Proceedings No. : D-16-1214C

IN THE MATTER OF

A Complaint made under Section 34(1A) of the Professional Accountants Ordinance, Cap. 50

BETWEEN

Registrar of the Hong Kong Institute of Certified Public Accountants — Complainant

and

Mr. TANG, Chung Wah (F02777)
Ms. LEE, Fung Ying, Alison (F03537) — Respondents

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

Members:	Mr. FUNG, Chi Man (Chairman) Ms. CHANG, See Mun, Lily Mr. CHIU, Shun Ming Mr. CHOI, Wai Wing Mr. MIU, Liong, Nelson
Present:	Mr. Kenneth NG and Mr. Peter NIP (for the Complainant) Mr. TANG, Chung Wah (the 1st Respondent)
Absent:	Ms. LEE, Fung Ying, Alison (the 2nd Respondent)
Date of Hearing:	22 July 2019
Date of Decision:	6 September 2019

DECISION

I. INTRODUCTION

1. Complaints were made by the Registrar of the Hong Kong Institute of Certified Public Accountants (the "**Complainant**") against:

   1) Mr. Tang Chung Wah ("**Tang**"), a certified public accountant ("**CPA**") (practising) (Membership no.: F02777); and

   2) Ms. Lee Fung Ying, Alison ("**Lee**"), a CPA (Membership no.: F03537) (Tang and Lee are collectively the "**Respondents**"),

   pursuant to Section 34(1A) of the Professional Accountants Ordinance, Cap.50, Laws of Hong Kong ("**PAO**").

2. The background and material facts of the case leading to the complaints were set out in the Decision[1] of the Honourable Mr. Justice To of the Court of First Instance (the "**CFI**") in Bankruptcy Proceedings No. 3819 of 2011, the Judgment[2] also of the Honourable Mr. Justice To of the CFI in Miscellaneous Proceedings No. 450 of 2016 and were summarized in the Court of Appeal (the "**CA**") Judgment dated 16 February 2017 in Civil Appeal No. 214 of 2016.

3. The facts relevant to this hearing are highlighted below.

Background

4. The CFI issued two orders ("**R1**" and "**R2**") on 5 November 2013 ordering the Respondents and JBPB & Co. ("**JBPB**"; a former accounting firm in partnership) respectively to produce certain documents.

5. The Respondents did not comply with the above orders. On 18 March 2015, the CFI issued R1's Enforcement Order and R2's Fresh Order (collectively the "**March 2015 Order**") to the Respondents.

6. Committal proceedings were commenced against the Respondents, and the Honourable Mr. Justice To found the Respondents guilty of contempt for failure to

[1] Decision dated 18 March 2015.
[2] Judgment dated 18 October 2016.

produce four categories of documents (cf. the CFI Judgment dated 18 October 2016).

7. The Respondents appealed and on 18 October 2016, CA found the Respondents guilty of contempt of Court for their failure to comply with paragraph 3 of the March 2015 Order[3] only in relation to one category of documents (i.e. invoices, receipts). The Respondents were ordered to pay 80% costs of the appeal and the CFI hearing on an indemnity basis.

8. The contempt was subsequently purged, and Tang was sentenced to pay a fine of HK$300,000 and Lee was sentenced to pay a fine of HK$200,000.

Complaints

9. Three complaints were lodged by the Complainant against the Respondents in relation to the Court's finding of contempt and sentencing:-

   9.1 Under Section 34(1)(a)(vi) of the PAO - that the Respondents failed to observe, maintain or otherwise apply Sections 100.5(e) and 150.1 of the Code of Ethics for Professional Accountants ("**COE**") to comply with relevant laws and regulations and avoid any action that discredits the profession, when they were found to be in contempt of Court by not complying with the March 2015 Order ("**Complaint 1**");

   9.2 Under Section 34(1)(a)(viii) of the PAO - that the Respondents' contempt of Court amounted to professional misconduct ("**Complaint 2**"); and

   9.3 Under Section 34(1)(a)(x) of the PAO - that the Respondents' contempt of Court amounted to dishonourable conduct ("**Complaint 3**").

