

B. Background

3. On 26 June 2019, the Respondent declared to the Institute that he had been convicted in the Magistrates' Court on 3 June 2019 of the offence of committing an act outraging public decency.

C. Relevant Statutory Provisions

4. Section 34(1)(a)(x) of the PAO provides that a complaint is made against a certified public accountant who was guilty of dishonourable conduct.
5. Section 34(2) of the PAO states that for the purposes of subsection (1)(a)(x), "dishonourable conduct" means an act or omission of a certified public accountant, whether or not in the course of carrying out professional work or as a certified public accountant, which would reasonably be regarded as bringing or likely to bring discredit upon the certified public accountant himself, the Institute or the accountancy profession.

D. The Complaint

6. Section 34(1)(a)(x) of the PAO applies to the Respondent in that he has been guilty of dishonourable conduct as a result of his conduct on 11 December 2017 that led to his conviction on 3 June 2019 at the Magistrates' Court.

E. Facts and Circumstances in support of the Complaint

7. The Respondent was prosecuted for taking a video of the thigh of a 28 year old female as she was walking. The Respondent had been around 1 metre behind the female pedestrian and the recording lasted about 10-15 seconds.
8. The Respondent was convicted after trial and was sentenced to imprisonment for 6 weeks.
9. In deciding on the sentence, the court had taken notice of a past conviction of the Respondent. In 2011, the Respondent was then convicted of the offence of loitering in a female toilet. He was sentenced to a probation order for 15 months (the "**First Conviction**").
10. The Respondent lodged an appeal against the present conviction based on weight and sufficiency of evidence, and the appeal was dismissed by the Court of Appeal in January 2020.
11. The Respondent had declared the First Conviction when he applied to become a registered student of the Institute in 2013. In light of the conviction, the Institute's Registration and Practising Committee considered whether the Respondent was fit and proper to be registered as a certified public accountant

("CPA") as and when he fulfilled the prescribed requirements. The Committee had regard to a number of mitigating factors and concluded that the Respondent should be given a chance to become a CPA. As such, the Committee allowed him to be admitted as a registered student.

12. The present conviction represents the Respondent's repeated commission of a similar type of offences. His act would reasonably be regarded as bringing or likely to bring discredit not only upon the Respondent himself but also the Institute or the accountancy profession. As such, the Respondent is guilty of dishonourable conduct under 34(1)(a)(x) of the PAO.

F. Proceedings

13. The Respondent admitted the complaint against him. By a letter dated 9 July 2020, the parties requested that the steps set out in Rules 17 to 30 of the Disciplinary Committee Proceedings Rules be dispensed with. The Committee agreed to the parties' proposal and directed the parties to make written submissions to the Committee as to sanctions and costs.
14. The Disciplinary Committee has reviewed the documents and agreed that 12 months' removal as proposed by the Complainant is an appropriate sentence.
15. The Committee agreed with the Complainant's proposal of at least 12 months' removal from the membership as per its letter dated 16 September 2020, and directed that the Respondent be removed from the membership of the Institute for 12 months accordingly. The Committee considered that the removal of 12 months is appropriate having regard to the circumstances of this case and of relevant case authorities.
16. In particular, the Committee has reviewed D-12-0770H in which there are elements in that and this case respectively indicating a more serious nature. For instance, in that case, there was clear evidence of "pre-meditation" of installing an app avoiding detection, and having already taken 201 photos before being arrested. Whilst the current case, the offence is a second offence which would warrant a tougher sentence. So on balance, the Committee agreed that a same length of sentence for both cases is suitable.
17. The Committee also agreed that the costs to be rewarded as per Annex D to the Complainant's letter dated 16 September 2020.

G. Order

18. The Committee ordered that:-

- (a) the Respondent be removed from the register of CPAs for 12 months effective from 42 days from the date hereof under section 35(1)(a) of the PAO; and
- (b) the Respondent do pay the costs and expenses of and incidental to the proceedings of the Complainant/Clerk in the sum of HK\$29,178 (i.e. Complainant's costs of HK\$27,064 and the Clerk to the Disciplinary Committee's costs of HK\$2,114) under Section 35(1)(iii) of the PAO.

Dated: 12 March 2021

Mr. David Fenn
Chairman of the Disciplinary Committee
Disciplinary Panel A

Ms. Chui Hoi Yee
Disciplinary Panel A

Mr. Li Peter Po-ting, CPA (Practising)
Disciplinary Panel B

Ms. Yap Hiu Yee, Betty
Disciplinary Panel A

Mr. Man Mo Leung, CPA
Disciplinary Panel B