

**IN THE GRAND COURT OF THE CAYMAN ISLANDS  
CIVIL DIVISION**

**CAUSE NO. G 70 OF 2018**

**IN THE MATTER of Section 27(1) of the Accountants Law, 2016**

**AND IN THE MATTER of an appeal against a decision of the Council of the Cayman Islands Institute of Professional Accountants**

**BETWEEN:**

**ROBERT PATRAULEA**

**Appellant**

**AND**

**THE COUNCIL OF THE CAYMAN ISLANDS INSTITUTE  
OF PROFESSIONAL ACCOUNTANTS**

**Respondent**

**Appearances:**

Mr. Laurence Aiolfi of Priestleys for the Appellant  
Ms. Laura Hatfield and Mr. Jamie McGee of Solomon Harris for  
the Respondent

**Before:**

Hon. Justice Richard Williams

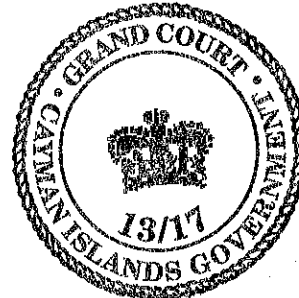
**Heard:**

22 May 2019

**Draft Judgment circulated:** 15 July 2019

**Date of Judgment:**

22 July 2019



**HEADNOTE**

*Appeal refusal to grant Licensed Practitioner Licence, s.13 Accountants Law, 2016 – nature of appeal hearing – standards of competence and suitability.*

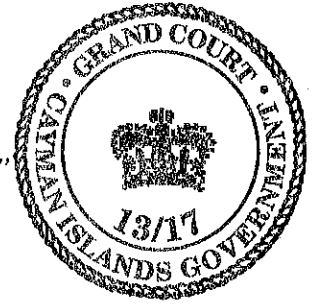
**JUDGMENT**

**Introduction**

1. This is a case about the correct approach to the granting of annual Licensed Practitioner's Licences ("Licence") which, pursuant to s.13 of the Accountants Law, 2016 ("the Law"), accountants must obtain to be able to engage in public practice in the Cayman Islands.

2. Section 2 of the Law defines public practice as meaning:

*“the performance of public accounting services for profit or reward.”*



Section 2 of the Law defines public accounting services as meaning:

*“..... signing, affixing or associating one’s name or the name of the firm of public accountants of which one is a partner, director or the holder of an equivalent public position to any report or certificate expressing or disclosing an opinion on a financial statement based on an audit or examination of that financial statement or expressing assurance on a financial statement but does not include –*

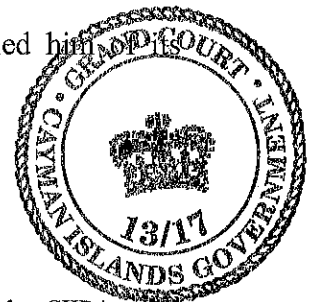
- (a) bookkeeping or cost accounting;*
- (b) installing bookkeeping, accounting, business or cost systems;*
- (c) preparing trial balances, financial statements or reports provided that the person so preparing does not indicate or in any way imply that the trial balances, financial statements or reports have been examined by a sole practitioner public accountant or a firm of public accountants or that they represent the opinion or certificate of a sole practitioner public accountant or firm of public accountants;*
- (d) providing compilation and agreed upon procedure services;*
- (e) reviewing accounts and accounting methods for the purposes of determining the efficiency of these methods provided that the person so reviewing does not indicate or in any way imply that the methods have been reviewed by a sole practitioner public accountant or a firm of public accountants; or*
- (f) .....*

This means that Engagement Partners who sign reports for or on behalf of a firm must possess the Licence.

3. All accountants in the Cayman Islands must be a member of the Cayman Islands Institute of Professional Accountants (“CIIPA”). Section 4(4) and Schedule 1 of the Law, read in conjunction with CIIPA’s Memorandum of Association, sets out the objects of CIIPA which include but are not limited to regulatory, disciplining, quality and welfare of the

profession roles in the Cayman Islands. The Council of the Cayman Islands Institute of Professional Accountants (“the Council”) is responsible for the management of the affairs of CIIPA and is the elected body from whom a Licence must be obtained.

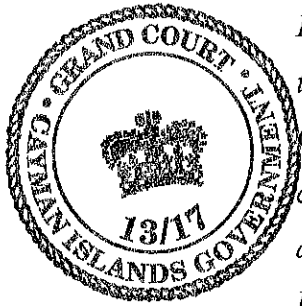
4. The Membership and Licencing Committee (“MLC”) is tasked with reviewing applications to ensure that each applicant either possesses the relevant qualifications at the time of his initial application or still possesses them at the time the applicant is applying for a Licence renewal. The Council may refuse an application for a Licence, pursuant to a recommendation of the MLC, if it is found that an applicant does not meet the necessary criteria for the grant or renewal of the same. Unless there are exceptional circumstances the MLC’s recommendations to grant or refuse Licences are followed by the Council.
5. This matter concerns the application of Robert Patraulea (“the Appellant”), who is the President, founder<sup>1</sup> and shareholder of Dominion Business Solutions Limited (T/A Dominion) (“Dominion”)<sup>2</sup>, to renew his Licence thereby permitting him to engage in public practice for the period 1 January 2018 to 31 December 2018 which the Respondent, the Council, refused to grant.
6. In a letter to the Appellant dated 17 January 2018 the Council informed him of its unanimous decision as follows:



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<sup>1</sup> Set up in 2007.

<sup>2</sup> An accountant licensed to engage in public practice must work for a firm which is registered by CIIPA or be registered as a sole practitioner. Dominion was a registered in 2017 and in 2018.



*"Your renewal application has been carefully considered by the Membership and Licensing Committee and we regret to inform you that having regard to the fact that you have not been engaged in public practice for more than nine years Council has determined that you are not sufficiently qualified, competent and capable of carrying on public practice both at the time of your renewal application, and for the period of the licence. Therefore, your Practitioner's Licence will not be renewed for 2018 and you will not be permitted to carry out public accounting services within the meaning of the Accountants Law.*

*You do have a right to appeal this decision by application to the Grand Court of the Cayman Islands within 3 months of the date of this letter pursuant to section 27 of the Accountants Law."*

7. At paragraph 49 of the affidavit sworn on 24 October 2018 by Sheree Ebanks, the Chief Executive Officer of CIIPA, she stated that:

*"MLC's and Council's issues with Mr Patraulea's relevant experience and competency revolve around the fact that Mr Patraulea has not practised public accounting since December 2007.... as well as the fact that Mr Patraulea's post-qualification experience falls substantially short of that which the MLC consider would allow Mr Patraulea to be determined to be fit and proper as it relates to Mr Patraulea being a sufficiently qualified, competent and capable person."*

8. The Appellant contends that he has demonstrated that he is capable and competent to engage in public practice and that he meets the requirements set out in the Law. Therefore, by a Notice of Originating Motion dated 12 April 2018, the Appellant has appealed the Council's decision. The Appellant now proceeds with only paragraph 3 in that Notice and seeks an order that he be issued with a Licence to engage in public practice for the period 1 January 2018 to 31 December 2018. No issue is taken by the Respondent of the fact that the period for the operation of such a Licence has already

expired. The Appellant has not sought any orders in this appeal that relate to the granting of a Licence for 2019.

