



CHARTERED PROFESSIONAL ACCOUNTANTS OF ONTARIO

THE CHARTERED PROFESSIONAL ACCOUNTANTS OF ONTARIO ACT, 2017

TO: JONATHAN W. MACNEIL, CPA, CA

AND TO: The Discipline Committee of CPA Ontario

The Professional Conduct Committee of CPA Ontario hereby makes the following Allegation of professional misconduct against Jonathan W. MacNeil, CPA, CA, a member of CPA Ontario:

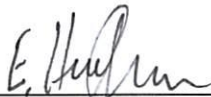
1. THAT the said Jonathan W. MacNeil, in or about the period June 1, 2013 through March 31, 2014, while acting as the engagement partner with MNP LLP in an engagement to audit the consolidated financial statements of "PCAC" for the year ended September 30, 2013, and having attached to the consolidated financial statements an unqualified audit opinion, failed to perform his professional services in accordance with generally accepted standards of practice of the profession, contrary to Rule 206.1 of the Rules of Professional Conduct, in that:
 - a. he failed to properly plan the audit;
 - b. he failed to exercise sufficient appropriate professional skepticism;
 - c. he failed to obtain sufficient appropriate audit evidence as to whether the opening balances contained misstatements that materially affected the current period's financial statements;
 - d. he failed to obtain sufficient appropriate audit evidence to support the Consolidated Statement of Financial Position item "Cash \$391,829";
 - e. he failed to obtain sufficient appropriate audit evidence to support the Consolidated Statement of Financial Position item "Accounts Receivable \$522,857";
 - f. he failed to obtain sufficient appropriate audit evidence to support the Consolidated Statement of Financial Position item "Accounts Payable \$426,560";
 - g. he failed to obtain sufficient appropriate audit evidence to support the Consolidated Statement of Financial Position item "Inventory \$693,497";
 - h. he failed to obtain sufficient appropriate audit evidence to support the Consolidated



Statements of Operations and Comprehensive Income item "Revenue \$3,408,076";

- i. he failed to obtain sufficient appropriate audit evidence to support the Consolidated Statements of Operations and Comprehensive Income item "Materials Used \$1,236,982";
- j. he failed to identify and assess the risk of material misstatement due to fraud or error despite the presence of numerous fraud risk factors;
- k. he failed to obtain sufficient appropriate audit evidence with respect to "Note 15. Related Party Transactions";
- l. he failed to maintain control over external confirmation requests;
- m. he failed to ensure an adequate engagement quality control review process was completed; and
- n. he failed to maintain sufficient documentation to support the conclusions reached in the audit.

Dated at Toronto, Ontario, this 17 day of January, 2020



E.D.M. HUFTON, CPA, CA, 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 **JONATHAN W. MACNEIL, CPA, CA**, a member of the Chartered Professional Accountants of Ontario, under **Rule 206.1** of the Rules of Professional Conduct.

TO: Jonathan W. MacNeil, CPA, CA

AND TO: The Professional Conduct Committee

DECISION MADE FEBRUARY 10, 2021 AND ORDER MADE FEBRUARY 24, 2021

DECISION

The allegation that Jonathan W. MacNeil has breached Rule 206.1 of the Rules of Professional Conduct is established and constitutes professional misconduct.

ORDER

IT IS ORDERED THAT:

1. Jonathan W. MacNeil be reprimanded in writing by the Chair of the hearing;
2. Jonathan W. MacNeil shall pay a fine of \$75,000 to the Chartered Professional Accountants of Ontario ("CPA Ontario") by February 24, 2022;
3. Notice of this Decision and Order, disclosing Jonathan W. MacNeil's name, is to be given in the form and manner determined by the Discipline Committee:
 - (a) to all members of CPA Ontario;
 - (b) to the Public Accountants Council for the Province of Ontario;
 - (c) to all provincial bodies,

and shall be made available to the public;

4. In the event Jonathan W. MacNeil fails to comply with the terms of this Order, his membership with CPA Ontario shall be suspended until such time as he does comply, provided that he complies within 30 days of the date of his suspension. In the event he does not comply within the 30-day period, his membership in CPA Ontario shall be revoked and notice of the revocation of his membership, disclosing his name, shall be given in the manner specified above, and in a newspaper distributed in the geographic

area of Jonathan W. MacNeil's residence or employment. All costs associated with this publication shall be borne by Jonathan W. MacNeil and shall be in addition to other costs ordered by the panel;

AND THAT:

5. Jonathan W. MacNeil shall pay costs of \$180,000 to CPA Ontario by February 24, 2022.

DATED at Toronto this 24th day of February 2021.

A handwritten signature in black ink, appearing to read 'D. Handley', written in a cursive style.

David Handley
Discipline Committee

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

DISCIPLINE COMMITTEE

IN THE MATTER OF: Allegations against **Jonathan W. MacNeil, CPA, CA**, a member of the Chartered Professional Accountants of Ontario, under **Rule 206.1** of the *Rules of Professional Conduct*, as amended.