10. The substantive hearing of the complaints took place before the Disciplinary Committee (the "**Committee**") on 22 July 2019. Tang was present but Lee did not appear at the hearing. The Committee was satisfied that sufficient notice had been given to the Respondents and opportunities were granted to them to state their cases. The hearing proceeded in Lee's absence.

II. DISCUSSIONS

11. The complaints were denied by the Respondents, although they admitted (and could not deny) the fact that they were held to be in contempt of Court.

[3] The Respondents partially complied with the March 2015 Order in that they complied in respect of the R1's Enforcement Order, but not the R2's Fresh Order. Paragraph 16 of the Judgment, dated 18 October 2016 refers.

12. Tang (who was not legally represented in these proceedings) raised various objections and grounds of defence in the present proceedings (which will be discussed below).

13. Lee basically adopted Tang's line of arguments in the present proceedings. Despite Lee's absence, her written defence / submissions were fully taken into account by the Committee in reaching its decisions. In particular, the Committee was conscious of the fact the she left the matter regarding compliance with the March 2015 Order largely to Tang to handle.

Capacity of the Respondents

14. In Tang's oral submissions, he claimed that the R1's Enforcement Order was made against the Respondents in their capacity as joint and several liquidators of CWT Textile Supplies Company Limited ("**CWT**"), while the R2's Fresh Order was made against the Respondents in their capacity as partners of JBPB, but not in the capacity as liquidators.

15. Tang emphasised that JBPB was not a registered firm of Certified Public Accountants at the time of the contempt. Upon that, in all findings of contempt taking place after 2010, the Respondents could not have acted in the capacity of liquidators, but only as partners of JBPB.

16. Tang suggested that, since the Respondents were found guilty of contempt for their failure to comply with R2's Fresh Order only, the contempt does not impinge on his capacity "as a liquidator or an officer of the Court, or in any professional capacity or in connection with any professional work as such"[4], and so does not constitute any professional misconduct, neither does it bring public disrepute to the profession.

17. In response, the Complainant argued that R2's Fresh Order was made as a result of the disputes amongst the partners of JBPB, and that was to make it clear that the person who has possession, control, and power of the requested documents would produce the same. The Respondents could not have been mistaken of their duties to comply with the relevant Court orders. After all, the Respondents are professional accountants and members of the Hong Kong Institute of Certified Public Accountants ("**HKICPA**") and they ought to comply with any Court order. This is supported by the CA judgment[5].

[4] Paragraph 29 of Tang's Reply, dated 6 December 2018.
[5] Paragraph 5.8 of the CA judgment, dated 16 February 2017.

18. The Complainant also quoted the CA judgment stating that the concerns or argument regarding the capacity of the defendants upon which they received the documents is "very much an afterthought"[6].

19. The Committee considers that the "capacity" upon which the Respondents received the orders requiring the documents makes no difference to whether the complaints can be established. They are professional accountants and as members of HKICPA, regardless of whether they were acting in the capacity of liquidators at the time of the contempt, or whether JBPB was a firm registered with HKICPA.

"Double Punishment"

20. Tang raised the argument that the present disciplinary proceedings would constitute double punishment. He explained that he had already purged his contempt and paid the penalties as sentenced by the CFI.

21. The Complainant submitted that Tang's argument reflects a common misconception of double punishment. We agree. The Court proceedings and disciplinary proceedings serve two different purposes as explained in a passage from *Ziderman*'s case, cited in Disciplinary and Regulatory Proceedings paragraphs 7.82 - 7.85 below:

> The purpose of disciplinary proceedings against [a dentist] who has been convicted of a criminal offence by a Court of law is not to punish him a second time for the same offence but ***to protect the public who may come to him as patients and to maintain the high standards and good reputation of an honourable profession***. (our emphasis)

22. In this case, the Respondents were punished by the Court for their disobedience of the Court orders. These disciplinary proceedings, on the other hand, primarily concern the professional conduct and standards expected of members of the HKICPA. These are two separate matters.

Jurisdiction of the Complainant

23. Tang further argued that the Complainant had no jurisdiction to put forward the complaints, with reference to the case of *Kao, Lee & Yip v Donald Koo Hoi-Yan*[7]. He pointed out that the Law Society of Hong Kong ("**LSHK**") did not commence disciplinary proceedings against Mr. Donald Koo even though he was held in contempt of court, and by analogy, the HKICPA does not have the authority to commence disciplinary proceedings on similar matters.

