduced a new one this year from 2015. It's called CA Foundations.

25 Q. All right. It's called CA Foundations, right. It seems to have an echo of what CPA have got with their foundation programme.

A. Well, we have a foundations that we ran through Deakin prior to CPA actually having one.

Q. But is it fair to say your new programme, or your new foundations programme, is somewhat more liberal than the previous programme?

30 A. No, it still meets our prerequisite requirements in a degree.

Q. That wasn't quite the question I asked you. Is it somewhat more liberal than the previous programme which you had?

A. I'm sorry, I'm not sure what you mean by liberal.

Q. More generous in the opportunities which it offers to people who have done other degrees?

A. I wouldn't think it's more generous. They still have to meet our requirements of coming in for our prerequisite –

5 Q. So why did you have to –

A. – requirements and equivalents.

Q. So why did you have to introduce a new programme?

A. We introduced a new programme because it's priced differently to our previous programme, so that they can sit the exam or they can, if they believe they're across the materials, or they can actually do the whole module. So it's just a little bit more flexible but they're still meeting those requirements that we assure.

10

Q. Does that meet the CAG pre-entry requirement?

A. It does, because it's an accredited degree.

15 Q. When you say "it's an accredited", what does the "it's" refer to?

A. Well, it's their original degree plus their additional subjects.

Q. Right, okay.

A. They come through with the accredited degree content for our prerequisite to come into the modules.

20 Q. And the, I think you've referred in your evidence to the fact that you and CPA have a joint accreditation, "agreement" is probably the right word, is it?

A. We've been doing joint accreditation in Australia with CPA for some years and we've just entered into agreements to do that across in New Zealand as well. We still have our own external experts that basically review that the universities are in compliance with the foundations that we've put together as a joint body.

25

Q. Yes, because both organisations are concerned to make sure that the degrees that they recognise externally are appropriate.

30 A. That's correct, with the – yep, the one requirement that we have that CPA don't is the audit and tax prerequisite requirement to come into our programme.

Q. But a difference between you, I mean, you, I'm sorry, CAANZ and CPA, is that you, sorry, CAANZ is dealing with Australian degrees and now,

as you say, New Zealand degrees, it doesn't accredit externally to international degrees or it does?

A. We, so we accredit Australia and New Zealand degrees and then what we do is review degrees that have been completed offshore and assess them just as CPA do.

5

1210

Q. So you assess them individually, do you, on an application basis?

A. Absolutely.

Q. But you don't have any joint arrangement with CPA about...

10 A. Not to my knowledge, no.

Q. Now you make the comment that – I will unpack that because that paragraph I was talking about, that the CPA programme wouldn't meet the GAA requirements and it, it doesn't because they have different entry pathway into the CPA programme, that's what you're saying?

15 A. They would meet the GAA requirements on a number of, on a number of planes in that the multi-disciplinary module case study, the way that we have workshops face to face so our candidates demonstrate that they've actually met those requirements within CAANZ. That would be one, plus the assessments area, the multiple choice for across the audit tax area would not meet requirements of CAG framework.

20

Q. But that, so far as CPA is concerned obviously meets what their aspiration as to meeting the needs of the professional accounting candidates who enter into their programme.

A. I assume so.

25 Q. And it might be said that the CPA programme is somewhat more flexible than the CAANZ/CAG programme?

A. I suppose some may say that it's more flexible in many respects, yes.

Q. Because for example, it has electives and the CAG/CAANZ has requirements, it's all required isn't it?

30 A. Yes because as chartered accountants, we believe it's important to have a rounding of knowledge and that level and depth that's across chartered accountants, so all chartered accountants have that rounding, that depth, and they specialise subsequent to our qualification.

Q. So they don't have the opportunity that's fairly common these days in most degree programmes to choose some specialisation at that stage?

5 A. Well some do, we just think it's appropriate for – CAs in the CAG bodies think it's appropriate for our members to actually have that rounding of knowledge. If you cover tax or you cover audit, you don't know really where you're going to be in the future and you do draw on that knowledge right through your career.

Q. But that's a choice which the GAA members make and other professional organisations in accounting will make another choice?

10 A. That's correct.

Q. Can I just ask you briefly – you said to my learned friend, you talk about the CPA comparison with, with modules, and I think the financial reporting module you mentioned, where does – that's right, you said the information about the financial reporting model came from the CPA comparison and that's what I was just trying to identify. If you look in  
15 volume 2, at page 327? Is that the document you were referring – take the time to look through the few pages, is that the document you were referring to?

A. That's correct.

20 1215

Q. If you go across to 331 because that's where the comparison is. With respect, there's not an awful lot to go on there in deciding what's in or what's out of either programme, is there?

25 A. No there certainly is not a lot there to provide very much detail at all but I just draw your attention to the outlines of the subjects in each of the modules that you've listed and that's what I've done that assessment on.

Q. So you're looking at page 337 then are you?

A. 334.

Q. Sorry.

30 A. And 335, 336.

Q. Right.

A. Which was, I believe, provided by CPA.

Q. CPA, yes. But that doesn't give you the detail of what's in any of the learning programmes for those –

A. It doesn't give you the depth, it gives you a broad coverage which was all I could compare in this case because that's all I was given.

5 Q. And then you've spoken about the mutual recognition agreements. If we leave the Americans out for a moment, are you entitled, as a member of the, sorry, is CAANZ entitled as a member of the GAA to recognise a non-chartered accountant organisation from Timbuktu, for example?

10 A. Probably not Timbuktu but I think basically any GAA under – we recognise. So if I work in England, in Ireland I can go there and I'm recognised.

Q. Sure, because they're members of the GAA. Sorry, I misled you in my question. Within the GAA you each recognise each other's qualifications?

A. That's correct.

15 Q. Yes, I understand that.

A. And that's recognised by the regulators in those cases as well.

20 Q. Yes, I meant outside the GAA, if we leave the Americans out for a moment. Can you, can CAANZ as a member of the GAA have a mutual recognition agreement with a non-chartered accounting organisation, and I'm sorry I used Timbuktu but pick another country, Argentina, is that possible?

25 A. So as you know, there's a lot of chartered accountants worldwide and their varied levels of bodies as well. So we would have to access that country. Normally we'd have partial mutual if there's a cross-over with their programmes which we have assessed as equivalents otherwise they would have to come through our programme again.

Q. So is the short answer to that –

A. Sorry.

Q. – no, CAANZ doesn't recognise –

30 A. They'd be done on an individual basis.

Q. Right. So you don't have mutual recognition agreements with organisations other than those within GAA?

A. Well we have agreements with other bodies partial, with CMA, you know, CIPFA, but basically as, yeah, so it depends. They are only



partial though they are not mutual like with our GAA bodies where we are satisfied our, of equivalence of our level of education and practical experience requirements have been met.

5 Q. You did refer somewhere in here, just the fact that CPA is not a member of the, or doesn't have a mutual recognition agreement with the American organisation, is that right? Yes, paragraph 26?

A. I believe that's to be the case now and it was in 2013.

Q. You understand that there was such a mutual recognition agreement previously?

10 A. I'm not across that at all, I know just in 2013 and now on their website it's disclosed as I have indicated in my paper.

1220

Q. And do you know the reason for that?

15 A. I don't – all I know is you're either accredited, you're mutually recognised or you're not, so that's how we look at it.

Q. All right, if you just look in volume 1 at page 129. It actually came from CAANZ discovery somehow or other, but in any event it's a letter from the Chair of NASBA and AICPA to CPA back in 2010. Perhaps just read it to yourself, just a quick skim of it.

20 **WITNESS REFERRED TO VOLUME 1**

Q. So firstly you'll see that they – there was mutual recognition between the American body and CPA until 2010 but there was then a review, which is what this letter's talking about, and the problem was the global nature of CPA, which not much CPA can do about, is there?

25 A. No, but you're either, you know, accredited, mutually accepted, or you're not.

Q. Sure, and CAANZ doesn't have that problem because it's Australian based and relies upon Australian accredited degrees for its entry requirements.

30 A. Primarily, yes.

Q. Yes. And in that same paragraph you were referring to the Canadian Institute of Chartered Accountants. That's one of the GAA members, is that right?

A. That's correct, and part of the CAG framework, yes.

Q. And there are at least two other, or there were in 2013, at least two other Canadian professional accounting organisations, is that right?

A. Are you referring to CGMA and those two –

Q. Yes, CGA and –

5 A. – that I've referred to in my paper?

Q. – CMA? Yes.

A. There are but yes, that's all happened as a result of the merger. As you know there's been a merger with Canada across 32 states.

Q. Yes.

10 A. And they're really in a transition period at the moment and working through with those different bodies –

Q. Yes.

A. – from those different states, and the, and the longer term view on how Canada will deal with those agreements.

15 Q. Because at the moment CPA's got mutual recognition with CGA and CMA and so, as you say, there's a transformation – that probably wasn't the word you used. There's a –

A. Merging.

20 Q. – process going on to try and resolve matters now that they've merged as at last year, I think, finally, was it?

A. And we have recognition with, um, NASBA, ISAB and Canada as a GAA body.

Q. Yes.

25 A. So, I mean, they're the significant ones as far as we're concerned because that's the regulators in those places –

Q. Yes.

A. – not necessarily the individual bodies which are more focused possibly around management accounting and other areas.

30 Q. Right. Just because we're otherwise going to lose you, Ms Evans, back to Australia, I'll just make sure that there's nothing else I should ask you about while you're here. Actually, there is one thing. You were at a conference in Tasmania recently, I understand.

A. I was at AFAANZ, correct.

Q. Yes, yes, and –

A. A lot of academics.

Q. A lot of academics and Ms Ward and also Dr – and I'm going to get the pronunciation wrong – Dr Tsahuridu from CPA?

1225

5 A. I believe I have, I saw Ms Ward. I think we were in a special interest group together.

Q. Is there any co-operation, if I can use that sort of general word, between, between yourself and the role you have and say Ms Ward and her role at CPA?

10 A. No, so we cooperate with CPA across many fronts, thought leadership, public interest, but in the education we're – other than the joint accreditation which we work with Mary and her time, very well, but in the space of our post, you know, our grad, you know, our programme, CA programme and CPA programme, we're in competition in markets  
15 so we don't really relate. We worked on the special interest group together the other day for AFAANZ, we all contributed towards technology in accounting in, as I say, the special interest group, and so we, we work together at those events but not so much on the programmes. We've got very different programmes.

20 Q. And what about with IFAC, talking about education now for a moment, is there cooperation at that level between CAANZ and CPA when it wants to, or when it thinks it's important in respect of accounting education?

A. We normally do those responses and input for IFAC through our GAA bodies.

25 Q. I see.

A. So we normally do a joint response with our bodies, yeah, it's, it's probably, it's just better to do it that way.

Q. Is there ever an Australian issue though that may not be shared by –

A. Nothing comes to mind really.

30 Q. Just on – GAA, as I understand it, is an alliance which is an – and I'd better just get this right, how many countries, is it eight or nine?

A. We've got 10 in GAA. There was 11 but with...

Q. You've swallowed one?

A. Well New Zealand and Australia came together as CAANZ.

Q. And you were talking about, in your brief, about face to face mentoring which the CPA evidence says it has also but the point you were making is that supervision by an IFAC member doesn't meet GAA requirements, you said that in paragraph 37.

5 A. Yes our members, our candidates must be supervised by a Chartered Accountants ANZ or ICA NZICA in the case of 13 or a GAA body member.

Q. But there are exceptions to that aren't there because that may not be practically possible in circumstances where people have gone aboard  
10 for example?

A. Well we're pretty – it's something we have to meet as part of CAANZ. I believe there's been one exception in the whole time that, and that was because it was an IFAC member and then there an NZICA member coming on board so it was just in interim. So we do have to, it's  
15 restrictive in many cases because – but it just means that under our CAG requirements that have to be met, they have to be a GAA or a CAANZ member.

Q. So, sorry, just out of interest, what does happen when somebody's in – if I use Timbuktu, don't, please don't growl at me again –

20 A. Sorry.

Q. – but in some country where there isn't a GAA presence, I mean, how, what do you require/

A. Where we have a candidate that is undertaking, say, the programme and they go elsewhere, off – well we usual could appoint an external  
25 auditor who in very circumstances that does meet our requirements and they sign off in that capacity as one of our members or a GAA member.

Q. I'm not sure I understand that.

A. Oh I'm sorry,.

Q. It's my fault, I'm sure, just say that again. So who would you find, if  
30 there's not a GAA organisation in that country?

A. So if somebody's almost through their programme and they wrote to us and said, "Look I'm almost through the programme, I've got to move somewhere," then we, it's very unlikely that we wouldn't find it through

the external auditor or, or someone, otherwise they just wouldn't be able to continue with us.

1230

Q. That's right. That's what I was suggesting that exceptions have to be made –

5

A. Rare.

Q. – in practical circumstances?

A. But it's fairly rare for a –

Q. Oh, yes, sure.

10 A. – none of our members or a GAA because we've got 800,000 of them within GAA would, you know, not be there. So it's very, very, it would be, you know, very rare.

Q. The example, unfortunately, we have here is Westpac in New Zealand but let's not bother to go there I think.

15 A. Well that must be the one.

#### **RE-EXAMINATION: MR GRAY QC**

Q. My learned friend asked you some questions about memoranda of understanding between different national or regional accounting bodies. Are all memoranda of understanding the same, do they all provide for the same level or recognition?

20

A. No, we have memorandum of understanding and we have partial memorandums of understanding which only give partial consideration.

Q. I think you may have answered my question but do all memoranda of understanding apply for mutual recognition of designation?