### Framework of Appeal

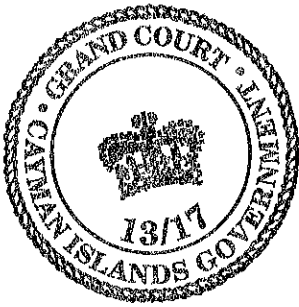
9. The appeal is brought pursuant to s.27 of the Law. The relevant part of s.27 of the Law provides:

*“(1) A person aggrieved –*

*(a) by the refusal of the Council of the person’s application for registration as a member or for a licence, including an application for the renewal of registration as a member or the renewal of a licence; ...*

*(b) ...may, within three months of the date of the decision, appeal against the decision to the Grand Court and Schedule 2 shall apply in relation to every appeal made under this section.*

*(2) No further appeal shall lie from the decision of the Grand Court on an appeal made under this section.”*



10. Section 1(b) of Schedule 2 of the Law provides that an appeal shall lie to the Grand Court:

*“from a refusal by the Council to grant an application for a licence or for the renewal of a licence made under section 11, 12 or 14.”*

11. Section 6(2) of Schedule 2 of the Law states:

*“The practice and procedure in relation to the hearing of appeals by the Grand Court, and for the enforcement of the decision upon any appeals, shall be as prescribed by the Grand Court Law (2008 Revision) but in any circumstances in which no provision is made for some matter or any difficulty shall arise the Judge may give directions as to procedure to be followed.”*

12. The relevant rules are to be found in Order 55 of the Grand Court Rules (“GCR”), which deals with appeals to the Grand Court from courts, tribunals and persons. Order 55, r.1 provides in material part that the subsequent rules of the Order shall, in relation to an appeal to which the Order applies, have effect subject to any provision made in relation to that appeal by or under any enactment. Order 55, r. 3(1), provides that an appeal to which the Order applies shall be by way of rehearing. No contrary provision exists in the Law, however the Law does not expressly stipulate whether the rehearing should be *de novo* or otherwise.

13. The powers of the Grand Court on this appeal are set out at s.7 of Schedule 2 of the Law which states:

*“7. (1) The Grand Court shall have power upon hearing of any appeal to confirm, reverse, vary or modify the decision against which the appeal is made or to return any matter to the Disciplinary Tribunal or the Council, with the opinion and directions of the Grand Court thereon, or to set aside the proceedings and order a new hearing or to make an order in the matter it may think just; and may, by the order, exercise any power which the Disciplinary Tribunal or the Council could have exercised; and the order shall have the same effect and may be enforced in the same manner as if it had been made by the Disciplinary Tribunal or Council.”*

14. As pointed out by Sanderson J in *Cortina International Limited (trading as Cortina Villas) v. Planning Appeals Tribunal and Central Planning Authority*<sup>3</sup>, the Court must first determine the nature of the rehearing. It was agreed by the parties that further

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<sup>3</sup> 2000 CILR 360 at page 368 line 34.



evidence could be given as set out in their affidavits and, if required, by the oral evidence from Joel Dodson.<sup>4</sup>

15. Classifying an appeal as an appeal by way of “rehearing” does not in itself provide an answer as to the nature of the appeal. The Appellant argues that the appeal is by way of a rehearing with the court reviewing the merits of the original application, and doing so on the basis of all the evidence before it on the merits on the application. The Appellant contends that the Law does not limit the grounds of appeal that may be advanced in the rehearing and also highlights that the wide powers of this Court on appeal support such a contention. Placing reliance on the House of Lords decision in *Lloyd v McMahon*<sup>5</sup>, the Appellant contends that there may be a “*rehearing of the broadest possible scope.*”
16. The Respondent, placing reliance on *E I Dupont de Nemours & Co v S T Dupont v E I Dupont de Nemours*<sup>6</sup> contends that the rehearing is not to be one “*in the fullest sense of the word.*” It is submitted, with reference to *Alexis Maitland – Hudson v Solicitors Regulation Authority*<sup>7</sup> and *Hadiza Bawa-Garba v The General Medical Council, The British Medical Association, The Professional Standards Authority for Health and Social Care, The British Association of Physicians of Indian Origin*<sup>8</sup> that the court’s task is to assess whether the Council’s decision was wrong as no reasonable judge could have come to the same conclusion.

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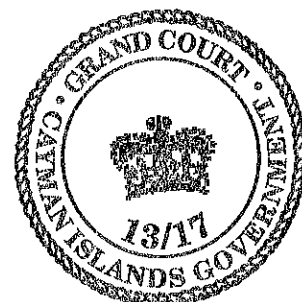
<sup>4</sup> See the Consent Order dated 21 May 2019 and the Consent Order dated 21 September 2018.

<sup>5</sup> [1987] AC 625.

<sup>6</sup> [2006] 1 W.L.R. 2793.

<sup>7</sup> [2019] EWHC 67 (Admin);

<sup>8</sup> [2018] EWCA Civ 1879.



17. Arguably there are three types of statutory appeal procedure. The first, which is not the position in the matter before me, is where the question is whether the judgment or decision complained of was right when given and there is no introduction of new evidence before the appeal court. The task of the court in such a case, which has no elements of a rehearing, would be whether the court below or body came to the right decision on the material that was placed before it.
18. The second type of appeal is an appeal by way of rehearing. This is where there is a rehearing on the documents, but where the appeal court may also receive further evidence. The task for the court at such a rehearing is to determine whether the order or decision ought to be affirmed or overturned in light of the material before it at the time of the appeal hearing. I note that in the matter before me it was agreed by the parties that further evidence could be given in affidavit form and, if required, and that there may be cross examination of named witnesses.<sup>9</sup> This is consistent with GCR Order, 55 r.7(2) which provides for the reception of further evidence and for directions to be given in relation to the manner of its receipt and there is no contrary provision in the Law<sup>10</sup>.
19. The third type of appeal is an appeal *de novo* where the court hears the matter afresh. In such an appeal all of the evidence is given afresh, unless the parties agree to the material used before the original body being used on the appeal. The court will determine the question raised in the appeal upon the material presented to it and will not be limited in anyway by the lower court, tribunal or body.

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<sup>9</sup> See the Consent Order dated 21 May 2019 and the Consent Order dated 21 September 2018.

<sup>10</sup> See s.6(2) of Schedule 2 of the Law.



20. For the Court to determine which type of appeal is given by the Law it will need to discern the Legislature's intention by examining the legislation as a whole. I recognise that a statutory appeal procedure may not fit into one of the three aforementioned types of appeal, and the Legislature may seek to combine features from each type. In the end, the nature of the appeal will depend on the provisions of the Law, which is the relevant statute which confers the right.

21. I have carefully considered the case law and oral and written submission provided by the parties on this issue. The wide powers provided to the Court including to:

*“confirm, reverse, vary or modify the decision” or “to make an order in the matter that it thinks just”*

are persuasive indications that the appeal given by s.7 of Schedule 2 is by way of rehearing. This coupled with the agreed power under GCR Order 55 to receive further evidence which is not limited by any provision in the Law is a further indication that the intention is that the appeal be by rehearing.

22. I note that s.2 of Schedule 7 of the Law gives the Grand Court a discretion to exercise one or more of the powers set out therein, including the power:

*“to return any matter to the Disciplinary Tribunal or Council, with the opinion and directions of the Grand Court thereon, or to set aside the proceedings and order a new hearing.”*



If the intention was for the appeal to the Grand Court to be heard *de novo*, there would be no purpose in the power to remit the matter back to the Council. Accordingly, I am satisfied that the intention of the Legislature, having regard to the provisions in the Law and GCR Order 55, was for a rehearing to be primarily on the documents, but with the power to receive further evidence on the appeal.

