

CHARTERED PROFESSIONAL ACCOUNTANTS OF ONTARIO

THE CHARTERED PROFESSIONAL ACCOUNTANTS OF ONTARIO ACT, 2017

TO: David Hillier, CPA, CMA

AND TO: The Discipline Committee of CPA Ontario

The Professional Conduct Committee hereby makes the following Allegation of professional misconduct against David Hillier, CPA, CMA, a member of CPA Ontario:

1. THAT the said David Hillier, in or about the period September 1, 2002 through December 31, 2005, while employed as the Controller of "ACCI", committed an act discreditable to the profession, contrary to CMA Ontario Bylaws section 21(d)(ii), as amended from time to time, in that he misappropriated approximately \$335,000 USD from ACCI by receiving payments as compensation for his participation in a fraudulent scheme whereby he concealed fictitious invoices totaling over \$2,750,000 in ACCI's accounting records.

Dated at Guelph, Ontario, this 26th day of June, 2017



D. J. CREMASCO, FCPA, FCA, CHAIR
PROFESSIONAL CONDUCT COMMITTEE

CHARTERED PROFESSIONAL ACCOUNTANTS OF ONTARIO

CHARTERED PROFESSIONAL ACCOUNTANTS OF ONTARIO ACT, 2017

DISCIPLINE COMMITTEE

IN THE MATTER OF: An Allegation against **DAVID HILLIER, CPA, CMA**, a member of CPA Ontario, under CMA Ontario Bylaws section 21(d)(ii).

TO: Mr. David Hillier, CPA, CMA

AND TO: The Professional Conduct Committee

DECISION AND ORDER MADE NOVEMBER 29, 2017

DECISION

David Hillier ("Mr. Hillier"), having admitted the allegation;

The Discipline Committee, having seen and considered the evidence, including the agreed statement of facts filed, finds:

THAT the allegation has been established;

THAT section 21(d)(ii) of the CMA Ontario Bylaws has been breached; and

THAT Mr. Hillier has thereby committed professional misconduct.

ORDER

IT IS ORDERED in respect of the finding:

1. THAT Mr. Hillier be reprimanded in writing by the Chair of the Discipline tribunal.
2. THAT Mr. Hillier be and he is hereby fined the sum of \$20,000 to be remitted to CPA Ontario within 30 days from the date this Order of the Discipline Committee is made.
3. THAT Mr. Hillier's membership in CPA Ontario be and is hereby revoked.
4. THAT notice of the Decision and Order, disclosing Mr. Hillier's name, be given in the form and manner determined by the Discipline Committee:
 - (a) to all members of CPA Ontario; and
 - (b) to all provincial bodies;and shall be made available to the public.

5. THAT notice of the Decision and Order, disclosing Mr. Hillier's name, be given by publication on CPA Ontario's website and in *The Globe and Mail*, the *Sudbury Star*, the *Brampton Guardian*, and the *London Free Press*. All costs associated with the publication shall be borne by Mr. Hillier and shall be in addition to any other costs ordered by the committee.
6. THAT Mr. Hillier surrender his CMA and CPA certificates to the Adjudicative Tribunals Secretary within ten (10) days from the date this Decision and Order is made.

AND IT IS FURTHER ORDERED:

7. THAT Mr. Hillier be and he is hereby charged costs fixed at \$20,000 to be remitted to CPA Ontario within 30 days from the date this Decision and Order is made.

DATED AT TORONTO THIS 4TH DAY OF DECEMBER, 2017
BY ORDER OF THE DISCIPLINE COMMITTEE



for/

ADJUDICATIVE TRIBUNALS SECRETARY

**CHARTERED PROFESSIONAL ACCOUNTANTS OF ONTARIO
CHARTERED PROFESSIONAL ACCOUNTANTS OF ONTARIO ACT, 2017**

DISCIPLINE COMMITTEE

IN THE MATTER OF: Allegations against David Hillier, CPA, CMA, a member of CPA Ontario, under CMA Ontario Bylaws section 21(d)(ii).