BETWEEN:

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

-and-

Jonathan W. MacNeil

APPEARANCES:

For the Professional Conduct Committee: Lily Harmer, Nisha Dhanoa, Counsel

For Mr. MacNeil: Robert W. Staley, Douglas A. Fenton,
Counsel

Heard: February 10, 2021

Decision made: February 10, 2021

Order made and effective: February 24, 2021

Release of written reasons: March 25, 2021

REASONS FOR THE DECISION AND ORDER

I. OVERVIEW

[1] The Professional Conduct Committee of the Chartered Professional Accountants of Ontario ("PCC") has made an Allegation that Mr. MacNeil failed to provide professional services from June 1, 2013 through March 31, 2014 in accordance with generally accepted standards of the profession while acting as the engagement partner in an audit of the consolidated financial statements of a public

company. This hearing was held to determine whether the Allegation was established and whether the conduct breached Rule 206.1 of the Rules of Professional Conduct and amounted to professional misconduct.

- [2] Mr. MacNeil wrote the legacy CA qualifying exam in 2004, and became designated as a legacy CA in 2006. He had joined MSCM LLP as a junior accountant in 2003, and when the firm merged with MNP LLP (“MNP”) in 2013 Mr. MacNeil became a member of that firm.
- [3] Mr. MacNeil was the engagement partner for MNP’s audit of the 2013 financial statements of the company SEL Exchange Inc (“SEL”).
- [4] In February of 2018, CPAO received a complaint from the Ontario Securities Commission advising that Vito Buffone, the CEO of SEL, had been convicted of drug trafficking in connection with the importation of cocaine. The Ontario Securities Commission noted that MNP had provided an unqualified audit opinion for SEL’s 2013 financial statements. This complaint led to an investigation by the PCC into MNP’s audit and the conduct of Mr. MacNeil as the engagement partner.
- [5] The onus was on the PCC to show on a balance of probabilities that Mr. MacNeil’s conduct breached Rule 206.1 of the Rules of Professional Conduct and amounted to professional misconduct.

II. PRELIMINARY ISSUES

- [6] Both parties agreed there were no preliminary issues.

III. ISSUES

- [7] The Panel identified the following issues arising from the Allegation:
 - A. Did the evidence establish, on a balance of probabilities, the facts on which the Allegation by the PCC was based?
 - B. If the facts alleged by the PCC were established on the evidence on a balance of probabilities, did the Allegation constitute professional misconduct?

IV. DECISION

- [8] The Panel found that the evidence established, on a balance of probabilities, the facts set out in the Allegation of professional misconduct.

- [9] The Panel was satisfied that the Allegation constituted a breach of Rule 206.1 of the Rules of Professional Conduct and, having breached this Rule, Mr. MacNeil committed professional misconduct.

V. REASONS FOR THE DECISION

Findings regarding Conduct of Mr. MacNeil

- [10] The evidence in support of the Allegation was placed before the Panel through an Agreed Statement of Facts (“ASF”), signed February 2, 2021 (Exhibit 1) and the accompanying Document Brief (Exhibit 2).

How MNP came to audit SEL’s 2013 financial statements

- [11] The ASF provides background information about SEL and how MNP became its auditor. Penfold Capital Acquisition IV Corporation (“Penfold”) had been a capital pool company with no material commercial operations and no material assets other than cash, and was listed on the TSXV Venture Exchange. In May 2013, Penfold completed a reverse take-over transaction by acquiring 100% of SLM Logistics Corporation (“SLN”), a private company owned by Buffone. SLN was described as a third-party returns and processing partner for retailers and manufactures of electronics.
- [12] As a result of the transaction Buffone became CEO and a Director of Penfold and he also remained a significant shareholder, holding approximately 54% of the shares. The common shares of Penfold began trading on the TSXV under “SEL” on May 8, 2013. As of September 30, 2013, SEL had a market capitalization of approximately \$3.5 million, with Buffone’s holdings accounting for approximately \$1.89 million of this capitalization.
- [13] In June 2014, Penfold changed its name to SEL Exchange Inc. (“SEL”). SEL will be used throughout these reasons for consistency.
- [14] Prior to the May 2013 reverse take-over transaction, SLM’s auditor was NTW LLP, which issued an unqualified audit opinion for SLM for the September 30, 2012 year end. NTW could not continue as the auditor after the reverse-takeover because NTW was not registered with the Canadian Public Accountability Board (CPAB), as required by the TSXV. MNP conducted SEL’s year-end audit for 2013, with Mr. MacNeil leading the team as the engagement partner. Mr. MacNeil declined to provide an unqualified Independent Auditor’s Report for the 2013 Financial Statements by the January 28 2014 deadline due to issues that arose in the course of the audit, including the discovery on January 27 2014 of unusual cash

transactions and accounting entries. After conducting further audit procedures, MNP provided an unqualified Independent Auditor's Report on March 21, 2014.

The fall-out from Buffone's arrest

- [15] Following Buffone's arrest on September 22, 2014, SEL's market capitalization declined to \$1.4 million. SEL established a Special Committee to investigate any possible wrongdoing by SEL in relation to the charges against Buffone. In December 2014 the Special Committee announced that it had found "no improper dealings". A few days afterwards, SEL announced it had completed a sale of SLM, its main operating subsidiary, to an arm's length third-party purchaser. By this time, SEL's market capitalization had declined to \$0.5 million. In January 2015, SEL's wholly owned subsidiary, SEL USA Inc., filed for bankruptcy protection. In June 2015, SEL announced it has entered into an agreement to sell its sole remaining operating subsidiary to a third-party purchaser.
- [16] MNP provided no services to SEL following the issuance of their opinion on the 2013 Financial Statements, but did not formally resign as auditor or withdraw its unqualified opinion.