23. I am required to review the evidence and carefully scrutinise the findings made. When doing so I must exercise a discretion. Although not a case placed before the parties at the hearing and not a binding decision on the Courts in the Cayman Islands, I find the following uncontroversial guidance of Dixon, Evatt and McTiernan JJ in the High Court of Australia case of *House v King*<sup>11</sup> to be insightful when exercising my discretion:

*“The manner in which an appeal against an exercise of discretion should be determined is governed by established principles. It is not enough that the judges composing the appellate court consider that, if they had been in the position of the primary judge, they would have taken a different course. It must appear that some error has been made in exercising the discretion. If the judge acts upon a wrong principle, if he allows extraneous or irrelevant matters to guide or affect him, if he mistakes the facts, if he does not take into account some material consideration, then his determination should be reviewed and the appellate court may exercise its own discretion in substitution for his if it has the materials for doing so. It may not appear how the primary judge has reached the result embodied in his order, but, if upon the facts it is unreasonable or plainly unjust, the appellate court may infer that in some way there has been a failure properly to exercise the discretion which the law reposes in the court of first instance. In such a case, although the nature of the error may not be discoverable, the*

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<sup>11</sup> (1936) 55 CLR 499, 504-505, [1936] HCA 40.



*exercise of the discretion is reviewed on the ground that a substantial wrong has in fact occurred.*

24. When I exercise my discretion I am conscious that the decision made by the Council was not one reached after a hearing at which representations were made by the Appellant. However, I must still have regard to the fact that the Council is a specialist body, comprised of members with great experience in the field of accountancy, especially if I am considering interfering with its decision.

### **Grounds of Appeal**

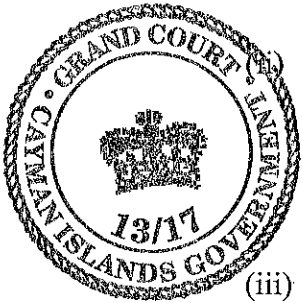
25. The Appellant now limits his appeal<sup>12</sup> to the following grounds, namely that the refusal to issue the Licence on 24 January 2018 should be reversed and a Licence granted to the Appellant for the following reasons:

(i) The Appellant is qualified and competent to engage in public practice and meets all of the requirements of sections 8 and 11 of the Law;

The Council was wrong in concluding that the Appellant's continuing professional development ("CPD") and experience was not sufficient to maintain his fitness and propriety to engage in public practice;

(iii) The Council has failed to indicate any training or other remedy required for the Appellant to meet the requirements to engage in public practice;

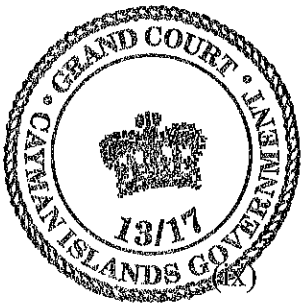
(iv) The Council's refusal on the basis of a lack of recent experience is illogical as it potentially prevents senior CIIPA members without recent audit experience from ever engaging in public practice work;



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<sup>12</sup> The Appellant did not pursue Grounds 1 and 2 of the initial Grounds of Appeal filed on 13 April 2018.

- (v) In determining the Appellant's fitness and propriety to engage in public practice, the Council placed undue emphasis on the fact he had not engaged in public practice since 2012;
  - (vi) The Council's decision contradicts the conclusions of Institute of Chartered Accountants in England and Wales ("ICAEW") following their assessment on 18 May 2017;
  - (vii) The Council was wrong to conclude that the Appellant had not met his CPD requirements for the period 1 January 2014 to 31 December 2016;
  - (viii) Both the Council's refusal to issue a Licence and the Council's conclusion that the Appellant has not satisfied CPD requirements are procedurally unfair due to the failure to provide detailed reasons and the failure to provide sufficient disclosure; and
- The result of the purported decision is irrational in that Dominion is a registered firm, although it can only be registered if the partners, directors or persons holding an equivalent position in the firm are the holders of a licence which the Appellant no longer is. He was the only person so licenced at Dominion.



### **The Law**

- 26. As the Appellant is a permanent resident in the Cayman Islands, it is ss.8 and 11 of the Law that are relevant when considering the requirements for any grant of a Licence to him.
- 27. To be licensed by the Council to engage in public practice one needs to first be a Regular Member. Section 8 of the Law provides the necessary requirements to permit a person to

be licensed as a Regular Member. There is no issue about the Appellant being a Regular Member or meeting the qualifications for membership set out in s.8 of the Law<sup>13</sup>.

28. Section 11 of the Law provides:

*“(1) A person who is Caymanian or a permanent resident and who –*

*(a) is registered as a member under section 8 and continues to meet the qualifications for membership specified in section 8;*

*(b) is or seeks to be a sole practitioner public accountant or a partner, director or person holding an equivalent position in a firm of public accountants;*

*(c) is either registered as a relevant sole practitioner or the firm of public accountants of which the person is a partner, director or person holding an equivalent position has registered as a relevant firm under section 38;*

*(d) pays the prescribed fee; and*

*(e) satisfies any other requirements relating to fitness and propriety that may be prescribed,<sup>14</sup>*

*may apply in the prescribed form to be licenced by the Council to engage in public practice from or within the Islands.*

*(2) The Council, if satisfied that a person satisfies the requirements for licensing under subsection (1), shall issue a licence to the person.”*

29. The relevant part of s.30 of the Law provides:

*“The Cabinet in consultation with the Council may make regulations for carrying into effect the purposes and provisions of this Law, and for*

*...*

*(d) prescribing public practice requirements*

*...*

*(h) prescribing anything required by this Law to be prescribed.”*

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<sup>13</sup> See paragraph 38 below.

<sup>14</sup> My emphasis by underlining.



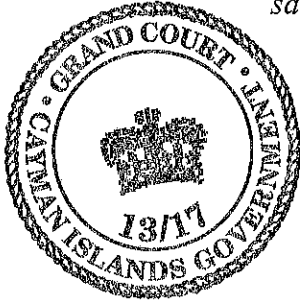
30. Pursuant to s.30 of the Law, the Accountants (Application for Membership) Regulations 2016 (“the Regulations”) were issued. The Regulations set out the process for new Licences of renewals of Licences.

31. Regulation 7(4) provides that:

*“The Institute may require an applicant to provide supplementary information or a clarification of the information provided in the application for a licence or for renewal and evidence to support that information or clarification.”*

32. Regulation 7(6) provides that:

*“The Institute shall consider the application for a licence or renewal and only if satisfied that the applicant is -*



*(a) sufficiently qualified, competent and capable of carrying on public practice both at the time of the application and for the period of the licence;*

*(b) of good character; and*

*(c) acts in a professional manner with integrity in the performance of the applicant's duties as a practitioner member.”*

33. The parties agree that having regard to s.11(1)(e) of the Law and Regulation 7(6)(a) the core issue is whether or not the Appellant was at the time of the application and would remain during the licence period:

*“sufficiently qualified, competent and capable of carrying on public practice”.*

34. As s.8(5) of the Law requires members to comply with the prescribed CPD requirements, Regulation 8 further prescribes that:

*“(1)...*

*(2) Regular members and practitioner members shall maintain their professional knowledge and skill at the level required to ensure that their clients and employers receive competent professional service based on legislative requirements and current techniques and developments in practice<sup>15</sup>;*

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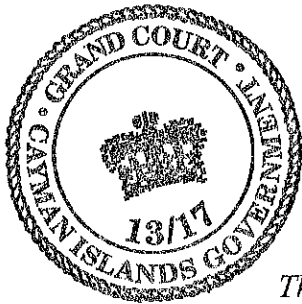
<sup>15</sup> My emphasis by underlining.