BETWEEN:

**Chartered Professional Accountants of Ontario
Professional Conduct Committee**

-and-

Mr. David Hillier

TRIBUNAL MEMBERS:

Stuart Douglas, FCPA, FCA – Deputy Chair
Anthony Davidson, CPA, CA
N. Jane Rivers, CPA, CGA
Rebecca Huang (Public Representative)

APPEARANCES:

For Professional Conduct Committee: Ms. Tamara Center, Counsel

For Mr. Hillier: Mr. Victor Nikitine

Independent legal counsel: Mr. Glenn Stuart

Heard: November 29, 2017

Decision and order date: November 29, 2017

Release of written reasons: April 2, 2018

I. Overview

- [1] Mr. Hillier obtained his CMA designation in 1997. He worked for various divisions of a company identified as Atlas Copco Canada Inc. ("ACCI") as a financial accountant from 1991 to 1994 and as an accounting manager from 1995 to 1998. From 1998 to 2002, he worked for another company in the United States.
- [2] In July 2002, Mr. Hillier returned to Canada and assumed the position of Controller of a division of ACCI located in Sudbury, Ontario. He remained in that position until December 2005. The allegations in issue arose during the period in which he held this position.

- [3] Mr. Hillier left that division of ACCI in January 2006 and relocated to the Belgium division of a related company. He remained there until December 2007. He subsequently worked for two other companies, the latter being located in London, Ontario, between April 2008 and February 2017. Mr. Hillier has refused to advise the Chartered Professional Accountants of Ontario ("CPA Ontario") where he is currently employed.
- [4] Mr. Hillier's conduct came to the attention of CPA Ontario on or about April 28, 2016, when an individual, Paul Caron, sent CPA Ontario an immunity agreement, dated July 8, 2009, between Mr. Hillier and the Crown. In the immunity agreement, Mr. Hillier agreed to voluntarily divulge his involvement, and the involvement of others, in a fraud perpetrated against ACCI. He also agreed to cooperate with the police and to repay the proceeds that he had received from the fraudulent scheme.
- [5] The fraudulent scheme involved four individuals. Paul Caron was the health care benefits and pension broker for ACCI. He created false invoices for employee benefits and billed them to ACCI. He rendered \$32 million in benefit invoices when only \$7 million in benefit expenses had been incurred. Once the false invoices were paid, Paul Caron diverted the funds to the three other participants.
- [6] Mr. Hillier's role in the fraudulent scheme was to conceal the transactions in the accounting records of ACCI. He concealed false invoices totaling \$2.7 million. In return for his participation, Mr. Hillier received "bonuses" totaling approximately \$335,000 USD.
- [7] The fraudulent scheme was only discovered in or around 2007 after Mr. Hillier left that position with ACCI in Sudbury. The scheme was discovered because the false invoices were no longer being concealed in the same way as they had been under Mr. Hillier's control, and a large year-end adjustment to the profit and loss statements was required after Mr. Hillier's departure.
- [8] As a result of his cooperation under the immunity agreement, Mr. Hillier was not prosecuted for his role in the fraudulent scheme. In May 2016, Mr. Hillier testified as a witness for the Crown at the criminal trial of two other individuals. One of these individuals was Paul Caron. The third participant pleaded guilty.
- [9] The individuals who were found guilty of criminal charges were each sentenced to between five and six and a half years in prison and were ordered to repay a total of \$34.5 million.
- [10] In January 2008, ACCI brought civil proceedings against the individuals involved in the fraudulent scheme. In return for his giving evidence regarding his and the other participants' involvement in the fraudulent scheme, Mr. Hillier was released from the claims by ACCI.
- [11] Pursuant to the immunity agreement, Mr. Hillier repaid a total of \$408,980.73 USD that he had received through his role in the fraudulent scheme.
- [12] Mr. Hillier did not attend the hearing before the Discipline Committee himself, although he

had counsel attend on his behalf. Mr. Hillier admitted the allegation against him. He also entered an agreed statement of facts with the PCC.