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[6] Paragraph 6.14 of the CA judgment, dated 16 February 2017.
[7] *Kao, Lee & Yip v Donald Koo Hoi-Yan* FACV no. 27 of 2007, dated 25 June 2009.

24. The above argument is flawed and it does not advance Tang's case at all. The Committee cannot and should not speculate the reason for any other professional body not to commence disciplinary proceedings against its members. The inaction of the LSHK has absolutely no bearing on the Committee's decision-making exercise. The Committee is satisfied that the Complainant has the power and adopted the correct procedures for the current complaints.

25. In fact, a previous application by Tang for discovery and / or subpoena orders against the LSHK for documents / information was dismissed (see the Order and Reasons for Decision of this Committee dated 17 April 2019).

26. The Committee repeats the reasons in paragraph 10 of the said Order and Reasons for Decision:

    (a) To the extent that Tang suggested that "if someone (who might have committed a breach of certain rules) was not prosecuted, he should not either", that is fundamentally wrong.

    (b) Absent any *mala fides*, this Committee should not intervene with the decision if a complaint is to be filed against any member of the HKICPA.

    (c) It could not be said that by not prosecuting Mr. Donald Koo, the LSHK set any "precedent" or any hard rule that the Complainant has to follow.

    (d) This Committee needs not speculate the reasons that the LSHK decided not to prosecute Mr. Donald Koo for breach(es) of the Hong Kong Solicitors' Guide to Professional Conduct or related Practice Rules. The LSHK would have its internal policy and how the LSHK responded to a member committing a breach has no bearing to the present complaint. The HKICPA has its own constitutions and rules and the decision to file the present complaint (or not) is one for the Complainant.

Errors in the CFI Decision and Judgment of the Honourable Mr. Justice To

27. Tang argued that the Honourable Mr. Justice To was very biased against him and had made many factual errors in his judgment. Twelve pages (pages 361 - 372 of the agreed Hearing Bundle) of comments against the Judgment were submitted in support of this point. He further pointed out that the Honourable Mr. Justice To has a habit of making colourful comments in his judgments in other cases[8]. Hence, the Committee should not take his harsh statements at face value, and should wholly

[8] *Allied Ever Holdings Limited* HCCW 497/2009, dated 27 November 2017.

disregard the findings of the Honourable Mr. Justice To in his Decision and Judgment.

28. The crux of the present complaints is the contempt order and the sentencing of the Court. Errors of law of the Honourable Mr. Justice To in his Judgment have been corrected by the CA. The Honourable Mr. Justice To was entitled to make his own finding of facts; and those facts / matters not altered or changed by the CA remain proper findings. The reference to *Allied Ever Holdings Limited* is unrelated to the present complaints and does not reflect the overall quality of Decision and Judgment by the Honourable Mr. Justice To when his Lordship held against the Respondents.

John Chan's case

29. Tang mentioned the case involving one Mr. John Chan's bankruptcy, in which he was initially nominated as the trustee-in-bankruptcy. He explained that there was a challenge as to whether he remained fit and proper to be a trustee-in-bankruptcy. In his Decision[9] dated 2 August 2019 (the "Decision"; a copy of which was provided to the Committee after the hearing on 22 July 2019), the Honourable Mr. Justice Louis Chan disagreed with the Official Receiver's submissions that Tang became unfit to act as a liquidator or trustee. This was despite the concerns[10] of the Official Receiver including: Tang's unwillingness and uncooperative attitude to comply with court order, his complete lack of respect to court, his refusal to accept that he was wrong in committing the contempt, his "stubbornness" and unnecessarily confrontational behaviour etc.

30. In paragraph 69 of the Decision, the Honourable Mr. Justice Louis Chan noted that there was no suggestion of dishonesty or malice on the part of Tang and his Lordship observed that whilst Tang's insistence or stubbornness would lead to frustrations of those being affected, those did not impact on Tang's judgment and performance as an insolvency practitioner or affect his fitness to act as a liquidator or trustee. At the same time, the Honourable Mr. Justice Louis Chan considered that Tang's fitness in general to practise as a CPA is a disciplinary matter of the professional body of which Tang belonged. The Committee agrees.