*(3) Regular members and practitioner members shall determine what is sufficient and relevant professional knowledge and skill and shall comply with the minimum continuing professional development requirements set out in Schedule 2*

*(4) The Institute may issue rules to clarify the requirements set out in Schedule 2.”*

35. Schedule 2 of the Regulations contains the detail of the requirements concerning CPD. Paragraph 2 of Schedule 2 of the Regulations states, under the heading “practitioner members”, as it relates to those with or seeking Licences that:

*“The continuing professional development shall-*



- (a) include an appropriate proportion of continuing professional development in a chosen speciality,*  
*(b) result in the maintenance of competence in audit (even if no audit work is currently being undertaken); and*  
*(c) be in compliance with the international education standard 8<sup>16</sup> as issued and amended by the International Accounting Education Standards Board.<sup>17</sup>*

*The Continuing professional requirement is:*

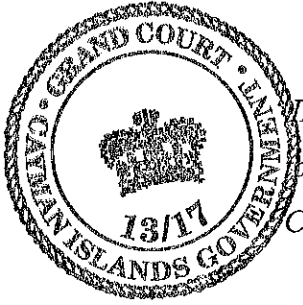
- 120 hours in each three year period ending December 31<sup>st</sup>*  
*60 of the 120 hours shall be verifiable; and*  
*A minimum of 20 hours per year ending December 31<sup>st</sup>.”*

36. The IAESB, which is an independent standard setting board, in its Handbook sets out the standards for competence and capability for engagement partners responsible for audits of financial statements at IES8.
37. CIIPA is a member of the International Federation of Accountants (“IFAC”). Both parties accept that member bodies have an obligation to support the adoption and implementation of international standards and other pronouncements issued by the IAESB. The Appellant notes that at Paragraph 11 under the heading “Access to CPD” at IES7 provides:

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<sup>16</sup> The International Education Standard 8 hereafter referred to as “IES8”.

<sup>17</sup> International Accounting Education Standards Board hereafter referred to as “IAESB”.



*IFAC member bodies shall facilitate access to CPD opportunities and resources to assist professional accountants in meeting their personal responsibility for CPD and maintenance of professional competence”.*

### **Factual Background**

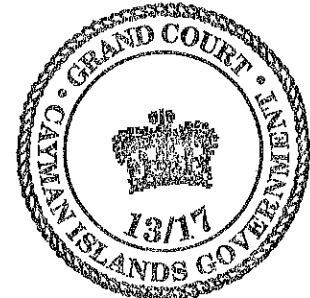
38. The Appellant meets the requirements for registration as a Regular Member as set out in s.8 of the Law. To become a Regular Member one must be registered as a Chartered Accountant or a Certified Public Accountant by an international body to obtain membership of CIIPA. The Appellant qualified as a Chartered Accountant in Canada with CPA Ontario in 2004. He became a member of CIIPA in 2005. Since 2012 he has been licensed to engage in public practice by the institute of Chartered Accountants Manitoba, Canada and with CIIPA since 2012. The Appellant contends that he has more than 14 years of experience in public practice, with 13 of those being in the Cayman Islands.

39. The Council concluded that, due to the need to comply with the standards in the 2016 Revision of IES8 and with the requirements in the Law which was introduced on 28 November 2016 to replace the Public Accountants Law 2009, greater scrutiny for Licence renewal applications was required. This approach resulted in the MLC concluding that there were issues in relation to the Appellant’s application to renew his Licence for 2017. At the MLC’s meeting on 6 December 2016 they agreed to defer the Appellant’s renewal. At the Council meeting held on the same day it was noted that the deferral was made:

*“pending further information relating to compliance with the competency requirements.”*

40. Mrs. Sheree Ebanks indicates that the MLC Handbook<sup>18</sup> suggest that the minimum requirement for a successful applicant include (i) the applicant possessing at least seven years of post-qualification practical experience; (ii) five of which should have been as an assurance professional at a firm approved by CIIPA or an Approved OPAI to be a training firm or equivalent supervisor at the time of the experience; and (iii) with a reasonable proportion of those five years, having been in the twenty four months preceding the application in supervisory or managerial roles on assurance engagement teams.

41. Mrs. Ebanks commented that when the Law came into force, the MLC considered that the Appellant did not have the required five years of assurance experience in a supervisory role nor that a reasonable proportion of two out of the five preceding years were spent in a supervisory or managerial role on assurance engagement teams. The MLC considered that the Appellant had only three years of post-qualification assurance experience, none of which were in a supervisory role or capacity and that, as mentioned in an email from him<sup>19</sup>, he and Dominion had not undertaken any assurance engagements.



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<sup>18</sup> At paragraph 50 of her affidavit, Mrs. Ebanks wrongly refers to it as being the MLC Help Sheet. The requirements are set out at paragraph 4 of the CIIPA Help Sheet and also at paragraph 13 of the MLC Handbook.

<sup>19</sup> 9 January 2017.

42. At the Council meeting held on 14 December 2016 the renewal of the Appellant's licence was approved, but on the basis that he was issued with a:



*letter noting the new Law and regulations, especially as they related to relevant experience and competency."*

This renewal was granted despite the MLC's concerns and the Respondent's view that the Appellant's licence would not have been renewed for 2017 if the criteria, now being applied to ensure compliance with the passing of the Law in 2016, had been applied to his 2017 application.

43. The aforementioned letter was sent on 30 January 2017 attached to an email which noted that:

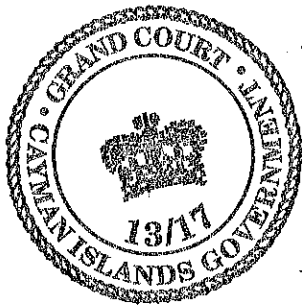
*"As is explained in the letter with the enactment of the Accountants Law, licence renewals will be subject to greater scrutiny and there is no guarantee of renewal and so your stated reason for maintaining a licence (as an option for the future and to avoid the effort of applying for a new licence) no longer applies. Fundamentally, licences can only be issued to persons who are engaged in public practice."*

In the said letter the Council noted:

*"Whilst Council has determined to renew your licence for 2017, our records, based on your feedback in 2016, indicate you have not been engaged in public practice since being licensed by CIIPA.*

*If you or your firm do not provide public accounting services during 2017, you are hereby given notice that Council will not be able to renew your licence for 2018 as licences are only available to (and required of) persons or firms that are engaged in public practice (subsection 12(1) of the Accountants Law) if you opt to*

*engage in public practice, we wish to make you aware that for your next renewal and every year thereafter CIIPA can only approve it if satisfied you are sufficiently qualified, competent and capable of carrying on public practice (see Regulation 7(6) of the Accountants (Application for Membership) Regulations). It becomes increasingly more difficult for someone to demonstrate their competence if they have not been in public practice for an extended period. Whilst you have assurance experience, it was gained several years ago and that the assurance environment has changed materially since then. We wish to give you advance notification so you may plan to your practice accordingly.*



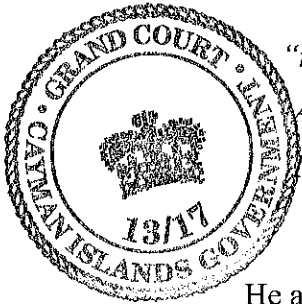
*...  
It must be highlighted that the grant of a licence was never intended to guarantee future renewals as ongoing requirements do apply. However, as the Accountants Law has been enacted just prior to the renewal date, Council has resolved to give you a further year as a grace period should you wish to plan and prepare for renewal next year."*

44. The Appellant seeks to argue that by this renewal the Council deemed him competent for 2017 and therefore the issue for his 2018 application is whether that level of competence and capability had been maintained. The reality is that he was deemed to be competent and capable on the stated basis that, out of fairness, he was being given a "grace period" of a year to address the clearly highlighted deficiencies in his practical experience. The January letter and email adequately explain why the Council was able to be more flexible and sympathetic concerning the renewal of the Appellant's licence in 2017, as well as acting as a clear indication of what the Appellant would be required to do to remedy the situation and secure a renewal of the licence for 2018 by giving him:

*"an opportunity to bring himself within the parameters of the criteria to be determined by the MLC to be fit and proper."*

It clearly was not the position that the Council was making a firm finding that he was competent and capable, if he continued to fail to perform or gain practical public experience, especially if that was going to be relied upon for any period beyond the end of 2017.