- [13] The onus was on the PCC to show, on a balance of probabilities, that Mr. Hillier's conduct breached the CMA Ontario Bylaws which were in effect at the time of the alleged conduct in issue, and that the breach constituted professional misconduct.

II. Preliminary Issues

- [14] The allegation was framed in terms of the CMA Ontario Bylaws because the alleged misconduct occurred prior to the unification of the accounting professions into CPA Ontario.

III. Allegation

- [15] At the hearing, the PCC made the following allegation of professional misconduct against Mr. Hillier:

1. THAT the said David Hillier, in or about the period September 1, 2002 through December 31, 2005, while employed as the controller of "ACCI", committed an act discreditable to the profession, contrary to CMA Ontario Bylaws section 21(d)(ii), as amended from time to time, in that he misappropriated approximately \$335,000 USD from ACCI by receiving payments as compensation for his participation in a fraudulent scheme whereby he concealed fictitious invoices totaling over \$2,750,000 in ACCI's accounting records.

IV. Issues

- [16] The issue for the tribunal was whether it was satisfied, on a balance of probabilities, that the agreed facts in support of the particular alleged by the PCC constituted professional misconduct?

V. Decision

- [17] The tribunal found that the uncontradicted evidence established, on a balance of probabilities, the particular set out in the allegation of professional misconduct.
- [18] The tribunal was satisfied that the particular alleged constituted a breach of section 21(d)(ii) of the CMA Ontario Bylaws, and, having breached this Rule, Mr. Hillier had committed professional misconduct.

VI. Reasons for the Decision

a) Findings Regarding Conduct of Mr. Hillier

- [19] The tribunal considered the evidence submitted by PCC and by Mr. Hillier as set out in the Agreed Statement of Facts (Exhibit 1) and the accompanying Document Brief (Exhibit 2) regarding the involvement of Mr. Hillier in the perpetration of the fraud against his former

employer, ACCI. Mr. Hillier did not attend the hearing, and his counsel confirmed that Mr. Hillier did not dispute the content of the Agreed Statement of Facts.

- [20] The essence of Mr. Hillier's conduct was set out in the Conclusion, paragraph 38, of the Agreed Statement of Facts, which Mr. Hillier signed on November 10, 2017. Mr. Hillier admitted there that, in the period September 1, 2002 through December 31, 2005, he had misappropriated approximately \$335,000 USD from ACCI (his employer). Mr. Hillier further admitted that he concealed fictitious invoices totaling over \$2,750,000 in ACCI's accounting records and received compensation for his participation in a fraudulent scheme.
- [21] The tribunal considered the evidence and found the facts agreed to by Mr. Hillier in the Agreed Statement of Facts and the accompanying Document Brief to be clear, cogent and convincing proof of the conduct alleged in the particular.

b) Finding of Professional Misconduct

- [22] The tribunal was of the view that Mr. Hillier misappropriated funds, committed fraud against his employer and did so over a period of several years. He committed a criminal offence and acknowledged doing so.
- [23] In paragraph 38 of the Agreed Statement of Facts, Mr. Hillier admitted that he had committed an act discreditable to the profession contrary to CMA Ontario Bylaws section 21(d)(ii), based on the agreed facts. The tribunal agreed with this admission.
- [24] The tribunal found that Mr. Hillier committed professional misconduct in that he breached CMA Ontario Bylaws section 21(d)(ii).

VII. Position on Sanctions

- [25] The PCC and Mr. Hillier, through his counsel, jointly submitted that an appropriate sanction was comprised of the following: a reprimand in writing; a fine in the amount of \$20,000; the revocation of Mr. Hillier's membership in CPA Ontario; and publicity of the decision in the ordinary course, including publication of the revocation in four newspapers.
- [26] Although revocation would typically be published in the newspaper where the member practised, counsel for the PCC explained that publication was sought in four newspapers in the unique circumstances of this case. Publication in the *Brampton Guardian* was sought because that was Mr. Hillier's last address of record with CPA Ontario. As his last known employment was in London, Ontario, publication was sought in the *London Free Press*. Publication was sought in the *Sudbury Star* because that it is where ACCI operated and where the fraudulent scheme had occurred. Finally, publication was sought in *The Globe and Mail*, due to its wide circulation and the fact that Mr. Hillier's whereabouts were unknown.
- [27] The PCC also sought an order for the payment of costs, fixed in the amount of \$20,000. This represented two-thirds of the actual costs of \$30,000, incurred by the PCC in relation

to the hearing. Mr. Hillier had indicated that he would pay this amount promptly.