31. The Committee does not consider that the Decision would impact on the question if the complaints will be established. The question for the Court to decide is whether Tang remains fit and proper to carry out the duties as a trustee-in-bankruptcy. The questions before the Committee are different[11].

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[9] *Re: Chan John Loong Fai* [2019] HKCFI 1886.
[10] Paragraphs 18 to 20 of the Decision referred.
[11] See Paragraph 9 above.

Alleged Inability to / Purported Reasons for not Complying with R2's Fresh Order

32. In Tang's explanation as to why he was found in contempt of Court, he illustrated the difficulties and frustrations he faced then. Tang stated that he was at the time dealing with a number of litigation cases with the majority partners of JBPB (the "**Majority Partners**"), and so the prospect of accessing the required documents seemed impossible.

33. Tang claimed that he had never seen the invoices of the payments once they were passed to the Administration and Finance Department of JBPB. He argued that he would be under a great administrative burden to produce the documents when they were not even in his possession. Be that as it may, once the relevant Court orders have been served, there was no excuse for non-compliance. One questions if there is any other person apart from the Respondents who is in a better place to produce the relevant documents, given that they were the liquidators of CWT. And of course, any purported reasons for non-compliance were rejected by the CFI and the CA.

34. Insofar as the Respondents were required to pay a sum of HK$35,000 to gain authorisation / access to the documents, Tang was, understandably, unwilling to make the payment (mainly because of their disputes with the Majority Partners) but they did manage to gain access to the documents by making the payment. So, the truth is that the contempt proceedings could have been avoided had the Respondents acted sensibly.

35. The Committee accepts that the documents may only be found in some 130 boxes of documents (without a Document Management List) and Tang had to spend hours opening each of the boxes by hand in search of the documents.

36. The Committee sympathises with the Respondents in regard to the difficulties they faced in complying with R2's Fresh Order. However, the Committee does not view the excuses for the delay / non-compliance given by Tang to be legitimate. The Respondents were ultimately able to produce the required documents. It was therefore clearly within their powers to produce the documents in compliance with R2's Fresh Order.

37. Tang also erred in raising a defence on the necessity of the documents. It is not for the Respondents to place himself as the judge in deciding whether the documents were of use, just as it is beyond the Committee to speculate. The Court order is there to be followed and once a challenge to the propriety of the orders (particularly the R2's Fresh Order) fails, there is simply no justification not to comply with the same.

Tang's Character and Past Contributions to the Profession

38. Tang quoted *GMC v Spackman*[12], stating that due inquiry involved a "full and fair consideration of evidence that the accused desires to offer" and "hearing his witnesses". The Committee does not dispute this.

39. Tang referred the Committee to seven witness statements he had submitted, to which he had hoped would reflect his integrity and what his acquaintances, and other members in his and other professions thought of him.

40. The Committee does not consider that the witness statements produced by Tang to be of much assistance. The question of whether the complaints are proved is for the Committee to decide. What Tang's witnesses think of him are irrelevant considerations for the Committee to take into account when deciding on the complaints.

41. Tang also referred to the case of *Re: Chang Hyun Chi*[13] in which he was involved and received compliments from the Court. He also drew the Committee's attention to his contributions to the profession and continued public recognition respectively, emphasising his good deeds and contributions to the profession and the insolvency practice in Hong Kong.

42. On the contrary, the Complainant argued that, in Tang's wilful defiance of the Court order, he has proven to be dishonest in the proceedings before him. The Complainant cited the Judgment of the Honourable Mr. Justice To which states that "even as of now, Tang has never been honest with this court"[14]. Tang is therefore not a man of integrity in this matter.

43. The Committee considers the above to be irrelevant to the liability itself as no amount of "good deeds" can negate the fact that the Respondents were in contempt of court. Equally, the observations of the Honourable Mr. Justice To would only be relevant in sentencing. There could be other mitigating or aggravating factors.