25

A. We have mutual recognition agreements with our GAA bodies and that's different to mutual or partial mutual agreements with other bodies.

Q. What happens with the other mutual or partial mutual agreements?

A. They are assessed individually on their qualifications. We do a full assessment of all their qualifications and what they're doing. They, you know, they may get one credit of something or do less but in many cases they actually have to undertake our whole programme.

30

Q. So if one accounting body were to say, "I've got a memorandum of understanding with an accounting body in India," does the mere fact of

an understanding describe whether or not you will be mutually recognised or whether some further qualification may be necessary before you can acquire a designation in the foreign country, in this case, India?

- 5 A. It says very little about those and what else is required from just a name.

#### **QUESTIONS FROM THE COURT:**

Q. Sorry, I should have interrupted Mr Galbraith. About 15 minutes ago one of your answers included yet another couple of acronyms. I took them down as CIMA and CIPFA. Does that ring any bells with you?

- 10 A. Yes it's the management accounting qualification, it's a fairly global and CIPFA is the Government qualification in the UK, sorry.

Q. So S-I-M-A is something management accounting?

A. Yes. They're not qual – yes, we have partial arrangements with them but we don't recognise their qualifications.

- 15 Q. And CIPFA again is financial accounting, is it?

A. CIPFA is public sector.

Q. Public sector?

A. Yes Your Honour.

#### **QUESTIONS ARISING – NIL**

- 20 **WITNESS EXCUSED**

#### **MR GRAY QC ADDRESSES THE COURT – WITNESSES**

**COURT ADJOURNS: 12.36 PM**

**COURT RESUMES ON MONDAY 13 JULY 2015 AT 9.59 AM**

**MR GALBRAITH QC ADDRESSES THE COURT (09:59:09)**

**5 BRIEF OF EVIDENCE OF DAVID LONT ADMITTED BY CONSENT**

**BRIEF OF EVIDENCE OF ANTONIUS JOHANNES VAN ZIJL ADMITTED  
BY CONSENT**



**MR GRAY QC ADDRESSES THE COURT (10:00:15)**

**MR GRAY QC CALLS**

**STEPHEN HARRISON (SWORN)**

5 Q. Is your full name Stephen Harrison, are you the Chief Executive Officer of the Global Accounting Alliance and do you reside in Sydney, Australia?

A. That's correct.

Q. Can I ask you to read your brief, please, beginning at paragraph 2?

10 **WITNESS READS BRIEF OF EVIDENCE FROM PARAGRAPH 2**

1010

**EXAMINATION CONTINUES: MR GRAY QC**

A. ... United Kingdom in 2008.”

Q. Can I just interrupt you there, please? Would you find volume 1 of the  
5 ring, of the spiral-bound volumes in front of you?

**WITNESS REFERRED TO VOLUME 1**

Q. Would you turn to page 74?

A. Yes.

Q. Are those the, is that the Articles of Association of GAA?

10 A. They are.

Q. Would you continue reading your brief please beginning at the second sentence in paragraph 18?

**WITNESS CONTINUES READING BRIEF OF EVIDENCE FROM SECOND SENTENCE OF PARAGRAPH 18**

15 A. “The Articles of Association...has been undertaken.”

1015

Q. Now can I ask you pause for a moment please and again look at volume 1 of the bundle at page 122? Is that the IACP website referred to in paragraph 25C of your brief of evidence?

20 A. Yes.

Q. Thank you, would you continue reading your brief please at paragraph 24.

**WITNESS CONTINUES READING BRIEF OF EVIDENCE FROM PARAGRAPH 24**

25 A. “The IACPA website...Articles of Association.”

1020

Q. Thank you, can I ask you to summarise your evidence about what GAA is in this way? Is it GAA which provides for mutual recognition by members of qualifications or designations issued by other members?

30 A. GAA has amongst its membership a series of reciprocal membership agreements which GAA has placed around a framework to evaluate their equivalence and to see those reciprocal memberships maintained.

Q. But does GAA do it or does somebody else?

A. GAA has inherited a framework from the earlier body, CAGE, which it has updated and maintained and we have a group of education directors who regularly scrutinise the qualifica – the entry programmes and qualifications of each of the member bodies that participate in those reciprocal membership agreements.

Q. Throughout the accounting world, not just between members of GAA, are memoranda of understanding for mutual recognition agreements of the same content so far as mutual recognition is concerned or do they differ?

A. From my experience, generally they differ. Reciprocal membership agreements permit a member in one body to go to the body that is the other party in that agreement and be granted admission with no further exams or qualifications other than to establish they are a person in good standing. Memoranda of understanding in general are statements of co-operation between professional accounting institutes and insofar as they relate to membership of one or other, or membership between those two bodies, will elaborate the various conditions that need to be fulfilled including further examination and experience or requirements to enable that person to be considered for membership.

Q. Thank you, and can you answer this, please, do you know whether the education requirements of what we are calling the CAGE framework in this case meets or exceeds the IES standards?

A. I don't believe that CAGE or GAA would have put the effort into defining that framework, updating it and maintaining it unless all member bodies were firmly of the belief that it reflects higher standards than those reflected by International Education Standards.

1025

### **CROSS-EXAMINATION: MR GALBRAITH QC**

Q. Mr Harrison, just in relation to the questions my learned friend was asking about mutual recognition, et cetera, having a mutual recognition agreement doesn't mean that you can go off from one country, end up in another country and start practising, does it?

A. Not necessarily, no.

Q. No. You may well have to do exams which satisfy the regulatory requirement of the country to which you've moved?

A. If those requirements are in excess of membership of the professional body.

5 Q. Which they're very likely to be in terms of knowledge of the laws of the country, the new country you've moved to or the taxation system of the new country?

A. In some cases, yes.

10 Q. And in America, for example, as that website you took, that my learned friend took you to, emphasises it's actually state boards which licence practitioners or accountants to practice publicly, isn't it?

A. Correct.

15 Q. Just looking at the constitution, there's nothing in the constitution about the mutual recognition of other members. I take it is that to be found in bylaws or regulations or is it just an understanding?

A. It's an understanding.

Q. Right, so, indeed, under the constitution there's no power to expel a member, for example, who doesn't continue a mutual recognition agreement with another member, is there?

20 A. Correct.

**RE-EXAMINATION: MR GRAY QC – NIL**

**QUESTIONS FROM THE COURT – NIL**

**WITNESS EXCUSED**

**MR GRAY QC RE-CALLS****IAN McDOUGALL (RE-SWORN)****CROSS-EXAMINATION: MR GALBRAITH QC**

Q. Right, Mr McDougall?

5 A. Good morning.

Q. You said in your brief that you were the director of marketing at the NZICA. I just want to understand where that fitted in the hierarchy and you may have said that you reported to Rebecca Ingram, am I right in that?

10 A. There, there were two general managers. I report to Rebecca Ingram – was the third, I'm sorry, there were three, Rebecca Ingram was the third.

Q. You mean there was somebody there when, when you first started somebody came along and Rebecca Ingram was the third –

A. Chronologically –

15 Q. Right, I'm with you, I'm with you, okay.

A. – there, there were three so, yes.

Q. And they, that person held what role, what, how was it designated?

A. General manager of sales marketing and communications.

Q. Mhm and to, above that person where did they report?

20 A. They reported directly to the chief executive.

Q. Now, when Kirsten Patterson came on board, I think she came on board as chief operating officer?

A. Correct.

25 Q. And my understanding from her evidence was that Rebecca Ingram then started, well, at that stage was reporting to her?

A. At that point, yes.

Q. Right. And just looking at your CV which was attached to your brief of evidence, in that role that you had as Director of Marketing, you noted you were leading a marketing team of five, is that right?

30 A. Yes.

1030

Q. And managing three marketing portfolios?

A. Yes.

Q. And a budget of one and a half million dollars a year?

A. In total.

Q. For the three portfolios?

5 A. Correct, including salary.

Q. I just wanted to talk to you first about the flier which you've given evidence on. I was a little unclear from your evidence at paragraphs 5 through 8 as to what the purpose of the flier was. You speak of concern about misinformation, is that one of the reasons for it?

10 A. No, it was more a request from the universities particularly from students and from some academics that their students were requiring information on just what the difference was between the CPA designation and the CA designation. So it was more about the provision of information I would say.

15 Q. And that was to students who were, because they were starting out on the prospective career, didn't have a background of knowledge about NZICA and CPA, is that right?

A. That appeared to be the case.

20 Q. You said that the NZICA marketing team was responsible for developing the flier, did you develop it or was it a conjoint effort?

A. It was a conjoined effort with a marketing executive at the time.

Q. And the marketing executive, what, reported to you?

A. Yes.

25 Q. Now you will find that in volume – you may have it there actually, have you got it there, volume 1 at page 133?

A. I'm sorry, what page sir?

Q. 133.

#### **WITNESS REFERRED TO VOLUME 1**

A. Yes I have it.

30 Q. Have you seen it recently?

A. Yes I have, in the context of this.

Q. Now the heading is comparing NZICA and CPAA, that's an unqualified heading, isn't it, it expresses itself as a comparison between the two organisations?

A. Yes.

Q. And at the bottom left-hand corner in reasonably large writing, "So what are we waiting for, kick start your career, join NZICA as a student affiliate," is that right?

5 A. Yes, that does appear.

Q. So on its face, if you just look at those two items it's a comparison which, at the end of which there's a prompt that there's no reason to wait any longer sign up as a student affiliate, have I put that fair?

A. That's what it says, yes.

10 Q. And then it's got a heading, "The facts." It's actually "the" facts it's not "some" facts, is it? So it's an expression that these are the facts comparing the two organisations?

A. Yes.

15 Q. So if we then look down the columns we've got the salary comparison and you've given some evidence about that. Hudson's weren't impressed with that use of their statistics, were they?

A. No apparently not and when they expressed that the flier was withdrawn.

20 Q. What the Hudson's information or survey represented was what were salaries that they'd identified from their resources in individual markets for both CPA and NZICA members, am I right?

A. Yes.

25 Q. And you chose to attempt to separate out the CPA component and then compare that with a separate survey which NZICA had carried out, have I put it fairly?

A. The Hudson information was the only information that we had that indicated what a CPA may earn in the market place. It was the only salary information that was available.

1035

30 Q. Well, it was identified by Hudson as being salaries that a CPA member and/or a NZICA member would earn in those particular marketplaces, wasn't it?

A. The salary band, yes.

Q. Yes.

A. That is correct.

Q. And you didn't know on what basis the Hudson information had been derived that produced those answers, did you?

5 A. No, but I assumed that the Hudson material, the data, would be robust, and I believe that was the case.

Q. Well, then, it would be equally robust, both in relation to CPA and in relation to NZICA members, wouldn't it?

A. Well, we knew that the number was not accurate for the CA.

10 Q. What you didn't know was the basis upon which the Hudson survey information had been provided. It might be perfectly robust on the assumptions and basis that Hudson had worked from, mightn't it?

15 A. That is, that is absolutely possible. However, it was the only number that we had. I assumed the research was robust. We knew that NZICA number, for example, was very accurate. That had been shown by research to be accurate over a period of years before. We had no CPA number despite my calling CPA and asking them for the average earnings of a CPA six year plus in practice. That information was not, perhaps understandably, given to me. The only source of information we then had was the Hudson number. I took the average of I believe it was 90 to \$110,000. I took the midpoint as what I believed to be a legitimate number. But I, I repeat, that was the only number that we had despite a request to CPA.

20 Q. But if that was a robust number, which of course it wasn't separately identified, then the Hudson number for NZICA salary was also robust and you should be comparing one survey information with one survey information, shouldn't you, Mr McDougall, if you're going to be accurate?

25 A. No, I don't agree with that. I think that provided that both sources of information are relatively robust then I think in a marketing context that that would be acceptable. You see, we, we never knew the CPA number. I don't know to this day that that number is wrong. CPA have never said that the \$100,000 figure that we quoted was wrong. That point was never made. It was said it was misleading, I think, but it – we

30



were never told it was wrong. We were never told what the number was.

Q. Mr McDougall, you never knew if it was right either, did you?

A. (no audible answer 10:38:34).

5 Q. You were the wrong putting this out in the marketplace.

A. Yes.

Q. Yes. It was your responsibility to make sure that was an accurate number that students were being told they could rely upon. Do you agree?

10 A. I had a responsibility to put out a number there that I believed was legitimate and I still believe it to be legitimate today.

Q. And you've got no basis for that other than that Hudson reported numbers for NZICA and CPA undifferentiated, didn't they?

15 A. Well, I would also say that CPA never claimed the number to be wrong, sir. They said it was misleading, yes, but they never said it was wrong and they certainly never provided at that point the correct number nor I believe in subsequent written communication between our legal counsel and CPA.

Q. Mr McDougall, you were the one putting this flyer out.

20 A. Yes.

Q. You didn't know any better than the information you had from Hudson at the time, did you?

A. Ah, no, the information I had was indeed from Hudson.

Q. So let's look at the next line, number of New Zealand members.

25 A. Yes.

1040

Q. And what you've compared there is NZICA's total membership, is that right?

A. For, I'm sorry, for NZICA?

30 Q. Yes.

A. That is the, that was the New Zealand membership at the time?

Q. It was NZICA's total membership both practicing in New Zealand and practicing overseas, wasn't it?

A. Yes, some were practicing for periods of time overseas.

Q. Not for periods of time, Mr McDougall, the, if we look at the documents later on but I think 26,000 is the local number, so some six-odd thousand abroad?

5 A. Probably right, about 10 thou – sorry, about 10% of the total membership was practicing overseas, but some were there only for a short time. They were, however, still NZICA members.