The audit failures

- [17] The ASF includes detailed evidence in support of the Allegations that Mr. MacNeil failed to properly plan the audit; failed to exercise sufficient appropriate professional skepticism; failed to obtain sufficient appropriate audit evidence respecting the opening balances; failed to obtain sufficient appropriate audit evidence to support the Consolidated Statement items for cash, accounts receivable, accounts payable, inventory, revenue, and materials used; failed to identify and assess the risk of material misstatement due to fraud; failed to obtain sufficient appropriate audit evidence respecting related party transactions; failed to maintain control over external confirmation requests; failed to ensure an adequate quality control review process was completed; and failed to maintain sufficient documentation to support the conclusions reached in the audit.
- [18] The ASF identifies the deficiencies related to each of these particulars, and cross references them to the relevant provisions of the Canadian Audit Standards in effect at the time of the audit. In doing so the ASF organizes the audit deficiencies into 12 sections, as summarized below.

Planning

- [19] Throughout the planning of the audit of SEL, Mr. MacNeil failed to adequately obtain an understanding of SEL and its business environment, or to adequately

assess the risks of material misstatement. More specifically, in the planning phase Mr. McNeil failed to adequately understand the nature of the entity; failed to perform an effective preliminary analytical review; failed to properly document the conclusions made around entry level controls; failed to properly understand and document the internal controls and the related parties of SEL; failed to adequately consider the risk of fraud and misstatement resulting from the lack of segregation of duties in accounting functions, and failed to adequately respond to and address the identified risks.

- [20] Mr. MacNeil spent insufficient time on audit planning, and failed to review many important planning documents. He admits that he failed to have an appropriate level of involvement in the audit planning process, when his input into that process as the most experienced member of the engagement team was critical for a successful first-time audit.

Opening Balances

- [21] The prior year financial statements were audited by NTW. The reliability of the opening balances that were rolled forward to the financial statements for 2013 was diminished due to several factors, including the difficulty in getting access to the audit working papers of NTW, the limited working papers provided by NTW, and the lack of documentation, which did not support the conclusion that the prior year balances did not need to be restated. Mr. MacNeil admitted that he failed to ensure that sufficient and appropriate audit evidence was obtained to adequately determine whether the opening balances contained misstatements that materially affected the current period's financial statements.
- [22] Mr. MacNeil failed to exercise sufficient appropriate professional skepticism in respect of the quality and reliability of the audit work done by the former auditors when the audit team did not obtain sufficient evidence to ensure the opening balances were properly stated.

Confirmations

- [23] Mr. MacNeil failed to ensure control over the confirmation process respecting accounts receivable, sales, and accounts payable.
- [24] Among the most serious concerns were that Mr. MacNeil failed to ensure his audit team controlled the preparation and sending of confirmations, but rather permitted the Controller of SEL to prepare and send the confirmations directly to SEL's customers. The working papers for accounts receivable, however, treated the confirmations as having been returned directly to the audit team. One confirmation was never received from the customer at all, but was created by the Controller to appear as if it was a response from the customer (the "Falsified Confirmation").

- [25] Mr. MacNeil admits that the Falsified Confirmation raised significant doubts about the reliability of the confirmation process, and the overall credibility of the Controller, and that he failed to exercise an appropriate level of professional skepticism regarding the Falsified Confirmation. He admits that he was required but failed to: no longer rely on representations made by the Controller and should have insisted on his removal; re-examine all audit work performed to date; consider the need for additional audit procedures to address the serious implications of a falsification of audit evidence by the Controller, and include the Falsified Confirmation in the audit working papers.

Unusual Transactions

- [26] One sales confirmation returned by a customer revealed a discrepancy of over \$78,000, causing Mr. MacNeil and the audit team to embark on a series of inquiries, which ultimately uncovered a number of unusual cash transactions from 2011 to 2013. As a result, Mr. MacNeil refused to sign off on the audit by the intended reporting date of January 28, 2014.
- [27] Mr. MacNeil advised SEL that the Falsified Confirmation and the material cash transactions moved the file into a high-risk category. MNP performed audit procedures for the unusual cash transactions. However, Mr. MacNeil admits to the shortcomings of these audit procedures, including a failure to make follow-up inquiries, a failure to question why HST was not collected; and a failure to retain documentation in the audit file.
- [28] Presented with inconsistencies and anomalies respecting the unusual nature of the cash transactions, Mr. MacNeil failed to exercise an increased degree of professional skepticism, and did not perform other procedures to determine if there were other cash purchases made from other suppliers that were not properly recorded.

Related Parties

- [29] During the planning stage of the audit, SEL management confirmed only one related party. When the unusual cash transactions were discovered, Mr. MacNeil consulted with MNP's forensic department, which recommended a corporate search. The search identified a number of additional related parties that MNP had not been told about, all of which were related to Buffone.
- [30] Mr. MacNeil acknowledges that the risk of a material misstatement due to fraud is higher with related party transactions, and that he failed to perform additional audit procedures when he learned of the additional related parties. These additional audit procedures include determining why management did not disclose the other related parties, and assessing the impact of these related party transactions on the

audit. Mr. MacNeil admits that he failed to obtain sufficient and appropriate audit evidence, failed to conduct alternative procedures, failed to retain adequate documentation in connection with SEL's related parties and related-party transactions, and failed to exercise sufficient professional skepticism when assessing the impact of undisclosed related parties.