45. On 27 January 2017 the Appellant wrote to CIIPA stating that Dominion had:



*“not undertaken any assurance engagements as we have had no interest to date. As such all of the internal processes relating to the same have been put on hold. In other words, there is really no documentation for you to review whatsoever.”*

He added that he would be happy to provide relevant documentation concerning the same if any are taken on in the future. There is no evidence that any assurance engagement has been undertaken to date.

46. On 25 January 2017 the Appellant wrote to Shawn Seymour at CIIPA informing him that Dominion were not registered with the Cayman Islands Monetary Authority as a public accounting firm.

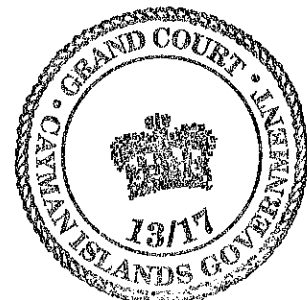
47. On or around 20 September 2017 the Appellant applied to renew his Licence to enable him to engage in public practice for 2018.

48. On 6 October 2017 the certificate confirming that Dominion was, until 31 December 2018, a registered firm in accordance with the Law was sealed by CIIPA. The reason why the expiry date of the registration was made until the end of 2018 rather than at the end of

12 months was because it was decided to implement a 'catch up' and thereby bring an end to staggered dates for the firms. It is accepted that a firm may only be registered if the partners, directors or persons holding an equivalent position in the firm are the holders of a Licence. It is also accepted that the Appellant had been the only person licenced at Dominion. Despite that, there is no merit in the Ground (ix) in the Grounds of Appeal that it was irrational for the refusal to renew the Licence as Dominion was at the time of the refusal a certified registered firm. It is clear that when the firm was certified as a registered firm in October 2017 the Appellant did possess a Licence. Although the Appellant was later not granted a renewal to the licence for 2018, there exists no power under the Law to revoke the earlier registration of Dominion.

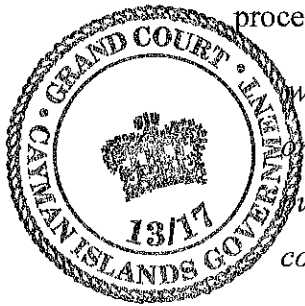
49. Following consideration of the Appellant's application for a 2018 Licence by the MLC a letter was written to him by CIIPA on 20 November 2017. In that letter an acknowledgement was given to the application for a renewal of Licence and reference is made to the letter dated 30 January 2017, and what was termed as being a renewal at that time with a grace period of one year. The Appellant was reminded that:

*"CIIPA can only approve the renewal of the Licence if satisfied you are sufficiently qualified, competent and capable of carrying on public practice (see Regulation 7(6)) of the Accountants (Application for Membership) Regulations. This was also noted to you in a letter sent on January 30, noting that it becomes increasingly more difficult to demonstrate competence if an individual has not been in public practice for an extended period."*



The Appellant was asked to provide evidence that he had conducted reviews or audit engagements during the past year as well as evidence to demonstrate how he had met the criteria set out at paragraph 4 of the CIIPA Help Sheet.<sup>20</sup>

50. The Appellant's attorneys wrote to CIIPA on 30 November 2017 stating that he met all the requirements under s.11 of the Law and made reference to a quality assurance review ("QAR") on Dominion conducted by the ICAEW. They mentioned that the purpose of that had been to review whole-firm procedures and to discuss the firm's approach to future audits. The attorneys added that the review records that the Appellant planned to undertake all audit engagements himself and as such the review for Dominion's procedures and its ability to conduct future audits:



*would necessarily have had a significant focus on Mr. Patraulea, considering not only whether he was sufficiently qualified, competent and capable of carrying on public practice, but also his compliance with CIIPA's requirements, including continuing professional development ("CPD")."*

The attorneys contended that the report concluded that appropriate procedures were in place for Dominion to start carrying out audit work and that the Appellant had performed appropriate CPD.

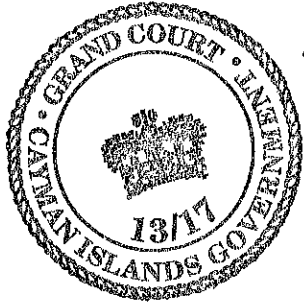
51. Mr. Trevor Smith, a Regional Director of Professional Standards with ICAEW swore an affidavit on 19 October 2018 on behalf of the Respondent in which he elaborated on the nature of the QAR which had been conducted. Mr. Smith mentioned that the scope of a review is limited to the firm as a whole and:

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<sup>20</sup>See paragraph 40 above.

*“does not include an individual review of any of the members or employees of the firm, save for as they relate to the policies and procedures of the firm as a whole.”*

He added that:



*“During the QAR, it would be commonplace for a reviewer to discuss the firm’s policies and procedures with the practitioner member of the member firm who was responsible for quality assurance and ensure that they have a sufficient grasp of the related rules, and in particular, assessing the competence of the firm by testing the audit quality primarily through the review of audit files<sup>21</sup> and the discussion of issues arising from this review.”*

52. Mr. Smith stated that a review of Dominion’s quality controls, policies and procedures, was carried out as well as assessing the firm’s compliance with the standards prescribed by the International Auditing and Assurance Standards Board (“IAASB”) in their guidelines on International Standards of Quality Control (“ISQC”) or ISQC1 by testing their audit quality. He emphasised that his primary observation during a view was that no audits had been signed at the time of the visit and noting that in his report he stated:

*“At the time of the visit, the firm had not completed any audits, although the first audit client was going through the client acceptance process.”*

Importantly, he concluded that:

*“As a result, it was impossible for me to assess the compliance with the relevant audit standards by testing audit quality on the basis that Dominion had not undertaken any audits” and that “the only feasible assessment for QAR purposes*

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<sup>21</sup> My emphasis by underlining.

*that could be made of Dominion at this point and, in this regard was how well Dominion was prepared for its first potential audit, which was yet to commence.”*

He further added that he had been:

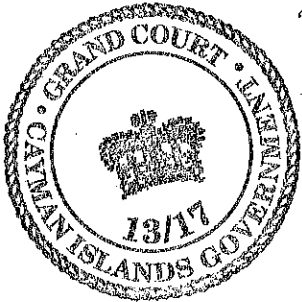
*“unable to assess Dominion’s compliance with the relevant audit standards, as part of my QAR, given that they had not conducted any audit engagements.”*

He stated that:

*“The scope of his review of Dominion was exceptionally narrow given that no audit quality testing could be completed as a result of Dominion not having conducted an audit, I believe since its inception in 2007, and was therefore limited to a review of Dominion’s policies and procedures.”*

He stated that:

*“During the conduct of the Review, in accordance with the normal ICAEW review process, the ICAEW did not make any determination as to the verifiable nature of Mr. Patraulea’s CPD but only commented on the adequacy of CPD in the context of the firm’s development of ISQCI, policies and procedures. The lack of completed audit files prevented any assessment of Mr. Patraulea’s ability to adequately apply those procedures on actual audits.”*

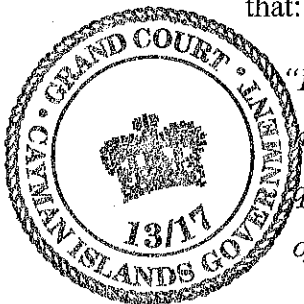


53. It is clear from the evidence of Mr. Smith that over-reliance is placed by the Appellant on the outcome of that review. The conclusions of the report do not support a contention that ICAEW found that the Appellant was sufficiently qualified, competent and capable of carrying on public practice. It cannot be regarded as being “*compelling evidence*” in support of such a contention. I find there is no merit in Ground (vi) of the Grounds of Appeal that the Council’s decision contradicts the conclusions of ICAEW.

