

IN THE MATTER OF

A Complaint made under Section 34(1)(a) and 34(1A) of the Professional Accountants Ordinance (Cap.50) (“the PAO”) and referred to the Disciplinary Committee under Section 33(3) of the PAO

BETWEEN

The Registrar of the Hong Kong Institute of Certified Public Accountants

COMPLAINANT

AND

The Respondent

RESPONDENT

Before a Disciplinary Committee of the Hong Kong Institute of Certified Public Accountants

Members:

ORDER & REASONS FOR DECISION

1. This is a complaint made by the Registrar of the Hong Kong Institute of Certified Public Accountants (the “**Institute**”) against the Respondent, a certified public accountant. Section 34(1)(a)(x) of the PAO applied to the Respondent.
2. The particulars of the Complaint as set out in a letter dated 27 May 2014 (the “Complaint”) from the Registrar to the Council of the Institute for consideration of referring the Complaint to the Disciplinary Panels, are as follows:-

BACKGROUND

- (1) On 15 December 2013, the Institute received a declaration from the Respondent reporting his conviction of the criminal offences of:
 - (i) one count of indecent assault, contrary to section 122(1) of the Crimes Ordinance, Cap. 200 ([xxxx]) ("**First Offence**"), on 9 August 2011; and
 - (ii) one count of loitering causing concern, contrary to section 160(3) of the Crimes Ordinance, Cap. 200 ([xxxx]) ("**Second Offence**"), on 8 November 2013.
- (2) The Respondent had pleaded guilty to the charges and was fined HK\$6,000 for the First Offence and ordered a probation order for 12 months (from 8 November 2013 to 7 November 2014) with special conditions for the Second Offence.
- (3) The special conditions under which the Respondent had to comply with during the 12-month period include attending psychological treatments and other programs as directed by the supervising probation officer.
- (4) The Respondent became a member of the Institute in February 2009 and was at all material times a certified public accountant.

RELEVANT PROFESSIONAL STANDARDS

- (5) The Code of Ethics for Professional Accountants ("**Code**")

"100.5 A professional accountant shall comply with the following fundamental principles:

...

- (e) *Professional Behavior – to comply with relevant laws and regulations and avoid any action that discredits the profession."*

"150.1 The principle of professional behaviour imposes an obligation on all professional accountants to comply with relevant laws and regulations and avoid any action that the professional accountant knows or should know may discredit the profession. This includes actions that a reasonable and informed third party, weighing all the specific facts and circumstances available to the professional accountant at that time, would be likely to conclude adversely affects the good reputation of the profession."

THE COMPLAINT

First Complaint

- (6) Section 34(1)(a)(x) of the PAO applies to the Respondent in that he was guilty of dishonourable conduct due to his conviction of the criminal offences of (i) indecent assault; and (ii) loitering causing concern, contrary to sections 122(1) and 160(3) of the Crimes Ordinance, Cap. 200, respectively.

Second Complaint (in the alternative to the First Complaint)

- (7) Section 34(1)(a)(vi) of the PAO applies to the Respondent in that he failed or neglected to observe, maintain or otherwise apply a professional standard, namely paragraphs 100.5 and 150.1 of the Code for failing to comply with relevant laws and regulations and avoid any action that discredits the profession, when he committed the criminal offences of (i) indecent assault; and (ii) loitering causing concern, contrary to sections 122(1) and 160(3) of the Crimes Ordinance, Cap. 200, respectively.

FACTS AND CIRCUMSTANCES IN SUPPORT OF THE COMPLAINT

First Offence

- (8) In the criminal proceedings of the First Offence, the Respondent did not dispute the following facts:
- (a) At about 8:45am on 27 June 2011, the Respondent entered an elevator of the building where he resided. Apart from the Respondent, a male (victim) and a female were inside the elevator.
 - (b) As the male victim was stepping out of the elevator after it reached the ground floor, he felt that his left buttock was touched once. The victim immediately turned around and saw the Respondent standing closely behind him.
 - (c) When questioned by the victim, the Respondent denied that he had touched the victim and immediately went out of the elevator and fled. The victim reported the matter to the police.
 - (d) At 8:37am on 29 June 2011, while the police was conducting a touring with the victim at the same building, the Respondent appeared at the ground floor lift lobby and was positively identified by the victim. The Respondent was then arrested by the police.
 - (e) Under police caution, the Respondent admitted that he has paid attention to the victim for awhile and had touched the victim's buttock with his left hand out of impulse on the morning of 27 June 2011.

Second Offence

- (9) In the criminal proceedings of the Second Offence, the Respondent did not dispute the following facts:
- (a) The Respondent was a member of "California Fitness" health club. The male victim in this case was a fitness instructor of the health club.
 - (b) At 11:30 am on 16 September 2013, the victim went to the male toilet of California Fitness located at the Mega Box shopping centre in Kowloon.
 - (c) While the victim was using the toilet inside a cubicle at the fitness club, the victim found the Respondent peeping at him from the next cubicle.
 - (d) The victim immediately confronted the Respondent and the Respondent apologized to the victim for his act. The victim reported the matter to the police.
 - (e) At 1:10pm on the same day, the Respondent was arrested by the police. Under police caution, the Respondent admitted the offence and said he peeped at the victim because he found the victim attractive and handsome.
3. The Respondent submitted to the Institute his reasons for committing the offences together with letters of mitigation to plead for leniency.
4. On 22 May 2014, the Respondent admitted both complaints against him. He did not dispute the facts as set out in the complaints. The parties agreed that the steps set out in paragraphs 17 to 30 of the Disciplinary Committee Proceedings Rules be dispensed with.
5. On 19 August 2014, the Disciplinary Committee informed the parties that they should make written submissions on sanctions and costs.
6. In considering the proper order to be made in this case, the Disciplinary Committee has had regard to all the aforesaid matters, including the particulars in support of the Complaint, the Respondent's personal circumstances, and the conduct of the Complainant and the Respondent throughout the proceedings.
7. The Disciplinary Committee orders that:-
- 1) the name of the Respondent be removed from the register of certified public accountants for 6 months on the 40th day from the date of this order under Section 35(1)(a) of the PAO; and
 - 2) the Respondent do pay the costs and expenses of and incidental to the proceedings of the Complainant in the sum of HK\$19,207 under Section 35(1)(iii) of the PAO.

Dated the 27th day of October 2014

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