Inventory

- [31] Mr. MacNeil admits that he failed to obtain sufficient and appropriate audit evidence in respect of the inventory counts. The inventory observation procedures failed to provide an adequate level of audit assurance that the client could not manipulate the final inventory quantities or that the final inventory quantities did not contain errors.
- [32] Mr. MacNeil also admits that the audit team failed to obtain sufficient and appropriate audit evidence around the inventory price testing, and specifically failed to include a test of details for the purchase cost of the inventory items examined.

Testing of Journal Entries

- [33] Journal entries were identified as a high-risk area, susceptible to management override, particularly by the Controller. Mr. MacNeil admits that he failed to ensure that the audit team adequately documented the audit procedures performed to satisfy himself that the risk related to this area had been reduced to a low enough level that it did not affect the auditor's report on the financial statements.

Consultation

- [34] Mr. MacNeil admits that he failed to adequately document the consultations around significant issues that arose during the audit.

Adjusting Entries Not Booked

- [35] Although the unrecorded adjustments were not material to the financial statements, they should have been re-evaluated in light of the subsequent events related to the discovery of the unusual cash transactions.

Engagement Quality Control Review

- [36] Mr. MacNeil failed to ensure that an adequate engagement quality control review process was completed as required by Canadian Audit Standards.

Special Committee

- [37] In response to Buffone's arrest, the SEL Board established a Special Committee to conduct an internal investigation of the extent to which SEL or its facilities were used in the commission of the alleged crime by Buffone. The Special Committee found there were no improper dealings as all transactions were properly documented, all products were shipped, properly invoiced and balances collected.
- [38] However, the documentation compiled by the Special Committee had significant deficiencies. Mr. MacNeil was not provided with this documentation, and did not request this documentation. Given the issues that arose in the audit, Mr. MacNeil ought to have reviewed the documentation to satisfy himself that the audit opinion did not need to be withdrawn. He ought to have been more skeptical of the impact of Buffone's arrest on the 2013 Financial Statements and the findings of the Special Committee.

Professional Skepticism

- [39] In summary, Mr. MacNeil failed to exercise sufficient appropriate professional skepticism throughout the audit.
- [40] The Panel was satisfied that the undisputed evidence in the Agreed Statement of Facts as supported by the admitted documents clearly and cogently demonstrated that the facts set out in the Allegations were established on a balance of probabilities.

Finding of Professional Misconduct

- [41] The Panel concluded that the Allegations, having been proven on the evidence, constituted breaches of Rule 206.1 of the CPA Rules of Professional Conduct.

VI. DECISION AS TO SANCTION

- [42] After considering the evidence, the law, and the submissions of both parties, the Panel concluded that the appropriate sanction was a written reprimand, a fine of \$75,000 payable within one year, and notice of the decision to the membership, the Public Accountants Council for the Province of Ontario and to all provincial bodies.
- [43] The Panel also set out terms that would apply if Mr. MacNeil did not comply with the terms of the Panel's order. These would require his suspension if he failed to comply with a term, and then, if he did not comply for 90 days after being suspended, his membership would be revoked.

VII. REASONS FOR DECISION AS TO SANCTION

Evidence of Mr. MacNeil

- [44] The Panel admitted Mr. MacNeil's Redacted Brief of Documents as Exhibit 4, and also heard sworn evidence from Mr. MacNeil.
- [45] In his evidence Mr. MacNeil provided an overview of his career. He joined MSCM LLP as a junior accountant in 2003, and when the firm merged with MNP in 2013 Mr. MacNeil became a member of that firm. He is currently Regional Managing Partner, working out of the Toronto office, with responsibility for the overall supervision and management of about 250 team members, including 42 partners. Mr. MacNeil devotes approximately 50% of his professional time to management and administrative tasks. He continues to maintain an audit practice with clients comprised primarily of public companies.
- [46] Mr. MacNeil spoke about the importance of continuing professional development to his practice as a public auditor. He takes very seriously his responsibility to maintain his technical proficiency, and testified that he has already invested about 50 hours in professional development in 2021.
- [47] The Panel was referred to Tab 8 of Exhibit 4, a reference letter from a Senior Vice President at MNP who has worked closely with Mr. MacNeil, and who, among other things, spoke to the high regard in which Mr. MacNeil is held for his technical knowledge on public audit matters. Mr. MacNeil is described in the letter as one of MNP's most highly respected public company partners across all regions, who has an excellent record of performance as an audit leader and is seen as committed to excellence in his own performance.
- [48] Mr. MacNeil addressed the size of the SEL audit, which entailed an initial fee of \$27,000, but increased to \$109,000 because of the additional issues that arose. MNP collected approximately \$70,000 of that fee, with the remaining portion written off as bad debt.
- [49] Mr. MacNeil testified about his cooperation with the investigation, and how he took full responsibility, as the engagement partner, for the failure to ensure compliance in all areas of the audit. He expressed his disappointment in this failure, and emphasized that he appreciated that the public relied on auditors of public companies.
- [50] Mr. MacNeil provided evidence of his many assurance engagements since the 2013 SEL audit, and testified that he has had no regulatory complaints or investigations since the SEL audit. He described how his practice has been subject to regular oversight since the 2013 audit. His audit files have been subject to regular, routine external inspection by the Canadian Public Accountability Board

(“CPAB”) and the CPAO. For instance, in 2017 CPAB conducted a routine audit of Mr. MacNeil’s files in relation to a significant public issuer as a component of its annual inspection program. There were no significant findings or reportable findings. In 2018 CPAO conducted a routine practice inspection review of Mr. MacNeil’s files in relation to a significant private company, in which no issues were noted. Also in 2018 CPAB conducted a routine audit of MNP’s audit files in relation to a significant public issuer for which Mr. MacNeil acted as a peer-review partner. There were no significant findings which would engage areas Mr. MacNeil reviewed as a peer-reviewer. In both 2019 and 2020 CPAB conducted a routine audit of Mr. MacNeil’s files in relation to a significant public issuer for which Mr. MacNeil was the supervisor reviewer, as a component of its annual inspection program. In each instance there were no significant findings or reportable findings.