54. On 5 December 2017 the Appellant received an email from CIIPA which had a link to a Certificate for the granting of a Licence for 2018. I accept the Respondent's evidence that the email from CIIPA purportedly enclosing the Licence for 2018 had been wrongly generated and electronically distributed. It does not appear that the Appellant now argues that that is an improper conclusion to reach and accordingly he no longer pursues grounds 1 and 2 of the appeal.

55. On 9 January 2018, the Appellant's application was further reviewed by the MLC. The members of the MLC unanimously determined that the licence should not be renewed as they found that the Appellant had not established that he had the requisite experience required to demonstrate competency. The primary ground for the refusal was the Appellant's lack of practical experience in audits/assurance over the last 10 years. The MLC determined that the Appellant had only three years of post-qualification assurance experience, none of which were in a supervisory role or capacity.

56. In 17 January 2018 CIIPA wrote to the Appellant to inform him that his Licence was not renewed. In the letter they referred to the request for evidence of audit work made in their letter of 20 November 2017 and the indication given about the requirements that would be needed to be met for a renewal set out in their letter of 30 January 2017. CIIPA stated that:

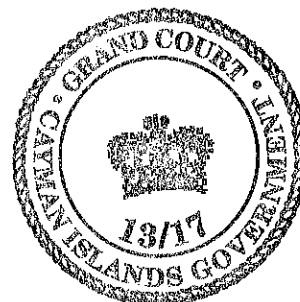


*"Having regard to the fact that you have not been engaged in public practice for more than nine years Council has determined that you are not sufficiently qualified, competent and capable of carrying on public practice, both at the time of your renewal application and for the period of the licence."*

57. The reasons given in this letter make clear that the extended period of nine years of non-engagement in public work was the significant reason for finding that the competency and capability requirement had not been established. It was not a finding that a senior CIIPA member “without recent audit experience” would be prevented from ever engaging in public practice work. I am satisfied from the way that the matter was approached by the Council that it would treat each application on a case by case basis and that the shorter the break from practical work the more significant the wider experience and CPD would become. Accordingly, I find no merit in Ground (iv) of the Grounds of Appeal.

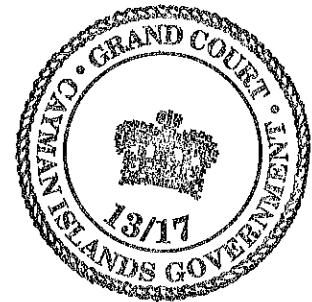
58. When the 17 January 2018 letter is read along with the email of 30 January 2017, together with the letter dated 30 January 2017 and the letter dated 20 November 2017 in which clear indications were given about the reasons why there was an obligation on CIIPA for greater scrutiny on renewals, what the requirements for renewal were and the consequences of non-compliance with those requirements set, he having provided them with no evidence about his engaging in public practice, the Appellant could have no doubt about why the Council had decided not to renew his Licence. Accordingly, I find no merit in Ground (viii) in the Grounds of Appeal.

59. On 12 April 2018, the Appellant filed his Notice of Originating Motion, in which the following orders were sought:



- (i) that the Licence to engage in public practice from received by email on 5 December 2017 from CIIPA be confirmed and a physical copy of the Licence be provided to him immediately;
- (ii) that the decision of Council made on 17 January 2018 to refuse to renew his Licence be declared void or, in the alternative, be reversed;
- (iii) that he be issued a Licence to engage in public practice for the period 1 January 2018 – 31 December 2018.

The Appellant no longer seeks the order in (i) above.



#### **The CIIPA Help Sheet**

60. CIIPA have produced a help sheet for applicants for initial Licence or for those wishing to apply to renew their Licence. The Appellant rightly points out that the help sheet does not comply with s.36 of the Law, as it does not state the provision of the Law to which it relates. I do not treat the help sheet as containing binding provisions. It is clearly a guide, and the expectations set out in the same are consistent with the warning about the requirements set out in the January 2017 letter sent by the Respondent to the Appellant.
61. The help sheet states that for a renewal of Licences, an applicant will be expected to demonstrate that they have met the ongoing requirements, including competence, capability, accessibility, commitment and good character. It also says that Council will determine competence and capability by reference to revised IES8 which came into effect in July 2016. At paragraph 3 where the learning outcomes which it is expected to have

resulted from “*serving for several years on engagement teams*” are set out, it states that an applicant’s practical experience and the level at which it was acquired is “*most important.*” Paragraph 4 details the expectations that Council has about an applicant’s experience.<sup>22</sup> The help sheet also sets out that “*by way of guide*” more experience than the “*typical minimum*” set out in paragraph 4 would be required if there had been significant gaps in the applicants experience and if that experience did not include adequate exposure to audits in specific industries. The help sheet also indicated at paragraph 6 that qualifications and ongoing CPD are also evaluated as part of the process.

### **The MLC Handbook**

62. The MLC Handbook is an internal handbook produced for MLC members. When dealing with competence and capability on a renewal of licence application the handbook provides that:

*“18. Professional competence is the ability to perform a role to a defined standard and goes beyond knowledge of principles, standards, concepts, facts, and procedures; it is the integration and application of (a) technical competence, (b) professional skills, and (c) professional values, ethics, and attitudes.*

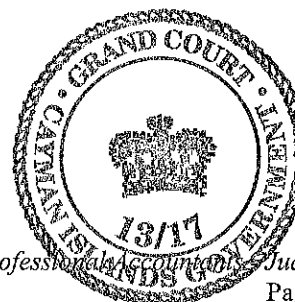
*19. Engagement Partners develop and maintain their professional competence through leading or serving on audit engagements, and through other professional development as part of their CPD. Competence and Capability cannot be maintained in the absence of ongoing practical experience, particularly with respect to professional scepticism and judgement.*<sup>23</sup>

*20. The applicant may seek to satisfy Council of his or her competence and capability with evidence e.g. performance reviews, independent references and*

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<sup>22</sup> See paragraph 40 above.

<sup>23</sup> My emphasis by underlining.



enhanced CPD activities specifically designed to compensate for any break in experience."<sup>24</sup>

63. The Appellant highlights that for the first application for a Licence, CIIPA's policy can be ascertained by looking at the MLC Handbook. Paragraph 15 in the Handbook provides that, when deciding whether to grant a Licence, Council:

*"may consider other factors when determining competency on a case by case basis."*

The Appellant suggest that a similar and less rigid approach should also be taken when considering an application to renew a Licence.

#### **Appellant's Contentions**

64. Consistent with a less rigid approach, the Appellant argues that he has demonstrated his ongoing competence and capability by the content of the ICAEW review of Dominion, due to the CPD it undertaken, due to the fact that he has a public practice licence with Institute of Chartered Accountants Manitoba ("ICAM") for 2017-2018, and due to his:

*"continued day-to-day practical involvement in audit issues with his work."*

I note that the Appellant rightly highlights that he is an experienced senior professional. He states that he prepares accounts that are audited and that frequently his work involves audit issues.



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<sup>24</sup> My emphasis by underlining.

65. As already stated at paragraph 53 herein, I am not satisfied that the content of the ICAEW demonstrates that the Appellant had established or maintained competency and capability to do public work.



**CPD**

66. The Appellant contends that Council failed to have regard to his CPD when determining that the same coupled with his experience did not demonstrate his competence and capability. In his evidence the Appellant states that in 2017 he undertook 43.75 hours of CPD, the majority of which he stated related public accounting practice. At paragraph 42 of his affidavit sworn on 24 October 2018, the Appellant provides some detail about how his CPD touched on audit issues and he refers to a detail Work in Progress Report which shows 29.95 hours of work that may be categorised as audit related. A significant amount of the disclosed time was spent on research including 7.25 hours in relation to developing Dominion's exhibited Quality Assurance manual and Audit Form.