Q. Yes, I accept that. And on the CPA side –

A. Yes.

10 Q. – you've put some numbers in which is only CPA's New Zealand membership, isn't it?

A. That is correct.

Q. And as I understand your evidence, you got that number because somebody talked to somebody who talked to somebody who'd left CPA who said somebody in CPA had told somebody who'd enquired that number, is that –

A. No.

Q. Oh, I see.

A. That is not correct.

Q. Okay, so who told you?

20 A. The, the ex-CPA employee.

Q. Told you directly?

A. Correct.

Q. I see and told you that, what?

25 A. I asked what the membership was and the answer was something like, it was an awful long time ago, but it was something like, "The number we give to members if they ask is between 700 and 750." The information came to me very directly.

Q. Right.

A. Mhm.

30 Q. And that doesn't, of course, reflect CPA's total membership in any way, does it?

A. No, because we were only concerned with the universe of New Zealand.

Q. Mhm. Do you think it would be relevant to a student who didn't know the background who was considering which organisation it should join to

know that CPA had a much larger membership and much greater resources than NZICA?

A. No, because we were at that point the New Zealand Institute of Chartered Accountants. We were dealing with the New Zealand domestic market.

Q. Well, even if the NZICA domestic market has roughly 6000 of its members overseas at any given time, so go back to my question, do you think it would've been of interest to a student not having the background to know that CPA was, in fact, a much larger organisation which, with much greater resources and a much larger membership?

A. I think that the students were more concerned about what could be delivered on site, as it were, in New Zealand as opposed to what may exist in Australia. They, they took a very New Zealand view on what the two organisations could provide them, so I only ever considered the relevant market to be the domestic market, the New Zealand market.

Q. Well, we'll see about that. And so that's why you've got your office locations in New Zealand also which you then set out again confining the CPA reference to what it's got in New Zealand, is that right?

A. Are you referring to the third box down –

Q. I am.

A. – yes, yes, correct.

Q. So let's go down to points of difference. Now, the points of difference presumably are the things which you would think matter to the students when they're making a choice, is that right?

A. I think that's part of it. I think there are a number of factors they would take into account such as earnings capability.

Q. Well, look at the third bullet point, "CA qualifications is recognised internally," I thought you said a moment ago the students were only interested in domestic perspective, Mr McDougall, so why did you include that?

A. I think we're dealing with two different things. I think that a student is entitled to take a qualification that may give them international recognition. Before we were talking about the provision of service from

organisations operating within the New Zealand market. I see that there's a distinction there.

1045

5 Q. Well the next bullet point, "International reciprocity through the GAA, the network that allows you to work overseas in countries like the UK with ease." Again showing a perspective, I suggest, of students interested in travelling abroad and the support they would get abroad?

10 A. Yes, that was put in there because we knew that students would consider the ability to travel with the designation after they had received it.

Q. So look in the right-hand column, fourth bullet point down that matches that one, "CPA not part of an international accounting alliance?"

A. Yes.

15 Q. Now, Mr McDougall, you would well have known because it's publicised on the CPA website that CPA had mutual recognition agreements with a large number of international accounting organisations, wouldn't you?

A. I'm not sure that I did.

Q. Well –

A. Ah, no I'm not sure that I did know that at the time.

20 Q. So you didn't bother to have a look and see or make any inquiry as to whether CPA did have such relationships?

A. I, I would, I may well have.

Q. It certainly would have been responsible to do so, wouldn't you?

A. Yes I agree with that.

25 Q. And the bullet point above, "Australian based qualification," which compares to the left-hand column, "CA qualifications recognised internationally," again suggests that CPA qualification, shall we put it this way, doesn't travel, is that fair?

A. Well I think it's fair to say that it is an Australian based qualification.

30 Q. And NZICA's qualification was a New Zealand based qualification, wasn't it?

A. CA is international.

Q. No, it only is international to the extent you've got a mutual recognition agreement, Mr McDougall?

A. Yes, that's correct, yes.

Q. And CPA had international recognition agreements with, as I say, a large number of countries, they are detailed in the evidence, do you accept that?

5 A. I think there's another context to this which is if I looked around at the time to accounting alliances I believe it was fair to say at the time and even now that GAA was the most prestigious accounting alliance that existed and therefore that seemed to be a relevant piece of information for a student considering an alignment with a designation.

10 Q. So you were going to make the choice for the student, they would be told about the alliance that you favoured but not told about the arrangements which they might have favoured?

A. Oh, I would suggest that a student would do their own homework on that but I felt that we had the, we had the right to tell them that our alliance  
15 with GAA was of benefit to them.

Q. You certainly say that but what you say in the right-hand column is that CPA is not part of an international accounting alliance and you understand, don't you, that the value of the alliance is only the value of the mutual recognition arrangements, you understand that, don't you?

20 A. I understand that. Would a student –

Q. And what you've said in the right-hand column is that there aren't any, so far as CPA is concerned and that's not correct, isn't it?

A. In that context, no.

Q. And if a student did rely upon this flier which sets out to compare the two and states what the headline says is the facts then you haven't  
25 stated the facts on these items in the right-hand column about the recognition internationally, have you?

A. I believe that I stated the facts on all items except the point that you've just made to me about the accounting alliance. I believe the others to  
30 be factual when I put them down.

Q. And would you agree that it would be relevant in the same context of a student in travelling overseas to work CPA had offices in eight countries and some 400 support staff?

A. Well, no, because again we were attempting to refer the data back to the New Zealand market.

1050

5 Q. Well, that's exactly what you've been trying to identify in the left-hand column, the opportunities of travelling, and CPA has in fact eight countries at that time, it may have been nine, with support officers and 400 support staff overseas. Wouldn't you regard that as relevant to a student who you're asking to sign up with NZICA?

10 A. I think what's of greater relevance to the student is their ability to know what will be provided on a local market basis.

Q. Isn't that for the student to judge, being properly informed so that they don't misunderstand the opportunity which is available to them?

15 A. Well, I think I am suggesting that the type of student we're talking about here would also conduct their own information gathering in general. I think this is only one piece, one part, of the information that would have been accessible to them.

Q. But this document itself suggests that they shouldn't wait any longer, they shouldn't go anywhere else, they should sign up as a student affiliate of NZICA, doesn't it?

20 A. Yes, it does, and I believe that that is an acceptable marketing, how can I say it, marketing strategy to encourage them to either join or consider seriously the CA offering. I –

Q. Because if you get them joined up on that basis they're unlikely, they're unlikely to move after that, aren't they?

25 A. Do you mean once they've committed to a designation?

Q. Once they've signed up as a student affiliate with NZICA you wouldn't get many drop off from there, would you?

A. Ah, we would get some drop off. Some. I don't know what the statistics on that would be.

30 Q. But that's the purpose of getting them signed up, isn't it, because it's a commitment –

A. One –

Q. – which they're making.

A. – hopes it would be.

Q. That's right.

A. But they still have the ability to gather information that make take them in a different direction.

Q. Sure.

5 A. I, I'm saying that I don't believe one flyer would ever have the power to place them into a direction from which they might not depart. That doesn't seem sensible.

Q. And the flyer, of course, once it's handed out to one student, would be likely to be passed on from hand to hand?

10 A. Not a point I ever considered. It is possible. Um, I have no evidence to suggest that it had pass-on value.

Q. But it wouldn't be surprising if it had some circulation effect, would it?

A. That is absolutely possible. I think, I think the difficulty here is that we can't quantify that. I wouldn't know how to –

15 Q. Correct, no.

A. – quantify that.

Q. Agree with you totally. Now can we just – yes, I just wanted to ask, paragraph 19 you said that the flyer was subject to internal processes before it was approved for release.

20 A. On the flyer?

Q. Yes. Would that review and approval be given in writing or...

A. No, not necessarily.

Q. Right, okay. I just want to talk about the advertisement for a bit, and if I could just give you –

25 A. Sorry, what page is that on, please?

Q. The advertisement is on 194.

#### **WITNESS REFERRED TO PAGE 194 – ADVERTISEMENT**

Q. But I'm going to give you a bundle of documents. Now...

#### **WITNESS REFERRED TO BUNDLE OF DOCUMENTS**

30 A. Golly.

1055

Q. This just gives us a track of how this advertisement was developed. Unfortunately the documents aren't numbered so we're going to have to

go through and turn the pages, Mr McDougall. Hopefully, the first one has got a heading "Insight Work", is that right, long brief?

A. Yes, that, that's a reverse brief from Clemenger.

5 Q. Right, okay and the target audience you see at the top, employers and small to medium business owners, right?

A. Yes.

Q. Now, if we go across, miss the next three pages, and go across to an email of the 25<sup>th</sup> of August from Jonathan Hales at Clemenger?

A. Yes, I have it.

10 Q. Got that one? Perhaps you can just confirm for me, you'll see that in the subject heading it says "member value updated brief", you see that?

A. Yes.

Q. Right, and as I read this, there was an existing brief which Clemenger's had which had been encouraged by some Auckland members reaction and now you were looking at updating that brief which is what the first sentence of the email says, "The updated briefs attached for your review," you see that?

A. Yes, I do.

20 Q. And the third paragraph says, "Refocus the next part of the task rather than make any dramatic changes to the objectives and key messages they remain immutable," you see that?

A. Yes, I do.

Q. Okay, right, so if we go across to the next page you'll see a very similar document to that first one we looked at, but then go across to the following page and we have a much more detailed document, see that?

A. Yes.

Q. So then it's the heading "What's the business challenge and objectives", and then it says, "CPA have been actively promoting their members to small/medium business owners in Auckland," right?

30 A. Mhm.

Q. So that seems to be the incentive for this, won't say re-briefing, but change of, of emphasis in the briefing, is that fair?

A. That was certainly part of it. CPA were a very good competitor –

Q. Mhm.



A. – but we must remember that this advertisement sits as part of the overall member value campaign –

Q. Mhm.

5 A. – which has as its primary purpose the general promotion of the CA designation to a number of audiences.

10 Q. Yes, well, the targeted audiences under the next heading “Who are we going after? Small/medium size business owners who require an accountant to help them run their businesses, have got to have an accounts person on staff can arrange some tiny sole trader, blue collar honest grafters to complex businesses, secondary large scale businesses with finance teams,” so that’s the target audience?

A. Yes, it’s a very wide target audience.

Q. Sure. And what you’re looking at to achieve is to positively influence that audience to hire or employ NZICA members, is that right?

15 A. Correct.

Q. Mhm and correspondingly to negatively influence their hiring or employing of CPA members, is that right?

A. I’m not sure about that.

Q. Well, we’ll see that.

20 A. I, I think if I may the better way to express that is that if, if we can create a preference for one designation, then immediately preference for the other designation falls away –

Q. Right.

A. – but that is the very stuff of the competitor marketplace.

25 Q. Mhm. And so there’s a question “How we grow the business”, and then, “What do we know about them?” A very valid point is made, business owners don’t want an accountant but need one and that seems a perfectly valid, valid point and then you’ll see in the second paragraph under that heading “What do we know about them?” “They are unlikely  
30 to know the difference between the two professional organisations and won’t realise what this means to them,” so quite clearly this is aimed at NZICA versus CPA, isn’t it, they’re the two professional organisations?

A. Well, they were certainly the two professional organisations that I was referring to –

Q. Yes.

A. – but the advertisement as it actually appeared is still designed to appeal to a wider or to be directed to a wider market including non-designation holders.

5 1100

Q. So if we go across the page, you'll see just where the 26,000 comes from. Why is this credible? You'll see in that second column, speaking of positive things, 26,000 in New Zealand members who share knowledge, et cetera?

10 A. Mhm, I see that.

Q. "How do we want the customer behaviour to change?" And so you'll see, first sentence, want the profession NZICA membership to be synonymous. "As such they will seek out NZICA credentials when looking for accounting support or when hiring." So that's the point about you're trying to encourage them to hire NZICA, either employees or contracts, and the point you make, that means there's less for CPA, is that putting it fairly?

15

A. No. The, the reference to seeking out NZICA credentials applied in the context of, um, yes, CPA but also I think at the time there was another qualification in the market called CIMA but there was also an emerging threat from what we call "table top accountants" who generally had no designations, and so in a mixed market like that, yes, we were trying to get people to prefer those with CA credentials.

20

Q. Well, the others aren't mentioned at all through anywhere in this bundle but we'll see that. So, "What we want them to do, hire or keep hiring an NZICA member," you see that?

25

A. Yes.

Q. Mhm. "How should we talk to our target? By taking the high ground. Confident, non-combative nor confrontational with CPA," and none of the other organisations mentioned, Mr McDougall.

30

A. No.

Q. No. Practical consideration, need to think of this, second paragraph, "This campaign is about taking a clear and authoritative leadership

position for NZICA and our members. The result will undermine CPA efforts.” See that?

A. Yes, that is the point that I referred to before, that if we can build preference for one brand then preference is removed or is diminished for another brand.

Q. So it'll have a financial benefit for one brand, NZICA, and a financial detriment for the other brand, CPA. That follows, doesn't it?

A. Yes, it does follow, but if I may, when CPA run television advertising they are doing exactly the same thing. That, that is the way that a competitive market works.

Q. And you'll see, “It must not be a product comparison, when getting into an accounting profession face-off that will only confuse the audience and could make CPA look good as the underdog.” See that?

A. Yes, I do.

Q. So it's quite directly, isn't it, NZICA versus CPA? That's what this is all about.

A. No.

Q. I see. Now you were developing an ingredient which this goes on to talk about of some case studies that you were going to provide on what, a digital platform, is that right?