- [51] Mr. MacNeil’s work has also been subject to regular scrutiny at MNP, including Engagement Quality Control Review (EQCR) and other internal reviews, which have resulted in Mr. MacNeil being afforded the best possible risk rating.
- [52] Mr. MacNeil also testified about his exercise of professional skepticism subsequent to the SEL audit, and provided the example of his refusal to sign off on an audit of a large public company due to the significant issues identified, related to the behaviour of the CEO. Mr. MacNeil emphasized his appreciation of the importance of rigorous professional skepticism, and of thorough documentation, and vowed that he would carry that approach through his professional career.

Position of the PCC

- [53] The PCC submitted that the appropriate sanction should consist of:
 - (1) A reprimand,
 - (2) A fine of \$50,000,
 - (3) Suspension for a period of 6 months,
 - (4) Supervised practice for a period of 18 months and CPD courses followed by reinvestigation,
 - (5) Publication of the decision in accordance with the applicable regulation, including publication in local newspapers.
- [54] The PCC provided detailed written submissions in support of this position. The main thrust of the PCC’s submission was that the audit failures committed by Mr. MacNeil were so remarkably pervasive that they required a significant suspension in order to protect the interests of the public.

- [55] The PCC submission emphasized that the audit was utterly deficient from start to finish. Planning was insufficient, and work on the opening balances and many of the audit tests and procedures were incomplete and lacked rigour. Extraordinary cash transactions and accounting entries were discovered, followed by explanations from management which defied belief. Among the most significant red flags was the discovery of a falsified confirmation by the company's Controller, who had sole control over many key accounting functions. Faced with these alarming discoveries, Mr. MacNeil failed to exercise the necessary degree of professional skepticism in issuing an unqualified Independent Auditor's Report.
- [56] Given the scope and seriousness of the audit failures admitted by Mr. MacNeil, the PCC submitted that this case calls for a renewed focus on maintaining the public's confidence in the profession's ability to govern itself appropriately. The PCC noted recent caselaw relating to audit failures of public companies in which significant fines were imposed without suspensions, but submitted that a suspension was necessary in this case to send a message to the investing and lending public that the accounting profession takes seriously its governance responsibilities respecting audits of public companies.

Position of Mr. MacNeil

- [57] Mr. MacNeil submitted that the appropriate sanction should consist of:
- (1) A reprimand,
 - (2) A fine of \$50,000,
 - (3) Publication of the decision in accordance with the applicable regulation.
- [58] Mr. MacNeil provided detailed written submissions in support of this position. The main thrust of Mr. MacNeil's submissions was that the suspension and supervised practice sought by the PCC are unduly onerous given the individual circumstances of Mr. MacNeil, are unnecessary to achieve the objectives of sanctions, and are inconsistent with the sanctions imposed in the most comparable precedent cases.
- [59] Mr. MacNeil emphasized his strong professional record and his decision to accept responsibility for the Allegations, and submitted that consequently there was no need to impose a term of suspension as a matter of specific deterrence or rehabilitation. Mr. MacNeil submitted that that the objective of general deterrence can be achieved by a significant monetary fine, as was imposed by the Discipline Committee in the *Barrington* (2007), *Woodsford* (2008), and *Wall* (2017) cases.
- [60] Mr. MacNeil's submissions relied heavily on the precedent value of these three cases, which, like the instant case, were professional standards cases involving no moral turpitude. Mr. MacNeil submits that as a suspension was not imposed in those cases, which involved more serious misconduct without the mitigating

factors for which Mr. MacNeil should be credited, it would be inappropriate to impose a more serious sanction on Mr. MacNeil.

Reasons for the Panel's Decision on Sanction

Objectives of Sanctions

- [61] The Panel accepts the PCC submission that effectively sanctioning professional misconduct is an important element of the regulator's ability to self-govern. The Panel adopts the approach of the Chartered Professional Accountants of Ontario Sanction Guidelines ["Sanction Guidelines"], that the purpose of sanctioning professional misconduct is to protect members of the public, promote public confidence in the profession, denounce the misconduct, achieve specific and general deterrence, maintain high ethical standards of the profession, and facilitate rehabilitation.
- [62] The challenge is determining how to best achieve these objectives given the set of facts unique to each case, with consideration given to both mitigating and aggravating facts, and the weight to be allocated to each. While prior decisions may be of assistance, the Discipline Committee is not bound by its prior decisions.
- [63] The process of determining the appropriate sanction is an exercise in discretion rather than an exact science which permits only one possible order. The sanction should ultimately be determined in light of the specific facts of the particular case and current circumstances and concerns of the public and the profession.