67. Issues arose in relation to the Applicant's CPD, which came to the fore when he was selected as part of a random sample for the monitoring by CIIPA of the CPD of practitioners. It was contended that he had failed to maintain accurate and verifiable CPD records because although he provided a log with his CPD, some of that detail was not backed up with or was verifiable from appropriate documentation. Upon review it appears that some of the CPD information provided by the Appellant to CIIPA did not come with sufficient documentary evidence to identify verifiable CPD hours of the requested period between 2014 and 2016.

68. CIIPA's concerns about the required form for the provision of CPD detail has not been an issue that I have had regard to when making my determination. Firstly, the Respondent has made it clear, and I satisfied that, that the CPD compliance issue did not "*play a direct role in*"<sup>25</sup> or was not a "*material consideration*"<sup>26</sup> in the refusal to renew his licence. With this in mind, I see no merit in the latter part of Ground (viii) in the Grounds of Appeal and Ground (vii) as it relates to whether the refusal to grant a Licence was wrong. Whether or not the CPD requirements have been met does not affect my decision at this rehearing as to whether the Licence should be renewed. Secondly, when determining the issue of competency and capability, I have considered and carefully reviewed the CPD material and the content of paragraph 37 to 55 of the Appellant's affidavit, not to see whether it is verifiable or not, but to see whether it when coupled with his disclosed experience compensates for or can be viewed as an alternative for the lack of public practice practical experience over an extended period of time.

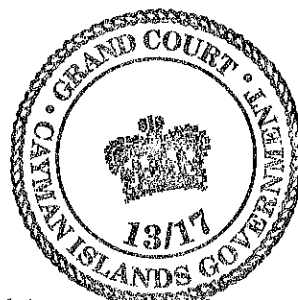
69. When one looks at IES8 it is clear that CPD is a factor to be taken into account when considering whether an applicant has demonstrated competence and capability. On page 106 of IES8 the following is stated:

*"A2. There are many different ways to describe and categorize professional competence. Within the IESs, professional competence is the ability to perform a role to a defined standard. Professional competence goes beyond knowledge of principles, standards, concepts, facts, and procedures; it is the integration and application of (a) technical competence, (b) professional skills, and (c) professional values, ethics, and attitudes.*

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<sup>25</sup> See paragraph 108 affidavit of Sheree Ebanks sworn on 24 October 2018.

<sup>26</sup> Last paragraph letter of Sheree Ebanks to the Appellant on 17 January 2018



A3. CPD is a continuation of Initial Professional Development (IPD): IPD is the learning and development through which individuals first develop competence leading to performing the role of a professional accountant. CPD is learning and development that takes place after IPD, and that develops and maintains professional competence to enable professional accountants to continue to perform their roles. CPD provides continuous development of the (a) technical competence, (b) professional skills, and (c) professional values, ethics, and attitudes achieved during IPD, refined appropriately for the professional activities and responsibilities of the professional accountant.

A4. As outlined in IES 75, CPD includes practical experience. As the career of an Engagement Partner progresses, practical experience becomes increasingly important in developing and maintaining the necessary depth and breadth of professional competence. Practical experience may be evidenced by annual self-declarations, records of chargeable time, and the results of qualitative monitoring such as performance reviews, engagement quality assurance reviews and regulatory inspections.

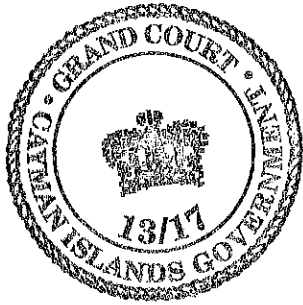
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A15. Only those professional accountants who develop and maintain the professional competence that is demonstrated by the learning outcomes listed in Table A will be able to deal with the complex situations that Engagement Partners may face during their careers. A professional accountant aspiring to be an Engagement Partner will usually serve for several years on engagement teams, and may progress through supervisory and managerial roles under the supervision of an Engagement Partner. This progression through increasing levels of responsibility is a common path through which a professional accountant may prepare to assume the role of an Engagement Partner. Those serving as an Engagement Partner develop and maintain their professional competence through leading or serving on audit engagements, and through other professional development as part of their CPD."

...



A17. Establishing the professional competence that professional accountants develop and maintain in performing the role of Engagement Partner serves several purposes. It protects the public interest; contributes to audit quality; enhances the work of Engagement Partners; and promotes the credibility of the audit profession.



A18. While a premise of this IES is that Engagement Partners have already developed the professional competence to assume that role, Engagement Partners operate in an environment of significant change. Pressure for change can come from many sources, including, but not limited to (a) increased regulation, (b) developments in financial and non-financial reporting, (c) emerging technologies, (d) increasing use of business analytics, and (e) business complexity. Change requires Engagement Partners to maintain and further develop professional competence throughout their careers." [My emphasis by underlining].

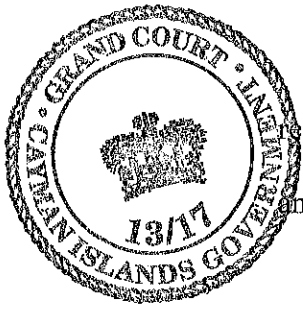
70. Paragraph 2 in IES8 provides that:

*"It is the responsibility of the professional accountant performing the role of Engagement Partner to develop and maintain professional competence by undertaking relevant CPD activities, which include practical experience."<sup>27</sup>*

71. The CPD undertaken may be more relevant and or act as an alternative if there has been a relatively short period of absence from practical experience. In such circumstances it is right that an applicant may be able to satisfy Council of his competence and capability if he can show evidence of enhanced CPD activities specifically designed to compensate for any reasonable period where there has been a break in practical experience. However, if there has been an extended break, and in the matter before me there inarguably has been, unless the CPD undertaken specifically and adequately addresses the deficiencies resulting from the lack of practical experience during that time, it is unlikely to be

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<sup>27</sup> My emphasis by underlining.



garded as an adequate substitute for relevant experience when considering competence and capability.

72. The fact that Dominion embarked in a satisfactory manner on preparatory work, albeit for an audit which in the end never took place, is a factor to have in mind. However, it carries far less weight when it comes to demonstrating capability and competence than might be derived from reviewing a well conducted audit.

73. IES8 makes clear that the accountant should continue to gain hands on practical experience. As rightly opined by the Respondent, the nature and complexity of the public practice work is not the same as it was in 2007. As already noted herein by me although, a part of his disclosed CPD information is related to audit work, the nature of the same is not substantial enough to compensate for the lack of relevant practical public practice accounting work since 2007. CPD alone would not suffice in demonstrating competence and capability to undertake audit work after such a significant period of time during which no audits had been conducted. I am not satisfied that the CPD evidence produced by the Appellant, which cannot be said to be specifically designed to compensate for any break in the experience for such an extended period of time, is sufficient to demonstrate sufficient competence and capability. Although I do feel that there should be a review of CPD undertaken when determining fitness and propriety to engage in public practice, I find that the Appellant's CPD was not sufficient. Accordingly, I find no merit in Ground (ii) in his Grounds of Appeal. I also find that having regard to the IES8 standards that great emphasis must be placed on the fact that the Appellant has not engaged in public

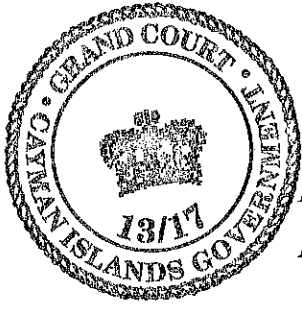
practice for an extended period of time. The guidance and approach taken by the Council is consistent with the international standard. Accordingly I find no merit in Ground (v) of the Grounds of Appeal. The nature of the disclosed CPD material and hours spent on audit related issues could not be termed as being “*enhanced*” to make up the deficiency in practical experience. For the avoidance of doubt, I reiterate that any concern held by CIIPA about whether the CPD disclosure from 2014 is verifiable has not influenced my conclusion.