VIII. Reasons for the Order

- [28] The tribunal accepted the joint submission on sanctions by the PCC and counsel for Mr. Hillier, as it was not unreasonable or contrary to the public interest and would not bring the administration of justice into disrepute.
- [29] In considering the joint submission, the tribunal had to consider whether the joint submission was within the range of reasonable sanctions for similar misconduct and not contrary to the public interest. The issue for the tribunal was not whether the tribunal would have imposed the same sanction, but whether the joint submission was not unreasonable. The tribunal was aware that deference should be given to a joint submission unless the submission was truly unreasonable and not within the range demonstrated by similar cases, such as those reviewed by the PCC in submissions. The test has also been framed in terms that a joint submission should be accepted unless it would bring the administration of justice into disrepute.
- [30] The tribunal concluded that the proposed sanctions were appropriate given that Mr. Hillier had perpetrated a fraud against his employer and allowed the fraud to continue for several years. The tribunal found the sanctions, including the amount of the fine proposed, to be within the range demonstrated by those cases put forward by PCC.
- [31] The tribunal concluded that the proposed sanctions were appropriate given that Mr. Hillier had perpetrated a fraud against his employer, and he allowed the fraud to continue for several years. In addition, although he was not the only party to the fraud, he did not attempt to end or disclose the fraud until he was caught. He committed a criminal offence and the tribunal found the sanctions, including the quantum of the fine proposed, to be within the range demonstrated by those cases put forward by PCC.
- [32] In considering sanction, the tribunal was concerned about Mr. Hillier's refusal to disclose his current whereabouts. The refusal was contrary to the expectation of CPA Ontario that its members provide their current contact information. Mr. Nikitine submitted that Mr. Hillier was mentally and emotionally exhausted and therefore unable to attend the hearing. Moreover, Mr. Hillier was concerned about his personal safety. He declined to identify his current whereabouts in case the individuals convicted of the offences located him. The tribunal accepted that the decision would be delivered through Mr. Hillier's counsel.

IX. Reasons for the Costs Order

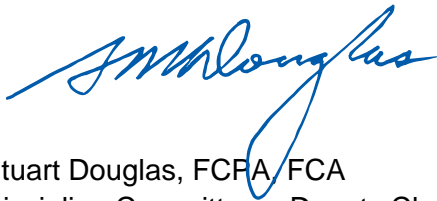
- [33] PCC submitted a Cost Outline (Exhibit 4) setting out costs totaling \$30,847. The total costs reflected the time for counsel to the PCC, as well as the costs of the investigator for PCC. The Costs of \$20,000 charged to Mr. Hillier reflect two thirds of the total costs. This allocation was in line with precedents and acceptable to the tribunal in this case. The costs are an indemnity and not an additional fine. As with the fine, the tribunal found that the time to pay within 30 days from the date of the Order was appropriate.

X. Order

[34] The tribunal ordered the following:

- Mr. Hillier be reprimanded in writing by the Chair of the tribunal;
- Mr. Hillier be fined \$20,000, to be paid to CPA Ontario within 30 days of the tribunal's order;
- Mr. Hillier's membership in CPA Ontario be revoked, effective immediately;
- The tribunal's decision and order be published in *The Globe and Mail*, the *Sudbury Star*, the *Brampton Guardian*, and the *London Free Press*, with the costs to be borne by Mr. Hillier; and
- Mr. Hillier pay costs in the amount of \$20,000 to CPA Ontario within thirty days of the date of the order.

DATED at Toronto this 2nd day of April, 2018



Stuart Douglas, FCPA, FCA
Discipline Committee – Deputy Chair