Facts Relevant to the Decision of the Panel

Seriousness of the Misconduct

- [64] The Panel considered the misconduct to be serious. The Allegations set out 14 particulars respecting the audit failure, and the ASF documents the scope and severity of the audit failures in detail, covering the full range of the audit process. The Panel accepts the PCC characterization that Mr. MacNeil failed to adhere to numerous Canadian Audit Standards "in virtually all aspects of the audit, from insufficient planning to the integrity of the opening balances to inadequate substantive audit procedures, documentation, follow-up, and above all, in the failure to bring the requisite level of professional skepticism to the file." In the Panel's view Mr. MacNeil exhibited incompetence, lack of attention to detail, poor judgment and a lack of professional skepticism that resulted in a very poor performance, from start to finish of the audit.
- [65] The Panel finds that the scope and seriousness of these audit failures constitute serious misconduct. There was risk of harm to the public, due to the public nature

of the company. In comparison to the cases involving larger public companies such as in *Barrington* (2007) and *Wall* (2017), the risk of harm to the public in the instant case is on a smaller scale.

- [66] The duration of the misconduct lasted the entirety of the audit, but was limited to this one audit. The misconduct was in that sense a singular event. It has not been repeated in the seven years since the completion of this audit.
- [67] The misconduct was not premeditated, did not involve ethical violations, and was not dishonest.
- [68] The PCC in its submissions emphasized the fact that, approximately 6 months after Mr. MacNeil provided the unqualified Independent Auditor's Report in March 2014, Mr. Buffone was arrested, ultimately convicted and sentenced to 22 years in prison for drug trafficking and money laundering. The ASF does not state that the criminality of Mr. Buffone was in any way related to Mr. MacNeil's audit failures. The panel sought and received clarification from the PCC that it is not alleging that the illegal acts of Mr. Buffone would have been exposed earlier if the audit had met professional standards. The Panel therefore does not find that the misconduct of Mr. MacNeil facilitated crime by others, in particular Mr. Buffone. There is no such aggravating fact in this case.

Acceptance of Responsibility

- [69] Mr. MacNeil has taken full responsibility for the audit failures. He has admitted the Allegations, and that the Allegations amount to professional misconduct contrary to Rule 206.1 of the Rules of Professional Conduct. In doing so he demonstrated remorse and accepted that it was his responsibility, as the audit engagement partner, to ensure that the audit complied with the applicable Canadian Audit Standards. He also saved the Discipline Committee and the PCC the expense and time of a lengthy hearing related to technical accounting standards.

Cooperation

- [70] Mr. MacNeil cooperated fully with the PCC investigation.

No other allegations of misconduct

- [71] No other allegations of misconduct have been made against Mr. MacNeil. To the contrary, since the audit failure Mr. MacNeil has by any measure excelled in his career. He has been promoted within his company, currently serving as Regional Managing Partner of MNP's GTA practice. He regularly acts on complex assurance engagements for public issuers with large market capitalizations. There have been no issues with Mr. MacNeil's conduct respecting these

mandates. He has not been subject to any disciplinary complaints, investigations or proceedings from any regulatory bodies.

- [72] As noted above in relation to his evidence, since the 2013 audit Mr. MacNeil's audit files have been subject to regular, routine external inspection by the CPAB and the CPAO, as well as through EQCRs and other internal inspections within MNP. The evidence indicates that he has a reputation among colleagues as a strong technical practitioner and that he has the full confidence of his clients and colleagues.

Consideration of Specific Sanctions

The Question of a Suspension

- [73] The Panel gave careful consideration to the submissions of the PCC that a suspension should be imposed on Mr. MacNeil, in addition to a fine of \$50,000. The Panel considered the cases cited by both parties, as well as the Sanction Guidelines.

- [74] In arriving at its decision to not impose a suspension, the Panel considered caselaw relating to comparable decisions. The Panel is mindful of the heeding of then Justice Cory at para. 30 of *Stevens v Law Society of Upper Canada*, that professional disciplinary bodies must be attentive to sanctions imposed in prior proceedings:

Any sentencing involves an onerous exercise of will that involves a conscious act of balancing and comparison. How bad is the wrong doer presently before the tribunal compared first, to the righteous doer and, secondly, to other wrong doers. Sentencing requires a consideration of the accused and the facts of the case presently before the court. A conscious comparison should be made between the case under consideration and similar cases wherein sentences were imposed. If the comparison with other cases is not undertaken, there may well be such a wide variation in the result as to constitute not simply unfairness but injustice. Considerations of such a nature should have as great a significance for professional discipline bodies with the power to impose onerous penalties as they do for courts of appeal and of first instance dealing with sentences upon conviction of criminal offences.

- [75] The Panel found that the cases of *Barrington (2007)*, *Woodsford (2008)*, and *Wall (2017)* were the most comparable and most helpful in their analysis.

- [76] In the *Barrington (2007)* case, three members of CPA Ontario were found to have violated Rule 206.1 of the Rules of Professional Conduct in relation to their audit

of the financial statements of Livent Inc. The findings of professional misconduct followed a lengthy contested liability hearing. Livent was a high-profile public company with a market capitalization over \$100,000,000. The cumulative failures of each member were described as significant departures from the required auditing standards, constituting serious professional misconduct.