A. That is correct.

Q. And part of the purpose of the advertisement was to get people to listen to the digital recordings and experience the case studies, is that right?

A. Yes.

Q. So if we go across to the next page, another email, 27 September now, you'll see this is an email from Rebecca Ingram, who you –

A. Yes, I do.

Q. – reported to?

A. Yes.

Q. All right. “Good morning, Terry.” That's to Terry McLaughlin. He was still the –

A. The then chief executive.

Q. Right.

A. Mhm.

Q. "Please attach a" – sorry – "Please find attached a first draft of the points of difference between CPA and NZICA CA for your approval," right?

A. Yes.

5 Q. And then you'll see it talks about positioning, risk, campaign execution, assuming insertion in the *Business Herald*.

A. Mhm.

Q. So this is all part of the development of this advertising strategy, isn't it?

A. Of the overall advertising strategy, yes.

10 1105

Q. And if we go across to the next page you'll find the points of difference.

A. Yes, that was an original draft. It was then revised, I believe.

Q. You'll see the reference, third down on the second column in under the NZICA chartered accountant references strict code of ethics?

15 A. Yes, yes I do, yes.

Q. And then if you go down sixth column down, "Business chooses NZICA members," and under the CPA column, "Few CPAs work in the big four accounting firms in New Zealand."

A. Yes, I see that.

20 Q. So if we go across the next page. I think this is the first time and I may be wrong, in fact I probably am wrong, but you'll see in that top email the 10<sup>th</sup> of October, it refers to NZICA project ambush?

A. Yes.

25 Q. And I think you accept either credit or responsibility for dubbing the campaign "project ambush" is that right?

A. Yes I wrong that.

Q. An ambush is something where you attack somebody and they don't know it's coming, is that sort of a fair summary of what ambush means?

A. In the context of what I had in mind, yes.

30 Q. Now there's something I just want to ask you about. The email at the foot of the page, Ritchie Connell to you says, "Re radio selection." Can you just explain what that's about?

A. I see the email. No, I drink what that's about, I can only think that we may have included radio on the original media plan but I don't believe that we proceeded with it.

5 Q. No that – I think you're probably right, we'll see some references further on so we'll just see. If you go across to the next page, for example, you'll see the middle email, 10<sup>th</sup> of October, again Ritchie Connell to you, radio selection third sentence, "One question on radio which would you prefer to use in the attached." And if you go across the following page which actually is dated maybe the same date you will see this is a,  
10 it has, "Auckland radio stations 30 second adverts," do you see down the bottom of that.

A. Yes, yes, you're absolutely right.

Q. Yes. Well at that stage, this is before the advertisements actually appeared, at that stage you'd set some dates for advertising and got  
15 some costs, costs and totalling \$49,851, is that right?

A. Mhm.

Q. And you were proposing, it looks like, well some four *New Zealand Herald* ads and a digital, three digital ads in the *New Zealand Herald*, is that right?

20 A. Yes, correct.

Q. And one *National Business Review* ad?

A. Mhm.

Q. And then the third one down you'll have to explain it to me. "NZH," which I presume is *New Zealand Herald*, "iPad smartphone." What are  
25 they?

A. I think that – do – I'm not sure I can give you a clear answer but I think that it refers to the *Herald* digital advertising component.

Q. It just comes up on somebody's iPad, does it?

A. Yes it's a conventional digital advertisement on, delivered by iPhone.

30 Q. Because there's no cost against that, I notice?

A. No.

Q. Right, okay.

A. I assume that's because it was negotiated at no cost in return for the other space. It's an assumption I make.

Q. So if we go across to the next, there's a lot of emails back and forward between you and Mr Connell but the next page you'll see the top email, 10<sup>th</sup> of October, again from Mr Connell. Was he the, what do you call in advertising, was he the, I can't think of the right word, the account executive for –

A. Ah, yes, he was an account director but –

Q. Yes, okay.

A. – yes.

1110

10 Q. So that top ad, sorry, that top email says the first part, parts of the two *NZ Herald* ads are within and here's the rationale and you'll see in the bigger print second paragraph, "We strongly encourage you to go with the second headline because now is the perfect time to restore our competitive advantage with CPA," is that right?

15 A. That's what it says.

Q. And we'll come to the ads in a moment.

A. Mhm.

Q. So if you go across about three more pages, you'll come to the, the two ads, or the two drafts, sorry. So the first one is headed, "Clemenger BBDO press copy, date/type 10<sup>th</sup> October, version 1," got that one?

20

A. Yes.

Q. Right and it's got a headline there or accountants and their accountants were NZICA members, see that?

A. Mhm, yes, I do.

25 Q. Now, just if you go down to under the copy to the second paragraph, last sentence, "Furthermore, chartered accountants are the only kind of accountant the top five accounting firms will hire," see that?

A. Yes, I see that.

Q. Well, that's of course not consistent with the points of difference that Rebecca Ingram had circulated earlier which said there are a few CPA members who are employed by the top four, I think she was talking of, is that right?

30

A. Mhm.

Q. So now you're saying the only (inaudible 11:11:49) so that's not right, is it?

A. No.

Q. No.

5 A. That was draft copy of course?

Q. Oh, sure, I accept that totally and, of course, just looking back why there aren't, weren't that many CPA accountants employed at that stage by the top four, there was still a statutory monopoly in favour of chartered accountants, wasn't there?

10 A. (no audible answer 11:12:15)

Q. Yes. And if we go across –

A. The point is still correct though, sir.

Q. No. If you go across to the next copy which is the second insertion and this was the headline that Clemenger favoured. Here we find the headline that we've seen before, "In accounting there's best practice and there's second best practice," see that?

A. Mhm.

Q. And you'll see, for example, the second paragraph, "Only a member of NZICA has been trained and maintained at the highest level," and the third paragraph, "That is why the top five accounting firms only employ chartered accountants," see that?

A. Yes.

Q. Now, did you go back to them and say, "Well, that isn't right?"

A. Well, we – there was a change in that copy –

25 Q. Yes.

A. – between this draft and the final advertisement –

Q. Sure.

A. – so it would have gone through a process of discussion and it was, was clearly rejected.

30 Q. Well, let's go to the next page, that's still the same day, this is you back to Mr Connell and you say, "Thanks, X will read the media plan and copy approach tonight," and I take it that's shorthand for Rebecca Ingram, is it?

A. Correct.

Q. Yes, "We'll compare notes first thing before our staff conference starts. On the copy I've referred the second version as it has a harder more competitive edge," that's your comment?

A. Yes, definitely.

5 Q. Right, yes. Now, turn a few more pages because there's a lot of repetitions so let's turn three, four, five – the trouble with emails, if you go over six, six pages I think you'll get to another two versions of the pressed copy which I think on my reading look very similar if not exactly the same as, as the ones we were just looking at so we won't dwell on those and, and if you go to the following page which is an email from  
10 Mr Connell to you of the 11<sup>th</sup> of October –

A. Mhm.

Q. – you'll see, "Dear Ian, here's the ad with alts," which I take it are "alterations", is that right?

15 A. Correct.

1115

Q. "Thinking it looks sharp and strong, smart message," and across the page we see it mocked up in the form that would appear in the newspaper, is that right?

20 A. That is correct.

Q. Now there's the heading that we're used to now and there's the copy, and if you look at the copy you'll see that there has been a change from the reference to the big four to now, "Top CFOs and CEOs only employ chartered accountants," do you see in the left-hand column?

25 A. Yes, I do.

Q. Right, so between the 10<sup>th</sup> of October and the 11<sup>th</sup> of October that alteration was made.

A. Correct.

Q. There's nothing in the documents that have been provided to us which indicates the origin of that alteration. There's no reference to a survey. There's no reference to a correction by you. There's just a change in the text of the copy.  
30

A. There is a change, yes.



Q. There's no doubt it was a change, but on Friday I think it was, Mr McDougall, you were saying that this was all the result of a survey which you recalled that NZICA had carried out, and you'll recall that we asked for NZICA to disclose to us that survey and they have been unable to make such a disclosure.

A. I understand.

Q. Right, and you probably don't also know that Ms Patterson did in her speeches, both in Christchurch and Wellington, that are under consideration, refer to a survey but said there was a survey in Australia and it showed that 62% of the potential commercial consumers didn't care whether they had a CPA or a CA accountant employed. Were you aware of that survey?

A. No, I was not.

Q. Well, you'll see that this wording is very similar to the wording that was used in relation to the top four which became the top five accounting firms that they only employ chartered accountants. Now you've already agreed with me that was wrong in relation to the accounting firms. What appears to have happened for some reason has simply been this change made claiming that top CEOs and CFOs do the same thing, or don't do the same thing, whichever way you like to put it. There was no foundation for that, was there?

A. Ah, yes, there was.

Q. I see. Where is it?

A. The change – ah, that is the document that cannot be located.

Q. I see.

A. The reason that that change occurred, I need to put this in context where, where describing a change between the top five accounting firms –

Q. Yes.

A. – becoming "Top CFOs and CEOs only –

Q. Yes.

A. – employ," which is the text as it appeared in the final ad. My recollection of that was that I considered the top five accounting firm claim to be rather narrow and that if we could substantiate top CFOs

and CEOs preference for chartered accountants, that that would be more powerful, and that is the piece of research that I had sighted that I believed substantiated that point. That is the piece of research that has not been found. But it's not correct to say that there was no substantiation for it.

5

Q. Well, I can understand entirely what you say about the reason for making the change because there was a change at the top of the next column also, "Your business might not be of this size and scale," wasn't there?

10

A. Yes.

Q. The point was to focus on your target audience, which was business rather than chartered accountant, well, sorry, big four accounting firms.

A. The ad focuses on busin –

Q. Yes.

15

A. – commerce in general.

Q. Yes, so I completely understand that.

A. Yes.

Q. But, Mr McDougall, it's just untrue to say that top CFOs and CEOs only employ chartered accountants, isn't it?

20

A. In the sense of "only" being an absolute term?

Q. Well only is an absolute term, I've never seen only as anything else but an absolute term, Mr McDougall?

A. Well the majority, I accept that that's not what it says but the majority of top CEOs and CFOs were strongly preferring CAs, there were very few CPAs.

25

Q. Well that's –

A. I don't, I can't give you the numbers regrettably.

Q. As a matter of the field they could chose from that would of course be correct at that time given that there was a small source of CPAs in New Zealand or coming from overseas as against the local CAs but it is untrue to say that top CFOs and CEOs only employ chartered accountants, isn't it?

30

A. Yes but that does not remove the point that the majority, the significant majority of people employed were, as you have just said, CAs. The fact

that CPA was not, had not grown to its point where it is now I believe doesn't make it wrong.

Q. Well it makes "only" wrong, doesn't it? It makes "only" wrong?

A. As an absolute term?

5 Q. Yes.

A. Yes, if you dissect it to that.

Q. And you would never have got on any survey from CFOs and CEOs a disclosure of an employment policy which said they would only employ chartered accountants, would you?

10 A. Probably not.

Q. So if we go over another four pages and you'll see there's an email from Mr Connell to you dated the 12<sup>th</sup> of October which says –

A. Yes, yes.

Q. – "Great to get the green light."

15 A. Mhm.

Q. Okay, "And here's the media schedule you had to sign off, send the digital file, send over the digital file for Monday." So still an intention to do a digital as well as paper copy, is that right?

20 A. No, no, the reference to digital there is simply the way that the material is transmitted to the paper.

Q. So if we go on from there another three pages, 15<sup>th</sup> of October now. An email you to Mr Connell, "Project ambush approval," concerning approval, do you see that?

A. Yes I do.

25 Q. "Total budget not to exceed 48,195?"

A. Mhm.

Q. "iPhone apps will go live on the 18<sup>th</sup>," so there certainly is some app which is proposed as well as the newspaper copy, is that right?

30 A. Yes, that was the reference previously to a digital piece of the campaign.

Q. And then go across the page, same date but you will see there's been an amendment to the ad, the second bullet point refers to, "Remove the sentence that said, 'Your business might not be of this scale as it didn't fit the change to the CFO and CEO reference,'" and so if you go across

the page you'll see the new text and so in place of that the top right-hand column is now, "An NZICA member can help any business thrive," do you see that?

A. Correct.

5 1125

Q. That was a sensible amendment, I can understand that. And then, I'm sorry, we might have to go back just to see, sorry. I've decided to take you backwards, can you go backwards to the schedule, the schedule of, of publications again which is about four pages back. This looks like the one we looked at before.

10

A. Which has the budget total of –

Q. 48,195?

A. Yes.

Q. Yes, right and you'll see there the radio spots seem to have disappeared?

15

A. Yes, they have.

Q. Right, now can I ask you were all those publications that are noted there actually carried out?

A. Yes.

20

Q. Okay.

A. I don't believe there are any changes to that schedule.

Q. No. Now, if you go forward again, you'll get to an email from Gianna Abbott of the 17<sup>th</sup> of October to a large number of people? Found that one?

25

A. Yes, of October 17?

Q. Yes, "Dear all, for your information?"

A. Yes.

Q. Right and just looking at the heading column it looks to me, but you'll no doubt correct me that the, the director addressees the two either probably all board members, are they?

30

A. No, some, some are. I think first, the first four or five are.

Q. Right.

A. But there are some names there that actually I don't recognise and there are also some members of the sales and marketing team.

Q. In that, the to column, I would have thought in a copied column there may be but not in the to column. The to column finishes with Doug McKay?