III. FINDINGS OF THIS COMMITTEE

44. The Committee agrees with the submissions of the Complainant that the contempt is serious, for the following reasons:

    44.1 In the CA judgment dated 16 February 2017, it was held that the contempt was a "wilful defiance" and a "determined and obstinate refusal to comply". Although the Respondents later tried to purge their contempt, the

[12] *GMC v Spackman* AC 627, dated 5 August 1943.
[13] *Re: Chang Hyun Chi* (Charles Zhi, now deceased in HCB5227/2006), dated 12 May 2017.
[14] Paragraph 109 of the CFI judgment, dated 18 October 2016.

Honourable Mr. Justice To, in the CFI judgment dated 11 October 2017, still considered that there was "a deliberate intention to stall time". Tang, in particular, contested the discovery application rigorously "by raising every objection, however technical and unmeritorious". Such conduct fell far below what would have been expected of a reasonable CPA.

44.2 The Trustees of Mr. David Ho suffered irremediable prejudice in having to "wait for more than two years for documents which the Respondents could have been easily produced"[15] and, by the time they had finally received them, were of no use whatsoever. By resisting the discovery application, the Respondents gave the objective impression they had something to hide, and thus the Trustees were "misled, their time and costs [were] wasted, and opportunities [were] lost". Moreover, there is a public interest element in the case, i.e. the public's interest in having liquidation investigated swiftly with the least expenses.

44.3 The Official Receiver is highly concerned about the present case and has temporarily removed the Respondents from all Panel A cases.

45. Tang argued that his lengthy comments against the Honourable Mr. Justice To did not reflect his lack of remorse, but were made to illustrate his perspective on the matter. Tang further elaborated that his refusal to pay the inspection fee was due to his stubbornness, as he was in a litigious fight with the Majority Partners at the time. In spite of this, the Committee pays heed to the findings of the Honourable Mr. Justice To in the Sentencing Order that there was a lack of remorse from Tang in his deliberate stalling of time and delaying of the proceedings.

46. The Committee does not consider any other purported excuses / justifications given by the Respondents to ignore R2's Fresh Order.

IV. DECISIONS – Are the Complaints Proved?

Complaint 1

47. Complaint 1 is in respect of the Respondents failure "to comply with relevant laws and regulations and to avoid any action that discredits the profession". The Complainant relies on Sections 100.5(e) and 150.1 of the COE.

48. The Complainant submitted (to which Tang disputed) that the phrase "relevant laws and regulations" would include the common law rules whereby Court orders must be obeyed, and is found upon the inherent jurisdiction of the High Court. The

[15] Paragraph 22 of the High Court judgment, dated 11 October 2017.

Complainant supported his argument by citing *Wong Ho Ming*[16]: "the law concerning contempt of Court order is not found in the statute, but in the common law." and that "the substantive law of contempt is still the common law"[17]. Hence, the jurisdictional basis for the contempt of Court order is the common law.

49. While the jurisdictional basis for the contempt of Court order is undisputed, there were no case precedents concerning the proper interpretation of the phrase "relevant laws and regulations" in that context. One may equate "laws" with statutes only, but the word may also bear the meaning of both statutes and the common law. The Committee considers that a purposive approach should be adopted and there is no reason to adopt a restrictive meaning of the word.

50. The COE serves as a guiding document stating basic principles that professional accountants should follow, including certain standards and compliance with the law when practising. The Committee sees no need in dwelling on the subtle differences between the common law and statutory provisions. The Committee should use a fair, wide and liberal construction of the wordings within the COE to ensure that professional accountants maintain a certain ethical standard.

51. It would be absurd if a professional accountant's omission to abide by direct Court orders was not considered to have fallen below the expected standard of the profession.

52. In any event, the Committee finds that the Respondents had failed to "avoid any action that discredits the profession". The Respondents could have easily avoided the contempt proceedings. In that regard, the Committee should mention that:-

    52.1 The Complainant highlighted to the Committee that Tang himself, in a letter dated 15 November 2017, admitted that he had "already suffered badly as a result of these contempt findings in terms of public disrepute, [and] severe tarnishing of [his] professional reputation".

    52.2 In rebuttal, Tang stated that the words quoted only had the effect of admitting his personal disrepute and did not represent an admission of discrediting the whole profession.

    52.3 The Committee gives little weight, if any, to what Tang stated in the aforementioned letter. The statements do not constitute any unequivocal admission. The Committee only focuses on the conduct (misfeasance / nonfeasance) of Respondents, and it is for the Committee alone to decide whether such contempt brings disrepute to the profession.