[77] In *Barrington* the PCC submitted that a suspension should be imposed on the members. The Panel in that case found that although a suspension would fall within the appropriate range of sanction, the principle of general deterrence could better be served by imposing a significant fine. The Panel emphasized that:

[T]here was no suggestion of moral turpitude, dishonesty or lack of integrity; the members were knowledgeable, experienced practitioners; and the charges arose with respect to one audit and there was no suggestion of a pattern to failing to comply with professional standards or carry out responsibilities with due care.

[78] With respect to the member Claudio Russo, the panel was persuaded that:

[H]e had learned from his mistakes. He is now seen within the firm as a seasoned leader, someone to go to when difficult circumstances arise. It seemed pointless to impose a suspension nine years after relevant events.

[79] The *Woodsford* (2008) case involved a finding of professional misconduct against a partner at Deloitte who was found to have violated Rule 206.1 of the Rules of Professional Conduct in relation to an audit of the financial statements of Phillip Environmental Inc. ("Phillip"). Shortly after the audit was completed, Phillip used the financial statements to raise US\$330,000,000 in the capital markets. The Discipline Committee found that Mr. Woodsford's audit failures were 'basic failures' and 'big mistakes' that required sanctions that would have a 'significant impact.'

[80] Like in the instant case, the Discipline Committee in *Woodsford* was faced with the question of whether to impose a suspension as a sanction. The panel in that case explained their reasoning in the following manner:

51 The dispute between the parties with respect to sanction was whether or not there should be a suspension. The imposition of sanction, as both counsel acknowledged, is a fact specific exercise. This is particularly so in a standards case when the issue is whether or not the member should be suspended. The facts and circumstances of each case are different. There is no one definitive set of criteria for determining whether or not a suspension will be imposed.

52 There are a number of factors which persuaded the panel that a substantial fine and publication in the financial press would have a greater

general deterrent effect than a lesser fine, a suspension and less publicity.

53 The impact of a suspension of a partner of a national firm, whose role is managing the national office, would not have an impact on the day-to-day activities of the member or the firm.

54 This is not a case in which a suspension is required to provide the member with time to rehabilitate himself.

55 The panel did think the fact that sanction is being imposed nine years after the misconduct was relevant to the issue of suspension. In this case the circumstances of the member have changed significantly from the time of the misconduct. As we have said above, Mr. Woodsford will not practise public accounting and his management role would not be affected by a suspension.

56 The panel accepts that a suspension of Mr. Woodsford would have the effect of damaging his reputation. However, the panel was satisfied that his reputation will suffer because of the finding of misconduct and the notice of this Decision and Order which is to be published. Any additional damage to his reputation, as a result of the imposition of a suspension, would be minimized by the knowledge that it would have no practical impact.

57 The panel accepted that a fine of \$75,000 was appropriate and would be seen as a significant fine by the profession and by the public. It is relevant that the audit fee in this case was \$896,000. A fine should never be seen as a licence fee for a member's misconduct. The panel was satisfied that a fine of \$75,000 would be seen as significant and appropriate.

[81] Finally, in the *Wall* case the member, a partner at PricewaterhouseCoopers, was found to have violated Rule 206.1 of the Rules of Professional Conduct relating to two audit engagements for Fairfield Sentry Limited, following a lengthy contested hearing. Fairfield Sentry Limited was an investment fund run by the Fairfield Greenwich Group and the largest feeder fund for Bernard Madoff Securities Ltd, having invested approximately \$7.2 billion in what turned out to be an enormous Ponzi-scheme. The Discipline Committee in that case considered it to be one of the most serious professional standards cases, given the nature of the misconduct, the investor loss, and the public impact.

[82] In the *Wall* case, there was a joint submission from the PCC and counsel for the member that a suspension was not necessary, as there was no issue of dishonesty, lack of integrity or moral turpitude on the part of Mr. Wall. The misconduct occurred in isolated circumstances.

- [83] The panel in *Wall* accepted the joint position that rehabilitation and specific deterrence could be achieved without suspension. At para. 24 the panel noted the following points made by the member's counsel:

More than 10 years have passed since the audit without further incident in Mr. Wall's practice as he continues to deal with highly complex audits of funds, public companies, investment brokers and dealers with no issues arising about Mr. Wall's adherence to professional standards. Mr. Wall was found by the Discipline tribunal to be a respected member of the profession. The parties are in agreement that there is no need for a period of suspension or professional development courses and that the recommended reprimand, fine and publication will have a significant impact on Mr. Wall and other members of the profession.

- [84] The panel in its findings noted the seriousness of Mr. Wall's professional misconduct, including a complete lack of audit evidence that supported the assertion the financial statements were presented fairly, and the consequences of the professional misconduct. At para. 33 the panel noted the contrast in Mr. Wall's professional record since the misconduct:

He is a competent and respected member of the profession who made a serious mistake. He has a good record and is highly regarded in his field of practice. There have been no other complaints about Mr. Wall's professional conduct, either before or after the audits in question nine and ten years ago. His firm has continued to entrust him with significant responsibilities. The PCC (rightly) does not suggest that he is not generally competent.

- [85] The Panel notes the factual similarities between these three precedent cases and the present case, and finds the reasoning of the Discipline Committee in these cases to be compelling in support of the position that a suspension is not necessary to achieve the overarching objective of general deterrence given the facts before the Discipline Committee.