A. Oh, sorry, yes, you're right, you're right –

5 Q. So it's –

A. I was looking at the to column.

Q. Yes, forget about the copied column for a moment, but the to column are all board members, aren't they, Murray Jack, Neil Paviour-Smith, Doug McKay, Hugh Rennie, Liz Hickey, she was, she was President I think at that stage, wasn't she?

10

A. They are board members.

Q. Yes, okay, but the copied column are the, are the staff, is the staff column, isn't it?

A. Yes, some I don't recognise but I assume they're staff.

15 Q. Yes and it includes Kirsten Patterson?

A. It does.

Q. And was she, had she been involved in the development of, of this campaign?

A. Of the campaign overall, no, she would've been aware of it but not directly involved in it.

20

Q. Well, in that, that email the last sentence of it says, "If you have any questions, please don't hesitate to get in touch with either myself or Kirsten Patterson," you see that?

A. Mhm.

25 Q. So she knew what was happening with or what was proposed to happen with the advertising?

A. She would have had general knowledge if that's why the board meetings (inaudible 11:28:26) in team meetings.

Q. Well, she's obviously regarded as a source of information to anybody there who wants to know, so she must've had the detail at her fingertips or she wouldn't have been able to assist them, would she?

30

A. Well, I assume that was part of the reasons this, she was copied into this email to bring her up-to-date so that she could handle any queries that arose.

Q. So had she seen the advertisement text before it was published?

A. I do not know.

Q. Okay. Now, again, you said in your brief at paragraph 25 that, that the advertisement was subject to internal controls and what would they, what were they in respect of the advertisement?

A. That the approval would be, the approval process would exist of myself, my general manager, the chief executive at the time, Mr McDougall, and legal counsel of the time, Mr Richard Moon.

Q. If it was going to go to the chief executive it would go via the chief, chief operating office, wouldn't it –

A. Not necessarily.

Q. – because – well, that's who Rebecca Ingram would report to?

A. Yes, but the coming right, coming back to an earlier email, I did note that Rebecca's communication was only to Terry McLaughlin. That's the, the email that's handwritten number 3. So it didn't appear that it was being channelled through the Chief Operating Officer.

1130

Q. Well, at the stage that we're now at, Mr McLaughlin may well have departed, mightn't he, because he's not on the email we were looking at of the 17<sup>th</sup> of October –

A. Ah...

Q. – and Mr Norgate is?

A. That would suggest he may have gone or they may have been, they may have been very late in the handover period.

Q. All right, okay. Now I think you said in your brief that you regarded the campaign and the advertisement as successful?

A. Based on anecdotes from members.

Q. Now, Mr McDougall, you had some little, but only a little, involvement in the events of the RePublic, the two RePublic conferences, is that right?

A. It was very minor. It was a conversation with the organiser of that event.

Q. Yes. But if you look in volume 2 –

# **WITNESS REFERRED TO VOLUME 2**

A. Do I need to refer to this again?

Q. No.

**THE COURT ADDRESSES MR GALBRAITH QC (11:31:48)****CROSS-EXAMINATION CONTINUES: MR GALBRAITH QC**

Q. I'll get you to produce it.

A. Volume 2? What page, sir?

5 Q. Sorry, page 312.

A. Mhm.

Q. Got it?

A. Yes.

10 Q. Now as you rightly say you had a discussion with Pippa Russell from RePublic, the Accountants' RePublic, do you see that?

A. Yes, I do.

Q. And you wrote this letter to KP, Kirsten Patterson, and Rebecca –

A. Yes.

15 Q. – Ingram? And set out some information and then, second last paragraph, "While the face-off promotional approach was unexpected, we need to be present and aggressive at the days," you say. What did you mean by that?

A. I'm sorry – what – the penultimate paragraph?

Q. Yes.

20 A. Oh, I simply meant that, um, apparently the, the RePublic event had been promoted without our knowledge as a face-off between the two organisations. We had never agreed to that. RePublic, or whatever they're called, had, had decided on that promotional approach. My point was that we still needed to be there in attendance and that we needed  
25 to be able to talk about the benefits of NZICA and CA the way that we normally would.

Q. By making comparisons, the way that you normally did?

A. No, not necessarily at all. I don't see that that's referred to in the memo.

30 Q. Well, "aggressive" is normally a word used in relation to some, somebody else or something else, you're being aggressive against something.

A. Well, I think, I think that the nature of the market was intensely competitive and that both parties were entitled to be aggressive in the

way that they approached their marketing and advertising. Certainly CPA were. So I don't see that the word "aggressive" necessarily implies a comparative approach.

5 Q. Well, it was in a face-off. It was in the sentence you were referring to, a face-off.

A. But, Mr Dalglish (*sic*), face-off was not our terminology. That was terminology put on the promotion of the event by RePublic, not, not by, not by NZICA, sir.

10 Q. I understand that, but the sentence is, "While the face-off was unexpected we need to be," leaving some words out, "aggressive at the days." It pretty clearly suggests that you should be aggressive in respect of a face-off with CPA, doesn't it?

15 A. Ah, no. I'm – no, no, it doesn't. It says that we did not expect it to be promoted as a face-off but nevertheless we had to be there, ah, promoting the CA designation and in a way that might be considered aggressive, but I don't see that is any different from, from what was reflective of a very competitive market at the time.

#### **RE-EXAMINATION: MR GRAY QC**

20 Q. Mr McDougall, having looked at 312, can you please turn forward to 321?

A. Yes.

Q. You see that 31, 321 and 322 are an email chain.

A. Yes.

25 Q. Can you see that the first email at the bottom of 321 and over is the email that you sent that my learned friend, Mr Galbraith, just asked you about?

A. Yes, it's the same email.

Q. Right and then can you look at the one above it please? Who's that email from?

30 A. It's from Rebecca Ingram.

Q. Right, did she comment on, on marketing material?

A. She does.



Q. Right and does she do anything to adjust or refine the approach to be taken at the day?

A. I'm sorry, would you repeat that please?

5 Q. Does she do anything to adj – or say anything to adjust or refine the approach to be taken at the conference?

A. No.

Q. Well, can I ask you to look at the second paragraph at the second sentence?

A. Yes.

10 Q. What do you think she's saying there?

A. She's saying, "Please proceed as you describe."

Q. And the second sentence?

A. "Efficient and effect of," she's referring there to leveraging the event for promotional purposes.

15 **QUESTIONS FROM THE COURT – NIL**

**EXHIBIT 9 PRODUCED – BUNDLE OF DOCUMENTS RELATING TO  
SUPPLEMENTARY DISCOVERY RELATING TO DEFENDANT'S  
ADVERTISEMENT**

20 **COURT ADJOURNS: 11.37 AM**

**COURT RESUMES: 12.02 AM**

**MR GALBRAITH QC CALLS**

5 **SEAN BERNARD HUGHES (SWORN) (VIA LINK AUSTRALIA)**

**THE COURT ADDRESSES WITNESS – DOCUMENTS (12:02:50)**

**MR GRAY QC ADDRESSES THE COURT – RELEVANCE (12:03:17)**

**EXAMINATION: MR GALBRAITH QC**

10 Q. Mr Hughes, is your full name Sean Bernard Hughes and you now reside  
in Australia, do you?

A. Yes I do.

Q. Would you mind reading your first brief from paragraph 1 please?

**WITNESS READS BRIEF OF EVIDENCE FROM PARAGRAPH 1**

15

1210

**EXAMINATION CONTINUES: MR GALBRAITH QC**

A. "...reference I understand."

Q. Perhaps we'll –

**5 WITNESS CONTINUES READING BRIEF OF EVIDENCE**

A. "Having regard to...entitled to accreditation."

Q. Thank you, Mr Hughes. That document reference is 197, but you haven't got – you've only got the copy of it there, I think, have you?

A. Yes, I have.

10 Q. And what does it – what's the heading? Can you just read the heading out so we can make sure we've got the same document?

A. "FMA grants auditor licensing accreditation to CPA Australia," and it's dated 18 October 2012.

15 Q. Thank you. Now if you just take up your reply brief and just similarly read that, please.

**WITNESS READS REPLY BRIEF OF EVIDENCE**

1215

**CROSS-EXAMINATION: MR GRAY QC**

Q. It's true, isn't it, that when the FMA licensed CPA Australia, CPA Australia didn't licence any auditor or register any audit firm?

5 A. To be best of my recollection, Mr Gray, at the time that CPA Australia was accredited by FMA there were no firms or individual auditors licensed by it and that remained the case until my term as CEO ended in 2013.

Q. Do you know whether it remains the case today?

10 A. I'm not personally aware of the situation, Mr Gray.

Q. Right. That meant, didn't it, that there was no basis upon which the FMA could monitor the performance of CPA Australia's audit regulatory systems either when, when the license was granted or subsequently during the first review period?

15 A. My recollection is, Mr Gray, is that FMA still conducted oversight of CPA Australia to ensure that it had systems and processes and policies in place so that it could effectively discharge its regulatory functions under the ARA and, indeed, CPA Australia was required to perform its own self-assessment which FMA would then verify to see whether it was  
20 completing those obligations.

Q. Well, my question to you was read from the FMA report a period ended 30 June 2015 in respect of CPA Australia. My question was didn't that mean that there was no basis upon which the FMA could monitor the performance of CPA Australia's audit regulatory systems during the  
25 period?

A. Mr Gray, I was not the CEO of FMA at the time of the report to which you refer, but I would repeat my earlier answer that FMA was and, indeed in fact, oversee and monitor the performance of CPA in relation to the systems and process and procedures it had in place.

30 Q. So if later the FMA were to come to say that there was no basis upon which it could monitor performance, do you say that was a change from a time in which you were chief executive?

A. No, Mr Gray, the position was that in the first period while CPA Australia was accredited that was after the period of my term as CEO. In that earlier period, the focus of the regulator of the FMA was to look at both the accredited bodies to ensure that they had systems, procedures and policies and frameworks in place. The subsequent period which doesn't cover the period when I was the CEO, naturally would have look at the actual operation of those procedures with individual auditors and, and firms. As I say, I wasn't the CEO at that time so I can't speak to that period.

10 1220

Q. But the heart of what I'm getting to is that the FMA was able to say, "There are initial frameworks and procedures in place, but we can't monitor them because there aren't any auditors and so we don't actually know how well they're working." Is that reasonable?

15 A. I believe I understand your question, Mr Gray, which seems to be suggesting that you can't undertake any form of monitoring when there's no humans to assess, but the reality is in that initial period it was a framework review rather than how the actual accreditation and regulatory oversight by CPA was operating in effect. It is true that  
20 CPA Australia had no firms or individual auditors it was licensing at that point in time but that was not the focus in that initial period of oversight.

Q. And if the FMA in this 2014 report went on to say that monitoring visits would occur after first licence had been issued, or where changes are made to systems or policies or procedures, that would have been  
25 consistent with what occurred when you were chief executive, wouldn't it?

A. Yes, Mr Gray.

**RE-EXAMINATION: MR GALBRAITH QC – NIL**

**THE COURT ADDRESSES MR GALBRAITH QC (12:21:10) – SIGNED**  
30 **BRIEF**

**QUESTIONS FROM THE COURT:**

- Q. Mr Hughes, had you been giving evidence here, my registrar would have caught you as you escaped from the witness box and made you sign your briefs. To relieve you of any further involvement by way of posting those briefs, would you be comfortable, please, just signing each of the briefs in the terms you have read to me this morning?
- 5 A. Yes, Your Honour.
- Q. All right, if you do that now before we sever the link, that will be sufficient.
- 10 A. Thank you, Your Honour.
- Q. Have you signed them, yes?
- A. I have signed copies with me, Your Honour, but...
- Q. Would you just re-sign them in my presence now, please, and date them today, thanks?
- 15 A. Would Your Honour like me to show them to the camera?
- Q. No, I – not being familiar with your handwriting, it wouldn't serve any further purpose, Mr Hughes. You have appeared on subpoena. You are now released. Thank you for your help.

**QUESTIONS ARISING – NIL****20 WITNESS EXCUSED**

**THE COURT ADDRESSES MR GALBRAITH QC – ADDITIONAL COPIES**  
(12:23:09)

**MR GALBRAITH QC ADDRESSES THE COURT – EMAILED DOCUMENT**  
(12:23:37)

5

**EXHIBIT 10 PRODUCED BY CONSENT – EMAILED DOCUMENT**

**LEGAL DISCUSSION (12:24:26) – BRIEFS OF EVIDENCE AND COMMON  
STATEMENT**

**COURT ADJOURNS: 12.28 PM**

10

**COURT RESUMES: 2.14 PM**

**MR GALBRAITH QC CALLS**

**5 ANTONIUS JOHANNES VAN ZIJL (SWORN)**

Q. Is your full name Antonius Johannes van Zijl but you're more commonly known, professor, as Tony van Zijl?

A. It is.

Q. And you're the Professor of Accounting and Financial Management at  
10 Victoria University?

A. I am.

Q. Now you've prepared two briefs in this proceeding, an original brief which was signed on the 12<sup>th</sup> of May 2015 and a reply brief that was signed originally on the 29<sup>th</sup> of June 2015. Do you confirm the contents  
15 of those briefs as correct and as your evidence?

**WITNESS REFERRED TO BRIEFS OF EVIDENCE DATED 12 MAY 2015 AND 29 JUNE 2015**

A. I do.

Q. Now we have put clean briefs in front of you, professor. I think probably  
20 the appropriate thing is to have those signed today and dated today if you wouldn't mind doing that. Now also in front of you there should be a report from yourself and Professor Lont, sorry, I'll let you sign that first. And Madam Registrar is just giving you what I hope is a clean copy of the report from yourself and Professor Lont. Can you just go to the last  
25 page, I'm not sure that's signed either?