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[16] Paragraph 55 of *Secretary for Justice v Wong Ho Ming* [2018], CACV 259/2017.
[17] *Hong Kong Civil Procedure 2018*, Vol 1, 52/1/1.

53. Considering the capacity of the Respondents as members of the HKICPA and his intentions behind the contempt, Committee finds the Respondents to have breached Sections 100.5(e) and 150.1 of the COE for failure to "comply with relevant laws and regulations and avoid any action that discredits the profession".

Complaint 2

54. Complaint 2 is in respect of "professional misconduct". For the test for professional misconduct:-

    54.1 The Complainant referred this Committee to *Law Yiu Wai Ray v Medical Council*[18] for a general definition and test for "professional misconduct", specifically conduct which has "fallen below the standards of conduct which is expected of members of the profession".

    54.2 Tang opposed by suggesting that applying a test by the Medical Council onto the accounting profession would be inappropriate. He in turn made reference to the *Disciplinary and Regulatory Proceedings*[19], paragraphs 7.82 - 7.85, in which a passage citing *Ziderman*'s case states that "the purpose of disciplinary proceedings... is to protect the public who may come to him as patients...". He argued that the test for professional misconduct should not apply to his conduct towards the "public" at large, but only to his potential clients.

    54.3 In citing the above paragraphs, Tang has failed to acknowledge the subsequent phrase, which states: "to maintain the high standards and good reputation of an honourable profession."

55. The Committee accepts that the proper test is as suggested by the Complainant and laid down in *Law Yiu Wai Ray v Medical Council.* Any conduct that has fallen below the standards of conduct of a reasonable accountant amounts to professional misconduct. The test adopted in the medical profession can equally be adopted in other professions for assessing "professional misconduct".

56. This Committee wishes to point out that misconduct alone does not automatically constitute professional misconduct. However, professional misconduct needs not occur in the course of professional practice.

57. The Committee concludes that the Respondents were acting as professional accountants and as members of HKICPA at the time of the contempt. The

[18] *Law Yiu Wai Ray v Medical Council*, HCAL 46/2015, dated 12 October 2015.
[19] *Ziderman v General Dental Council* [1976] 1 WLR 330.

Respondents' defiance to the Court order is an attempt to stall for time, as seen in the long-delayed presentation of the required documents. There was a conscious decision made by the Respondents and unquestionably amounts to professional misconduct.

Complaint 3

58. Complaint 3 concerns "dishonourable conduct". This is defined as "an act or omission... bringing discredit to the certified public accountant himself, the Institute or the accountancy profession", under Section 34(2) of the PAO, and overlaps with Complaint 1.

59. The Committee considers that the Respondents' contempt, which has led to the profession being discredited, fulfills the criteria for "dishonourable conduct", falling under Section 34(1)(a)(x) of the PAO and hence Complaint 3 is also established.

Lee's Case

60. Lee submitted that she had entrusted the matter to Tang for handling, and that she had already retired, hence had no resources or means to comply with the Court order.

61. The Committee considers this defence as wholly insubstantial. As joint and several liquidators and partners of JBPB, Lee and Tang both bore the same non-delegable personal obligations to comply with the Court Order. Despite Lee being dormant in the handling of the case and leaving all matters to Tang, she did not raise any objections to the conduct of her partner. Hence Tang's inaction towards the Court order is attributable to Lee as well.

62. Leaving aside the personal / family circumstances, the only difference between Tang's case and Lee's case is that the more aggressive conduct of Tang in the Court proceedings (and the present proceedings) does not apply to Lee, which might lessen her culpability. That was reflected in the fines imposed on them.

V. ORDERS

63. The Committee ORDERS that all 3 complaints against the Respondents are established.

64. The Committee also ORDERS that the Complainant and the Respondents file / exchange written submissions on the appropriate sanctions and costs within 28 days of service of this Decision, and are at liberty to reply to the other party's submissions within 21 days thereafter.

Mr. FUNG, Chi Man
Chairman

Ms. CHANG, See Mun, Lily
Member

Mr. CHIU, Shun Ming
Member

Mr. CHOI, Wai Wing
Member

Mr. MIU, Liong, Nelson
Member