74. As the CPD, especially if it is enhanced, is a factor that may be taken into account when seeking to demonstrate capability and competence then an opportunity must be given to an applicant to take up that opportunity with the CIIPA giving some guidance in that regard. It is argued that the Council failed, prior to refusing his renewal application, to provide any assistance to the Appellant as to how his practical experience could be met by other means, for example by pointing out or providing access to enhanced CPD. It is submitted that this makes the Council’s decision unjust.

75. The Appellant recognises that IES7 paragraph 3 reiterates that it is the responsibility of the professional accountant to develop and maintain a professional competence by undertaking relevant CPD activities. However, the paragraph then goes on to state that it is the role of IFAC member bodies to:

- “(a) Foster a commitment to lifelong learning among professional accountants;*
- (b) Facilitate access to CPD opportunities and resources for professional accountants; and*

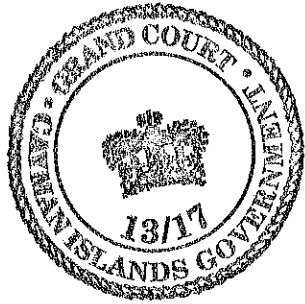




*(c) Adopt prescribed requirements relating to the development and implementation of appropriate measurement, monitoring, and compliance procedures, so as to help professional accountants develop and maintain the professional competence necessary to protect the public interest."*

76. In support of his contention, the Appellant also argues that one of the objects of the CIIPA, as set out in Schedule 1 of the Law, is to provide support and assistance to its members, for example by increasing the knowledge, skill and proficiency of members in all things relating to the business or profession of accountants as well as by encouraging and assisting by the provision of increased facilities for the study of accountancy.

77. There can be no doubt that, from the content of the letter sent by CIIPA to him on 30 January 2017, the Appellant was fully aware of what the Council required him to do if he sought a renewal for 2018, namely to actually provide public accountancy services during that year. To do so he was not required to undertake any complex or large audit. The requirements set out in the January 2017 letter, especially after such a prolonged gap in experience, are consistent with the Learning Outcomes set out at paragraph 9 Table A in IES 8. The content in Table A highlights the technical competence requirements which arguably could only be demonstrated by the conducting of an audit. Any accountant reading the same should recognise that the type of CPD that would, pursuant to paragraph 2 IES8, be his responsibility to organise and undertake, would need to address or meet the same. It is also consistent with what is set out in the Framework for International Education Standards for Professional Accountants and Aspiring Professional Accountants (2015) paragraph 35-37 which provides:



“35. Change is a significant characteristic of the environment in which professional accountants work, requiring them to develop and maintain their professional competence throughout their careers. Pressures for change come from many sources including, but not limited to, (a) public expectations, (b) globalization, (c) advances in technology, (d) business complexity, (e) societal changes, and (f) increase in regulation and oversight. As a result, continuous learning is integral to CPD as professional accountants need actively to pursue the education, training, knowledge, and skills which they need to anticipate and adapt to changes in processes, technology, professional standards, regulatory requirements, employer demands, and other areas.

36. Professional competence requirements may change as professional accountants take on new roles during their careers. For example, a professional accountant in business may wish to become an accounting educator; or an accounting technician may wish to work in an audit role. CPD that includes many of the same elements as IPD also develops the additional breadth and depth of (a) technical competence, (b) professional skills, and (c) professional values, ethics, and attitudes which may be necessary when moving into a new role.

37. CPD includes practical experience that provides individuals with the opportunity to develop their professional competence within the workplace. As a professional accountant's career progresses, emphasis tends to shift from structured learning activities to practical experience and informal learning. [My emphasis by underlining].

78. There was no specific training that Council were saying to the Appellant that he was required to undertake, but on the other hand during 2017 the Appellant did not reach out to CIIPA seeking assistance or access to facilities/opportunities to address the long standing deficiencies in his practical experience which he was fully aware of and accepted. As set out in paragraph 2 of IES8, the primary responsibility rests with the professional accountant to develop and maintain his professional competence.

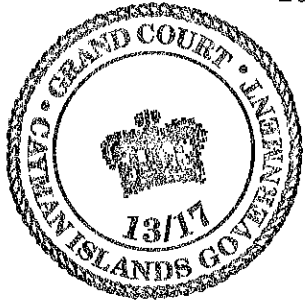
79. It is evident that CIIPA were willing to offer guidance if sought. In the 9 January 2017 letter to the Appellant Mrs. Ebanks told him that he should not hesitate to contact the CIIPA Office if he had any queries about the Quality Assurance Review. In her letter of 20 November 2017 Mrs. Ebanks stated when referring to her 30 January 2017 letter:

*“I attached a copy of the law and regulations for information. Please do not hesitate to contact myself or the office if you have any questions or requests, including if would like to meet with myself or the Membership and Licensing Committee to discuss.”*

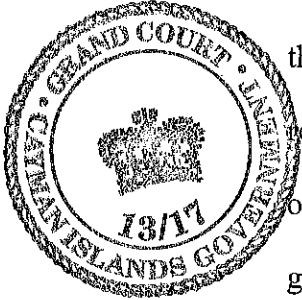
It does not appear that those offers were taken up by the Appellant.

80. The remedy required of the Appellant was clearly provided him in the January and November 2017 correspondence. It is evident that the Appellant was not proactive in seeking guidance from CIIPA about the type of training required. From the correspondence it appears that CIIPA were offering an open door to him if he wished to seek their guidance. Accordingly, I do not find merit in Ground (iii) of the Grounds of Appeal.

81. The Appellant relies upon the fact that the he has been licensed to engage in public practice with CPA Manitoba (“CPAM”) in Canada since 2012 and that a licence was granted to him 2018. He points out that CPAM, who like CIIPA is a member of IFAC, has found him competent and capable. There is no detail before me about the nature of the accountancy work that may be conducted in Manitoba. However, the way that one member body applies the standards found in IES8 and that country does not bind the way



that another member body applies them in its own jurisdiction. In accountancy, it is clear that the type of work that may be conducted will change from jurisdiction to jurisdiction. The type of work in the offshore jurisdiction of the Cayman Islands will be different to that found in Manitoba and accordingly there may be additional requirements set by the regulatory body. This may be because there may be a requirement for an increased level of proficiency in the jurisdiction to affect the nature of work is undertaken there. The granting of a Manitoba Licence, although something that I and the Council may note, is not something that should have affected its decision where there is no evidence of public practice being undertaken by the Appellant there or in the Cayman Islands for such a significant period of time.



### Conclusions

82. I do not find that Council were wrong in deciding to refuse to renew the Appellant's Licence. Having had the opportunity to rehear the matter which has included a thorough review of all of the evidence, careful consideration of the oral and written submissions and authorities provided by the parties, when exercising my discretion, I reach the same decision as that reached by the Council in the Appellant's circumstances. The extended period of lack of provision of public accounting services by the Appellant is not consistent with the standards and practical experience required to establish competency and suitability by the IAESB and his other experience and CPD undertaken does not compensate for that. I am not satisfied that the Appellant is qualified and competent to engage in public practice and meets all of the requirements of s.8 and s.10 of the Law.

**Costs**

83. My provisional view is that costs should follow the event, and therefore the Appellant should be ordered to pay the Respondent's costs. At this time I see no reasons why those costs should not be made on the standard basis. However, as I have not heard from the parties on the issue of costs, either party has leave to apply to be heard on the issue. If the Court is not notified in writing by a party that they wish to be heard on the issue of costs within 14 days of the circulation of the sealed final version of this Judgment, then I will then make the costs order outlined above.

.....  
**The Honourable Mr. Justice Richard Williams**  
**JUDGE OF THE GRAND COURT**