**WITNESS REFERRED TO REPORT**

A. No it's not.

Q. If you wouldn't mind signing and re-dating it, well, yes, better re-date it today.

30 A. In respect of the briefs (inaudible 14:18:05) change the date?

Q. Yes, if you wouldn't mind. Professor, just before I ask you to explain your views which are set out in that report, could I just ask you briefly about the CAGE framework which you refer to on page 6 of that report.



You've seen the framework document on a confidential basis, is that right?

A. I have.

5 Q. Have you had any difficulties because you've not been able to refer that to an educational expert within CPA?

A. Well I've seen the document but taken very little notice of it because it just didn't seem to me to be particularly relevant to the issues in dispute.

10 Q. Now would you like to explain to His Honour the views which, of yours which have been expressed in the report and why you support those views?

### **THE COURT:**

Professor, just before you begin, I should say that I have, I was given all the briefs in the middle of the morning but my time hasn't been my own. I have read your first brief but not your reply brief and Professor Lont, is it  
15 Professor Lont, I'm afraid I have only got to paragraph 36 of your brief. So although of course I will read them more carefully, when you are making your comments you should assume that that's the limit of my understanding of your briefs.

1420

### **20 EXAMINATION CONTINUES: MR GALBRAITH QC**

A. So you'd like me to go through?

Q. Yes, if you just go through and explain.

A. Well, this statement is, of course, set in the context of briefs. In my initial brief I was asked to respond to a number of issues, and that was  
25 at paragraph 14 of my brief. I provided a summary of my responses at paragraph 16 and the brief itself, of course, provides the detail. The reply brief in part expands on issues that I have touched on in my initial brief but principally responds to issues raised in the briefs of Professor Lont and Ms Evans. In this report it reflects the result of  
30 discussions between Professor Lont and myself over a number of meetings held last week, and we start off our statement by acknowledging that in many respects we are not in disagreement in

respect of the standing of the professional bodies concerned. Both bodies, being NZICA/CAANZ and CPA Australia, are well-respected as professional bodies by all the relevant members of constituencies in the sense of regulators, professional bodies, tertiary institutions and individual investors. Both professional bodies have long-standing accreditation processes for accounting degree programmes and in addition holders of the CA designation or the CPA designation have basically the same kinds of activities open to them, both in Australia and New Zealand. So set within the context of that general agreement about the standing of the bodies concerned and the designations, we then looked at a number of issues and on most of the issues we agree in respect of, if you like, bare facts, but then disagree in terms of the inferences that can be drawn from those facts. And so if I then go through them one by one. In respect of the level of the programme, that heading covers both the Graduate Diploma in Chartered Accounting issued by CAANZ and also the level of the modules comprising the CA programme and the level of the sequence comprising the CPA programme, well, in respect of the fact that candidates doing the CA programme come out not just with the CA designation but also the graduate diploma, obviously that is a fact. However, I don't attach a lot of significance to the fact that the candidates in that programme do, in addition to the designation, end up with a graduate diploma, and the reason being that that in effect is a form of accreditation and any entity holding accreditation clearly demonstrates by virtue of that accreditation that they've met the standards of the accrediting body and in the process they therefore reduce information asymmetry between the entity itself and persons who might wish to deal with that entity. But that doesn't allow the holder of the accreditation to claim that their programme is, or product or service, is therefore better than a similar programme, product or service held by a body that hasn't sought that accreditation. And one example I can give of that is in respect of accreditations held by universities in respect of their business programmes. At Victoria we hold AACSB Accreditation for business but in addition we hold AACSB Accreditation for accounting. Currently we

are the only New Zealand university to hold that accreditation and in Australia there is only one university, namely, the University of Sydney that holds AACSB Accounting Accreditation. Well we don't claim we are therefore better than every other university offering an accounting programme, rather, we just say we have met the standards set by AACSB in respect of accounting and that that fact should be helpful to students in terms of making their choice. Now in the case of the graduate diploma that is issued to graduates from the CA programme I understand from Ms Desley Ward's brief that CPA Australia has never sought authority to issue a diploma as well as the designation to candidates to completing the CPA programme. The reason being partly to do with retaining full disciplinary coverage of their members and partly to do with sharing information with TEQSA, the Australian regulator and the detail is spelt out in Ms Ward's brief. Well that's clearly a judgement for CPA Australia to have made but obviously on balance they must have thought that those advantages outweighed any disadvantage that might have occurred with them in respect of students having less information about their programme and then they might have had had the programme also had the accreditation listed in the graduate diploma. The second issue is that of multiple choice assessment. Professor Lont and I agree that both the CPA programme and the CA programme make use of a range of different types of assessment but that CPA makes greater use of multiple choice assessment, however, similar to the first issue we also disagree on the inferences that can be drawn from that fact. In my view there is no cause for concern that CPA Australia makes greater use of multiple choice assessment. I understand that there are rigorous processes applied in (a) developing the multiple choice exams and an analysis of the results and efforts made to ensure consistency of the standards across both time and different forms of the exam. The issue has a number of related aspects. One is that I think the applied education component of the CPA pathway needs to be looked at, not just in isolation but rather as a top-up or as an addition to the academic education component of the pathway and clearly the sorts of things that you would test through written exams or

exams requiring written responses and might find difficult to test via multiple choice assessment. Those kinds of skills can be tested extensively within the academic component. Even if that concern is conceded there are of course also experts who in fact say that there is no cause for concern because all of the whole full range of skills can in fact be tested by multiple choice assessment methods providing that the methods are carefully constructed and applied. It's also relevant to note that there are large numbers of candidates involved in sitting the CPA exams as part of the pathway and if the method of assessment was largely subjective, as it would be if there was full use of exams requiring written responses, then there would be inevitable subjectivity, A, not just within one single examiner but also in terms of trying to obtain consistency across teams of examiners, given that there would be a need to employ teams given the large number of students, and I understand that the number of students ranges around 5000 students at a sitting.

1430

So there is a need to make a trade-off between objectivity and subjectivity, but also with that issue of numbers goes the questions of the cost of conducting examinations and also the ability to be timely in providing responses to students sitting the examinations. And if you look arrested the world at bodies conducting exams with large number of candidates, the common method of assessment is largely multiple choice, and the really relevant example here is the AICPA, the American Institute of Certified Public Accountants, who conduct the uniform CPA exams and their exams are composed of four modules. Three of the modules are 60% multiple choice and 40% simulated case, but basically the exercise involved is inserting numbers into slots in a spreadsheet, so again totally objective, and the fourth paper is 85% multiple choice and 15% written response. So across the four modules there's only 15% in one paper that in fact requires students to provide written responses to the questions. And I guess the choice of form of examination is driven by numbers, the numbers sitting those exams are huge, and in terms of the wish to be objective rather than subjective, to

have consistency, and questions of cost and timeliness, you are driven to that method of assessment even if there was concern about the ability to assess the full range of knowledge and skills by that method of assessment. The CFA, the Chartered Financial Analyst body, their exams are also largely multiple choice, and it's also common in the world of medicine. One of the issues raised in Professor Lont's brief was that of coping with the bias for positive answers and – for positive marking, rather – and I pointed out in my reply brief that the mechanical bias that results from positive assessment is in fact larger than he had calculated and we agree on the estimate that I made, but I have to add that in the analysis of results that CPA Australia conducts, they in fact deliberately correct for the possibility of that form of bias and the process is not simply a mechanical one of in effect doing negative marking to compensate for the positive bias. The third issue is that of the breadth versus depth in the financial accounting segment. This is an area in which we do agree. The fact is that in the case of the CA programme there is a longer list of topics in the syllabus for financial accounting than there is in the list of topics for the syllabus for financial accounting in the CPA segment, but if you accept that the module and the segment are expected to take similar student time to complete then an obvious conclusion is that the list with the larger number of topics must reflect less depth. The list with the shorter number of, well the lower number of topics must reflect greater depth. It's just kind of an arithmetic consequence. Another aspect of that particular issue which isn't covered here but maybe I should mention and that is that the topics covered in those modules and segments is really in a kind of an applied version of what the student would have covered at university anyway. And so even if there were topics that were not covered in the CPA programme the student will have covered those topics in their academic education component of the pathway. Hours of study is the next topic. On the basis of information on the web for both CPA and for the CA programmes, I have made an estimate of the study time required by candidates in respect of the set of modules comprising the CA programme and the set of segments comprising the CPA programme

and making fairly generous estimates in terms of the information that's given there. For example, in the case of the CA programme, the estimate given is that it's between 10 and 15 hours per week over a 12 week period and so I've assumed that on average this would be 12 and a half hours and so multiplying it by the number of weeks takes you to 150 hours for each of the three technical modules. In the case of the CPA segments I've done something similar and I also arrive at a number of 150 hours. In the case of the Capstone module and the Capstone segment, the calculations are a little different but they also come to around 150 hours but a difference arises in that there are five modules but six segments required and so five times 150 takes you to 750 or in the way that I did it in my initial brief, the 760 hours compared with 900 being six times 150 in the case of the CPA programme. So overall I estimate that the average student in the CA programme would take 760 hours, in the CPA programme 900 hours. And Professor Lont disputes that and in particular in terms of the fact that some students will take longer. Well, I don't dispute that. My estimates are for average students and I feel that I have been generous in terms of taking the numbers reported by each of the, or reported for each of the programmes. Then there's the issue five which is to do with the relevance of the future versus the past pathways. My information gleaned from the CA material on the web is that there was agreement reached between the ICAA and NZICA in October of 2011 to play for a joint CA programme and by October of the following year they had agreed on the regulations for that programme and the joint programme commenced in 2013.

1440

So given the context of Ms Patterson's comments made in May 2013 it seems to me that the relevant comparison between the CA and CPA programmes is, well the relevant comparison is between the CA programme and the CPA programme rather than programmes that NZICA had prior to entering those agreements with the ICAA, and, of course, in May 2013 the two bodies, NZICA and ICAA, circulated to their members a proposal for comment on a possible merger, and so by the

time of Ms Patterson's comments it was clear that not only had they agreed and were implementing a joint programme but also a merger was likely. So, in my view, the relevant comparison is between the CA programme and the CPA programme, not comparison between the CPA programme and earlier versions of the Institute's programmes. Then there's issue 6, foundation exams. The CPA programme has considerably greater flexibility than does the CA programme and one area of some standing in that regard is the foundation exams, although just this year the CAANZ has also produced a foundation programme, and the purpose of the foundation programme is to allow persons who haven't completed an accredited accounting programme to nevertheless enter the CPA programme, and they do that by in effect topping up their non-accounting degree with appropriate elements of the foundation exams so that their selection from the foundation exams plus their non-accounting degree would take them to the same place as having an accredited accounting degree, and they can then enter the CPA programme. Well, I understand that exactly the same will apply from this year for the CA programme. But it does provide the flexibility to candidates to come into accounting even though that wasn't perhaps their original choice when going to university, and not only is there that flexibility but there's also flexibility in terms of when they do the study so that a person entering the CPA programme with an accredited accounting degree must have completed the accredited accounting degree prior to starting the applied education component of the pathway. But in the fact of a person entering via the foundation exams, they need not have completed their non-accounting degree at that point, and this is an issue that Professor Lont has put quite some store by whereas I think in fact it's desirable flexibility, it means that somebody could be say near completion of their non-accounting degree but start doing the CPA foundation exams and possibly also be doing the CPA applied education modules, segments, but by the time they present themselves for obtaining the designation, the CPA designation, they must have completed their original degree, and given that many of these people would be perhaps more mature, perhaps better focused,

perhaps more highly motivated, it is unlikely to be the case that they wouldn't apply self-interest in terms of doing the various exams in a sensible order. So it's not an area of concern for me at all. The particular concern that Professor Lont has with the foundation exams is that they are all fully 100% multiple choice assessed, but I make a comment similar to the comment that I made in respect of the greater degree of multiple choice assessment for the segments than there is for the modules in that again one needs to look at the package of foundation courses together with the non-accounting degree, and looked at it in that light the sort of skills that might be difficult to test via multiple choice would surely have been tested in the non-accounting degree that they've been working towards. And so I don't have any concern with that, plus the fact that I don't see that it's necessary to test these other skills that perhaps are difficult to test through multiple choice in every exam. They can be tested in certain exams but they don't need to be tested everywhere.

The next topic is that of audit and tax modules and segments. We agree that because of again flexibility in the CPA pathway that persons doing an accredited accounting degree for CPA purposes do not need to do audit and tax within their degree. They can instead do it in the set of applied education segments. So those students would do only one course in audit or tax. On the other hand, students in the or candidates in the CA programme are all required to include audit and tax in their degree. It also appears as compulsory in the set of modules and therefore they will do two courses. Similarly for students with the non-accounting degree and topping up with foundation exams, they do their auditing and tax within the set of applied education segments. So it's possible that there are going to be some people obtaining the CPA designation, people who have had only one course in tax or in auditing or in each of them, in comparison with all holders of the CA designation having done two courses in each of those subjects. So we agree on that, but we disagree on the consequences, and I don't have concerns and the reason being that the standard at entry for candidates doing



audit and tax as part of the CPA set of modules, of segments rather, they would have had the standard, that standard would have been set by students also doing those subjects within their accounting degree. So students doing an accounting degree would, and doing those subjects within the degree, will have done them and can elect to also do them within the applied education segments. So clearly the standard for those courses within the applied education segment must be set by the students who have done those subjects within their degree. And so that then means that the students who have not done it within the degree or candidates who have come from the foundation exams clearly need to do additional study, and I understand that the study material made available by CPA provides them with a basis for doing that, but clearly they can do additional work to that, and there would also be the case that the applied education modules in the CA programme, the applied segments in the CPA programme, are more of an applied nature anyway than the kind of approach followed in those subjects in a degree, so that in a degree, for example, in respect of say an accounting standard, the discussion might focus more heavily on why the requirement is in the form that it's in. On the other hand, anybody going out and applying the standard needs to know what the standard does require, and so there is that kind of difference between what students would learn in their degree and what students would learn in the professional component of the pathways. The profession component is going to be more applied in nature than the academic component and so that while it might seem strange that candidates could go into those applied education courses in audit or tax without having done the subjects in their degree, if one recognises the different nature of the tasks said then it's not, I don't think, surprising.

1450

30 Then we come to the last topic, topic 8 which I've been already asked a question about but the CAGE framework, CAGE apparently stood for Chief Executives Group and it was a kind of forerunner to the GAA. I've been a little mystified by this CAGE framework and the extensive reference to it in that in the brief of Mr Harrison, while he talks about a

potential member of the GAA being required to demonstrate that certain standards have been met in respect of preparation of candidates for membership, he never makes reference to the CAGE framework, and also Professor Lont has informed me through a comment made in respect of multiple choice assessment that apparently the IACPA which is a member of the GAA is not subject to the CAGE framework. So this seems like an odd framework to be applied to apparently to become a member of the GAA. Even if it is applied to organisations wanting to join the GAA it doesn't seem to me to have any relevance to CPA Australia because CPA Australia has never sought membership of this body and therefore in that sense it's a bit like going back to issue one on the, back from the CA programme candidates also get the diploma but given that CPA Australia has never sought to award a diploma that fact is also relevant. Well, same here, here we have a framework which apparently applies to something that CPA Australia hasn't sought to join so therefore why is it at all relevant. Furthermore, there is an exclusive residency clause for membership of the GAA, each country can have only one member. So given that the ICAA was already a member of GAA that would have precluded CPA Australia becoming a member of the GAA. It's an interesting aspect I think the exclusive residency clause because the fact that it exists suggests that the GAA is perhaps far more about promoting competitive position of the members of the GAA than it is about protecting the public interest by promoting all professional accounting bodies that meet certain standards.

**25 THE COURT ADDRESSES MR GALBRAITH QC (14:55:42)**

**THE COURT:**

- Q. These topics may in the end have no bearing at all, professor, but do you know if all of the multiple choice types of exam, are they all closed book or will they be open book?
- 30 A. I don't know.
- Q. When you talk about a positive bias, in simple terms is that if somebody doesn't know an answer they've got a chance of getting it right by –

A. By guessing.

Q. – by guessing?

A. Yep.

5 Q. Whereas in an exam format you have different filters for assessing the limit of their knowledge?

A. Correct.

10 Q. The foundation exams as a prerequisite substituting for an accounting degree, are you familiar with CPA's requirements? Do they vary depending on the discipline, the other discipline that the student is engaged in?

A. My understanding is that CPA Australia makes a detailed comparison between the courses that a student has completed towards their non-accounting accredited degree.

Q. Yes.

15 A. Compares that with the courses that would comprise an accredited accounting degree and then selects from the list of foundation exams courses that would make up the difference –

Q. Right.

A. – as shown in the comparison.

20 Q. So that if the other discipline is, for example, engineering and the students have had to demonstrate proficiency in maths they wouldn't have to replicate that but if the student's studying law they perhaps wouldn't have to do a commercial law module? It's that sort of –

A. I think that's the general –

25 Q. – that's the pic –

A. – approach, Sir, yes.

Q. All right.

**THE COURT ADDRESSES MR GRAY QC (14:57:47)**

30 **LEGAL DISCUSSION – MULTIPLE CHOICE**

**MR GRAY QC CALLS****DAVID LONT (SWORN)**

5 Q. Is your full name David Herman Lont? Are you a professor of accounting at the University of Otago?

A. Yes, it is.

Q. Can I ask you, please, to address the Court in your response to what Professor Van Zijl has said and to the joint report that you've submitted with Professor Van Zijl to the Court?

10 A. Indeed, thank you. The first thing I'd like to say is that I echo Professor Van Zijl's comments that both programmes are well-respected within the accounting community. Both devote significant resources to ensure the integrity of their programmes and both serve a valuable role to users of accounting services and their members. However, I also  
15 believe the CA programme is taught to a higher level than the CPA programme. This is not to say the objectives and learning outcomes of the CPA programme are inadequate for their purposes but I believe the course in their current form cannot be considered a level 7 foundation for the foundation units or a mix of level 7 and 8 for the  
20 professional programme. The other important point to note here is that the programme for the CA is accredited to level 8 and the other is not. I do not believe cost or timeliness is a reason for not meeting the graduate profiles as under the Australian qualification framework. Professor van Zijl suggests a lack of accreditation is not significant but I  
25 disagree because there is sufficient evidence presented to conclude the CPA programme is not taught to an AQF level 7 as suggested by Ms Wand, a CPA witness. My opinion is based on the following statements and facts. Desley Ward states in paragraph 43 that the foundation exams are designed to meet the knowledge requirements  
30 generally achieved through the undergraduate study and therefore are at the level of a bachelor degree with the appropriate initial design level being AQF level 7. Professor van Zijl suggests the entire package needs to be considered in relation to the foundation programme specifically any undergraduate degree that may have been completed.

Ms Ward has not stated the CPA assessment of the foundation course is based on such an assumption. Instead she has stated the foundation programme is at the undergraduate level. I believe Professor van Zijl's opinion is not relevant in this assessment for this reason. Furthermore, this would be inconsistent with the AQF as I will explain. The AQF specifications for a bachelor degree level 7 state: These are in the public domain Your Honour and I will try not to read everything in this but it's, I think, relevant. "In summary, graduates at this level have a broad and coherent knowledge and skills for professional work and of further learning. Knowledge. Graduates at this level will have broad and coherent theoretical and technical knowledge with depth in one or more disciplines or areas of practice. In skills the graduate at this level will have a well developed cognitive and technical and communication skills to select and apply methods and technology to analyse and evaluate information to complete a range of activities, analyse, generate and transmit solutions to unpredictable and sometimes complex problems, transmit knowledge, skills and ideas to other. Graduates at this level will apply knowledge and skills to demonstrate autonomy, well developed judgement of knowledge and responsibility and skills in context that require self-directed work and learning within broad parameters to provide specialist advice and functions. Graduates of a bachelor degree will demonstrate the application and knowledge and skill of knowledge with initiatives and judgement and planning, problem solving, decision making in professional practice and skills and to scholarship, to adapt knowledge and skills to diverse context." Ms Ward's evidence only uses the word "knowledge" in her paragraph. If this is a deliberate choice of words there are a number of aspects to the graduate profile which is clearly not met. To assist the Court I introduced the Bloom's Taxonomy designed to increase the precision –

**30 OBJECTION: MR GALBRAITH QC (15:03:29)**

**THE COURT:**

Q. The topic you are still addressing, if I understand it, is the difference in grading between the CPA's and the CA?

5 A. It's the issue around what level the different programmes are taught to, Your Honour.

Q. And you –

A. And assessments cannot be – it cannot be assessed with multiple choice for the full graduate profile.

10 Q. Right, let me just understand where you were going now we've interrupted you.

A. Sure.

Q. There is independent objective grading of the CAANZ in Australia at level 8?

A. Yes.

15 Q. But not a comparable independent grading of CPA at level 8?

A. That's correct.

Q. What I've heard already is that CPA says the lack of that doesn't mean that we wouldn't achieve it in the round?

A. That's right.

20 1505

A. That's right.

Q. But you say that the grading does matter?

25 A. Yes, because the multiple choice can only meet certain parts of the learning objectives and so in particular it cannot meet synthesis and evaluation aspects of the knowledge that we would try to be measuring.

Q. Right.

30 A. And the AQF for a bachelor's, it only gets harder for a post-graduate diploma, would require you to both evaluate and synthesise that information. Educationally, that's not possible through multiple choice. So the foundation course cannot be at a level 7 because it fails to be able to meet those two attributes. So there are six attributes. Four can be met through multiple choice, two cannot –

Q. Right.

A. – and that's in the educational literature, Your Honour.

Q. And if I had got further than paragraph 36 of your brief, I would have found these views reviewed there, would I?

A. Yes, so my basic contention is there's the AQF requires certain standards to be met in terms of graduate outcomes.

5 Q. Yes.

A. That's not possible through multiple choice because you can only measure four types of assessment –

Q. Right.

A. – and not the higher levels –

10 Q. Right.

A. – that we required under the bachelor's and it requires even more of that sort of analysis and – sorry, synthesis and evaluation, under a post-graduate qualification.

#### **THE COURT ADDRESSES MR GRAY QC (15:06:45)**

15 **THE COURT:**

Q. What I envisaged in the introductory comments that wouldn't have been interrupted, professor, was each of you speaking to the synthesis of views that you've – I appreciate how difficult this might have been for you to produce it and to sketch in your own words why the differences remain.

20

A. I'm happy to refer back to –

Q. Could you?

A. – this and to provide –

#### **THE COURT ADDRESSES MR GRAY QC (15:07:15)**

25 **EXAMINATION CONTINUES: MR GRAY QC**

Q. One thing, Professor Lont was interrupted and you were introducing a taxonomy which had six levels.

A. Yes.

Q. Can I ask you to identify what the six levels are?

- A. Your Honour, this is a taxonomy which is well-used in education, but there are other taxonomies, but for the purpose of this it just helps us to look at the different types of questions to see what level they are being taught at. Those six levels are knowledge, comprehension, application, analysis, synthesis and evaluation. They are hierarchical, so if you can do evaluation, by default you can do the first five. My contention is, and educational research tells us, that multiple choice is good for one to four but there are limitations around the third and the fourth application analysis if there's not a clear answer. Mathematics is a good example where there's a clear answer but in accounting, where you have lots of assumptions going in, it becomes problematic if you limit your choices to a multiple choice format.

#### **THE COURT:**

- Q. Do you know the answer to the question I posed, Professor Van Zijl, as to whether all the multiple choice testing are done on closed book or whether some of them are open book?
- A. I'm afraid I don't, Your Honour.

#### **EXAMINATION CONTINUES: MR GRAY QC**

- Q. Having coped with that, let's go back to the joint report and work your way, if you will through the issues.
- For sure. So the contention around the level programme is that CPA Australia does have a good programme around the multiple choice. I would see evidence of a significant amount of resources being placed to answer those types of questions, but if the question is what level are they teaching to, and their assertion is they teach to level 7 for the foundation or level 7 and level 8 for the professional programme, it's just simply not possible to meet all the graduate profiles under that framework and they would fail on that basis, in my opinion. And so we are in dispute on the relevance of that. I believe that that independent assurance makes a significant difference and it provides a quality control around the programmes. The second ch – the second issues around this multiple choice, and I've obviously alluded to some of those



issues, as I read out with the graduate profile, there are a whole series of soft skills, written skills, communication skills, the application of knowledge, the synthesis of that knowledge, the evaluation of that knowledge. Again the multiple choice cannot meet that and so the foundation programme cannot be at a level 7 as asserted by Ms Ward. It may be a level 7 on the knowledge component of it which is the first level of the Bloom Taxonomy but it cannot be by definition one at the higher levels, the last two. It's not my contention, Your Honour, that multiple choice doesn't have significant advantages. It does, and when you have so many students this may be a very appropriate way of measuring those learning outcomes. However, if it is a fact that the CA programme is certified to a level 8 the CPA programme is not and I believe it cannot be because of the reasons that I've already said.

In terms of the breadth and depth of knowledge, I don't know if we can draw very much from the information that we've been provided to give you any real guidance about whether one is more deeper or breadth but all we can say is that, again, one is at level 8 and if we looked at the Australian qualifications framework then you would expect that to be both, have significant depth and breadth. On self-assessment, or just through the fact that only multiple choice can be completed then you would expect the lower level for that. Again I would emphasise that does not mean that they don't meet their objectives they just simply cannot meet the objectives of the framework.

In terms of the hours of study, I think you need to look at a number of factors to understand whether the average is a correct one. For example, we'd need to understand the quality of the students entering the programme. If there is a systematic bias there that one programme has a better cohort than the other or that greater support is provided to students to be able to assist their learning then this would change the level, the number of hours required to complete the programme. One programme, the CA programme I think has more face to face learning and the other is more reliant on e-learning. Again that's not a criticism it

just simply changes the number of hours required to be able to learn the material.

5 The relevance of the future and past pathways, I agree with Professor van Zijl that it's, that we're more likely to be better to focus on the future pathway. However, I think that one key difference in the past pathway which informs, perhaps, the way that some of the executives of the institute were thinking is that the New Zealand requirements prior to these changes required a four year degree as opposed to a three year degree under the ACAA. So I just think that putting that into some context may be helpful but this is probably a future orientated statement that was being made so I would agree that on balance it's the future pathway that is the most relevant to consider.

15 And then finally on the, it's not finally, issue 6 was around the foundation courses as they relate to multiple choice. Professor van Zijl's argument is that these are top-up accounting degrees which is probably true but the problem is that if the assertion is, is that this is a level 7 course then part of the requirements of the level 7 course is that you can apply that knowledge and (inaudible 15:14:00) and evaluate that knowledge from the context of that information. With those foundation modules I believe that's not possible and so that's my, the basis of my concern.

1515

25 In terms of the audit and tax modules one programme the CPA has, has these as electives but you must do them if you haven't done them at an undergraduate level and the CA programme requires both an undergraduate and additional courses. The problem I have here is assuming that you can then say that the outcome at the end is equivalent. There are two concerns, one that there is no basis to make that opinion so it's not a matter of fact, and the second is, is that it makes it harder to safely draw that conclusion if one student is tested twice for his two courses and the other has only one course. The other relevant aspect here is that we do know that the CA programme is certified to a level 8 and there is no prior knowledge for the CPA

programme which would mean they would have to go from zero knowledge up to wherever the learning outcomes are trying to take them. We unfortunately don't know what the learning outcomes are for either module so we can't comment further on that.

## 5 THE COURT:

Q. So that might mean that the content of a tax unit taken in a commerce degree at any of, either of your universities might cover exactly the same ground as the professional module for CAANZ?

10 A. The – well CAANZ requires this as a pre-requisite and so for CAANZ you would expect them to develop on that knowledge. The CPA doesn't make that assumption so would have to start from the base. Given that these are 100% multiple choice, those two electives of tax and audit, then that obviously then limits your ability to go to advanced based tax and audit issues. And so I would expect, on the balance of probability,  
15 that that course would be more of an introductory course than an advanced course. I would expect the CA programme to be more an advanced course for that reason.

Q. Okay.

## EXAMINATION CONTINUES: MR GRAY QC

20 A. Finally the CAGE framework. Professor van Zijl didn't place any real weight on the framework and his justification for that was that there is no requirement for CPA to apply that framework. That is correct, there is no requirement for CPA to follow that. The interesting thing about the CAGE framework however is that it does provide us with evidence that  
25 those higher skills that I'm talking about from the Bloom Taxonomy, the synthesis and evaluation components are in that framework and so that they have to be tested so we can have greater assurance that the CA programme is having to meet both the graduate and post-graduate requirements because of that additional framework. CPA is under no  
30 obligation to meet those higher requirements.

## MR GRAY QC ADDRESSES THE COURT – PROCEDURE (15:17:57)

**AUDIO RECORDING STOPS (15:18:20)**

**AUDIO RECORDING RESUMES (15:25:11)**

**ANTONIUS JOHANNES VAN ZIJL**

**5 CROSS-EXAMINATION: MR GRAY QC**

A. ...but it's very difficult for somebody on the outside to in fact make a sensible comparison of the level of learning, and that's what I also say along the way in my first brief, that given the different structure of the applied education elements of the two pathways and the different number of modules from segments, it's very difficult to sort of say, well, you know, one is better than the other, and I answer it on the basis that I didn't see anything that would lead me to form the view that one was less good than the other, or of lesser quality than the other.

Q. But in addition to that you went on to look at other attributes of the CPA programme, like flexibility –

A. Mhm.

Q. – and to use that as a basis for a conclusion that it's a thoroughly good programme.

A. Yeah, well, I saw it as a positive feature but some people might see flexibility as a negative feature and so I guess that was one of the reasons why I did discuss that.

Q. But you accept, don't you, that considering the flexibility of the programme and the extent to which it's a positive feature of the programme, is not part of an assessment of whether one or the other is taught to a higher level?

A. To the extent that one can make comparisons of one being at a higher level than another, I agree.

Q. So then what you did at paragraph 37 was rely on a detailed comparison undertaken by CPA.

A. Paragraph?

Q. 37.

A. This is to do with contracting for accounting services.

Q. I wonder if I've jumped a little ahead of myself. Sorry, 27.

A. Okay.

Q. Even I can't read my writing. It's not a very good means of communication, is it? Forgive me, paragraph 27. You consider the scope of work likely to be undertaken by students who become members?

5

A. No, I think that's later on. 27 gives the breakdown of the CPA applied education component.

Q. Yes. Then at 34 you come to look at the outlines of the segments.

A. Oh, yep.

10 Q. And concluded, by looking at the descriptions of the topics, if you like, that you couldn't see a clear difference in breadth and depth?

A. Yes, and I also I think made the comment there that I hadn't seen much beyond simply the material that I've described there and in particular what was missing was seeing the material that was presented to students, the exam scripts prepared by students, the exam questions confronting students. You know, if I was given a syllabus for a course at another university and was asked to make a judgement about how that course compared with a similar course at another university, I really couldn't make a judgement on the basis of just the description of what's in the course without seeing what sort of exam papers are set, what the – what is regarded as an acceptable response to the exam questions. You know, you need to see a lot more than what was available to me.

15

20

Q. And that's the point, isn't it –

A. Mmm.

25 Q. – that counting the hours and counting the number of topics is a quantitative but not a qualitative assessment?

A. Well, it's a – I used it as a kind of pointer, I said, you know, that I can't come to a view on the basis of what material that I've seen, but if you then see something like, well, you know, more hours are required, that would suggest that, you know, clearly the level isn't lower.

30

Q. Depending on how the hours are spent?

A. Sure.

**THE COURT:**

Gentlemen, we take a break of 15 minutes at this stage. I will treat both of you as being subject to cross-examination so although you can continue to talk to each other, you shouldn't talk to anybody else about your evidence.

**5 COURT ADJOURNS: 3.30 PM**

**COURT RESUMES: 3.45 PM****CROSS-EXAMINATION CONTINUES: MR GRAY QC**

5 Q. Professor van Zijl, regrettably our first couple of questions and answers to each other were not recorded so I will try and ask you a couple which I hope summarise it.

A. Okay.

10 Q. The first thing we did was look at paragraphs 12 and 14 of your brief and I asked you whether that the first question you attempted to answer in your brief was whether you found any evidence to support the proposition that one or other of the programmes was better than the other?

A. Right.

Q. Is that correct?

15 A. I'm not sure whether you're asking me to agree that that was your question or are you asking me for the answer?

Q. That's the question I asked you before?

A. Sorry, yes, sorry.

Q. And your answer to it was?

20 A. Well basically that I have, I think from recollection I gave you quite a long winded answer but that I had, I think most of the time when I was writing my briefs that we were looking more is there in fact any evidence to support the assertion that the CPA programme is inferior to the CA programme.

25 Q. And then the conclusion you ultimately reach, was it not, was that you couldn't find any evidence to support a conclusion that the CPA programme was better than the CPAA programme and partly that was because a question can't be answered by simply adding up the number of hours it takes to teach the modules or looking at the range of topics  
30 covered by the modules themselves?

A. Well that's the answer that I gave in paragraph 34 and then looked at other indicators that one might look for to see whether in fact they would assist in forming a judgment.

5 Q. The first of my new questions is this. You say that it's not helpful when considering whether one programme is better than the other that the CPA programme is TEQSA accredited whereas the CPAA is not? Sorry, the CA programme is TEQSA accredited whereas the CPA is not?

A. Would you mind just stating your question again?

10 Q. Yes. You say don't you that it is not helpful to considering whether or not the CA programme is better than the CPAA programme, that the CA programme is TEQSA accredited whereas the CPA programme is not?

15 A. Yes, so I regard it as a irrelevant to an assessment of the levels of the two programmes, yes.

Q. But in the world of accounting isn't independent and objective assessment regarded as a good thing?

20 A. Yes it is but it would be different if, say, CPA had tried to get HEP status and failed then you could say, well, that would indicate that CAANZ ranks higher than does CPA Australia but CPA Australia hasn't sought that status and it's a bit like the comment that I made when I was in the witness box that by virtue of the fact that we have AACSB Accreditation in accounting that doesn't allow us to go around and claim that our programme is superior to the accounting programmes offered at the other New Zealand or Australian universities. All we can say is that we've demonstrated compliance with the standards set by the accreditation body and in the process we will have produced information asymmetry as between ourselves and potential students.

25 Q. Doesn't the fact of independent assurance give comfort that the accreditation that you have in the case that you give is appropriate and is accurate?

30 A. Well, it says something perhaps about the CA programme but it doesn't say anything about the CPA programme.

1550



Q. But it – in the case at hand that we're talking about, CA against CPAA, the fact of TEQSA accreditation gives a degree of comfort that the CA programme is indeed level 8, doesn't it?

5 A. Well, that depends on the process that's actually involved and I'm not familiar with the process, but I surmise that it's similar to many accreditation programmes that you do your own assessment, submit that to the accreditation body and the accreditation body may then choose or not choose to question you on your own assessment so –

Q. So did you not check it?

10 A. – (inaudible 15:50:59).

Q. Did you not check whether the assessment by TEQSA was independent or was an acceptance of a self-assessment?

15 A. Well, what I said was that it starts off, I assume that this is the way that it's gone, that it started off by CAANZ or ICAA at the relevant time doing its own assessment and submitting that to TEQSA and they may then just accept that or may have certain questions to ask. In the process of doing so they're, by implication, saying they agree with the assessment by the submitter.

Q. Well, you don't know whether that's the way it went or not, do you?

20 A. I don't, no. I haven't been – I didn't participate in that process.

Q. You don't know whether the TEQSA material calls for independent objective assessment or not?

25 A. Well, what I've described I would say is the equivalent of independent assessment in the sense that if you submit your material and the person at the accreditation body regards the information provided as being inadequate or indicating that in fact you don't meet the required standards then there are going to be questions asked and, you know, if the questions are satisfied then maybe you have achieved the accreditation, otherwise you don't. So it's independent assessment to that degree but it starts off, I would imagine, with the body concerned.

30 Q. And do you know that the members of the CAGE framework independently assess each other periodically?

A. I understand that is the case but again I've had no participation in that.

Q. And if it is the case, wouldn't that be something which would give you comfort that the CA programme was indeed level 8?

5 A. Well, I don't know that the CAGE framework involves assessment indicating level 8 or some other level, but I guess that the members of GAA by doing this mutual assessment do provide comfort to each other that, you know, they're indeed meeting their assessment – their standards.

10 Q. And in the world of accounting, I ask you again, doesn't that sort of independent objective assessment provide comfort? Isn't that why you do it? Isn't that why audits are conducted independently? You don't allow companies to self-audit themselves.

15 A. I could agree with what you're saying in terms of the function of audit, but that doesn't relate to what we're talking about here which is can you infer from the fact that one entity has been accredited, another one hasn't sought the accreditation, can you infer from a comparison of those two bodies that one is better than the other in terms of quality? No, you can't. There's no logical basis for doing so.

20 Q. But you're taking me further than we had initially. We were simply looking at the CA and the proposition I was putting to you is that you can have a degree of comfort around CA actually meeting level 8.

25 A. Oh, well, that's what I've said about accreditation, that, you know, if you achieve an accreditation then that demonstrates that you've complied with the standards of the accreditation body, mmm, and hence you reduce information asymmetry between yourself and the potential students, clients, customers, whatever.

1555

Q. And we know that CPA self-assess at level 7 and a half?

30 A. Well, I don't quite know what the status of that self-assessment is in the sense that obviously done by a person within CPA but is that the assessment that they would have made had they been making an application to TEQSA and if so, what would their assessment have been of the standard of the CA programme had they had all the relevant information? Who knows? Could well be, you know, if you –

Q. They're hardly likely to be underestimating their level of achievement, are they?

A. I agree but that doesn't mean to say that they would have achieved, that they would have assessed CA any higher than that either and –

5 Q. So just take it on its face. We've got one programme independently assessed within the CAGE framework and by TEQSA, it's meeting the CAGE framework and the CAGE framework being level 8.

A. Well I don't –

10 Q. (inaudible 15:55:57) other self- assessed at seven and a half. Doesn't that by itself tell you something?

A. I wouldn't include the CAGE framework in that sort of summary. If you extract the CAGE framework from your summary and focus back on TEQSA then, yes, CPA, sorry, CA candidates get a diploma which has level 8, which apparently has to have AQF level 8. All that we know in  
15 comparison about CPA Australia is that they have a programme which a person within CPA has assessed at a lower level but I don't know how that person would have assessed the CA programme in terms of putting that self-assessment in context.

20 Q. Well that really brings us to the point that Professor Lont discussed under the heading of taxonomy, doesn't it? Did you hear what he had to say about Bloom's Taxonomy?

A. I did.

25 Q. Do you accept that in the world of teaching and learning there are levels of knowledge and understanding and achievement that are put into a hierarchy?

A. Yes, Bloom's Taxonomy is one. There are other taxonomies.

Q. And do you accept that the Bloom's Taxonomy starts with knowledge and it proceeds up to evaluation?

A. I do.

30 Q. And his evidence was that multiple choice assessment is suitable for the bottom four of the six levels but marginal at 3 and 4 and not suitable for 5 and 6?

A. Mmm.

Q. Do you accept that?

A. Well I don't actually, no. There is a range of views on what you can do through multiple choice assessment and what Professor Lont gave was his view but it's not a uniformly held view.

Q. And your view is?

5 A. One view on multiple choice is that I don't and never have set multiple choice questions for students, the reason being that it's incredibly difficult to do well. But I also recognise that it's possible to cover a very wide range of different learning levels through multiple choice but it takes a lot of effort in terms of what I've heard about what CPA Australia does, it seems that they exert that sort of effort and so I don't have that concern.

Q. So from your personal experience you don't know whether you can accept multiple choice examinations to test levels five and six of Bloom's Taxonomy because you've never done it?

15 A. That's correct, from personal experience but on the other hand there is a literature on the use of multiple choice and that literature is anything but unanimous.

Q. The taxonomy point wasn't just limited to the extent to which testing by multiple choice can be appropriate. It was also, was it not, an assessment of the taxonomy of the CAGE framework against the taxonomy of the IES standards?

A. Well I'm not sure that that was the intention but...

Q. Well doesn't the taxonomy offer standards themselves tell you what the aspiration of the programme is?

25 1600

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