- [86] The Sanction Guidelines note that a suspension may be particularly warranted where the misconduct involved elements of dishonesty, repetitive acts of deceit or negligence, significant failures to comply with professional standards, deliberate misconduct, extended misconduct, risk to the public, likely recurrence, and a prior disciplinary record. The Panel finds that few if any of these facts are found in the present case. Most significantly to the Panel, there is no suggestion that Mr. MacNeil has engaged in any acts of dishonesty or other moral turpitude. The misconduct at issue, while serious, relates to the matter of competence in a single audit, and the evidence available to the panel suggests that Mr. MacNeil's audit work has been exemplary in the time since. Given these facts, the Panel's view is

that a suspension is not necessary to meet the objectives of sanction in this case.

- [87] The Panel wishes to be clear, however, that it does not view a suspension as outside the appropriate range of sanctions for a professional standards case. The Panel notes that such a sanction has previously been imposed in such cases. It is the mitigating facts in this case, including the isolated nature of the misconduct and Mr. MacNeil's exemplary record since that time, along with his willingness to fully cooperate with the PCC and take full responsibility for the audit errors, that led the Panel to conclude that a suspension is not necessary in this case. Faced with a professional standards case with different facts, the Panel would not have hesitated to impose a suspension.

The fine of \$75,000

- [88] The Panel finds that a fine of \$75,000 ensures that the objectives of specific and general deterrence are achieved, as well as the protection of the public and the maintenance of the reputation of the profession. In recognition of the seriousness of the misconduct and the decision to not impose a suspension, the amount of this fine is greater than that included in the written submissions of the PCC or Mr. MacNeil. The Panel is cognizant that a fine, in order to achieve the above objectives, must not merely constitute the cost of doing business. It must also reflect current economic realities and social values. The Panel is confident that the size of this fine will achieve these objectives.
- [89] The Panel took into consideration that a fine of \$100,000 was imposed in *Barrington* (2007), a fine of \$75,000 was imposed in *Woodsford* (2008), and a fine of \$125,000 was imposed in *Wall* (2017). Each of these three cases involved much larger public issuers and much larger audit fees. The \$75,000 fine imposed on Mr. MacNeil constitutes a significantly greater proportion of the value of the audit work and the fees collected by MNP for the audit than any of these three precedent cases. The Panel also considered that, unlike the members in these three precedent cases, Mr. MacNeil benefits from the mitigating fact that he took full responsibility for the audit failures and entered into a comprehensive ASF with the PCC.
- [90] The Panel is confident that a \$75,000 fine in these circumstances will send a clear message to the industry and the public that non-compliance with the standards of the profession will attract significant consequences.

Reprimand

[91] The parties are in agreement that a reprimand is necessary to highlight the seriousness of the misconduct and make clear to the member that his conduct has been unacceptable, achieving the objective of denunciation.

Supervised Practice Order and mandatory CPD

[92] Included in the suite of sanctions sought by the CPA is a supervised practice period of 18 months and professional development, followed by reinvestigation by the PCC, to achieve the objective of rehabilitation of Mr. MacNeil so the public will be protected. Considering the evidence in the ASF and from Mr. MacNeil at the hearing, the Panel does not consider that Mr. MacNeil is in need of rehabilitation. The Panel does not accept the PCC submission that these sanctions are necessary to ensure that Mr. MacNeil brings his standards up to the required level. There is no evidence before the Panel that Mr. MacNeil's standards are not currently at the required level; to the contrary, the evidence is that since the 2013 audit of SEL Mr. MacNeil has consistently met or surpassed professional audit standards based on internal MNP reviews and external reviews by CPAB and the CPA Ontario.

[93] If the case had come before the Discipline Committee closer to the time of the misconduct, the Panel may have been more inclined to impose courses and supervision to ensure that Mr. MacNeil's standards of practice were raised to the appropriate level. However, based on the evidence before it, the Panel finds that the courses and reviews already completed by Mr. MacNeil in the seven years since the time of the misconduct have been useful and effective in correcting the deficiencies identified in the ASF. Given the lack of any further complaints or a pattern of incompetence subsequent to the misconduct, in the Panel's view an order requiring supervised practice and mandatory CPD courses is not suitable in this case.

Publicity

[94] Both parties agree that the decision should be publicized in the normal course, consistent with CPAO Regulation 6-2. Because the Panel has not imposed a suspension, there is no requirement of publicity in the local press, and the Panel does not make such an order in this case.

Summary

[95] In the view of the Panel the cumulative sanctions sought by the PCC were unduly onerous considering the facts before the Panel, and in particular the specific circumstances of Mr. MacNeil. The Panel further considers that those sanctions

were not in line with the sanctions imposed in the most comparable precedent cases. Given the degree of current supervision and oversight, and the quality of Mr. MacNeil's work in the seven years since the audit failures, the Panel considers that a suspension, supervision, and the mandatory completion of courses are not necessary to achieve the objectives of sanctioning in this case. The Panel finds that public confidence in the profession's ability to self-regulate, general deterrence, and specific deterrence are best achieved through the imposition of a fine of \$75,000, combined with a reprimand and notice of the decision to the membership, the Public Accountants Council for the Province of Ontario and to all provincial bodies.

VII. COSTS

- [96] The law is settled that an order against Mr. MacNeil for costs with respect to the disciplinary proceeding is not a penalty. Costs are intended to indemnify the PCC, based on the underlying principle that the profession as a whole should not bear all of the costs of the investigation, prosecution and hearing arising from the member's misconduct.
- [97] Costs are awarded at the discretion of the Discipline Committee. It has become customary for the PCC to file a Costs Outline in the same form as used in civil proceedings, and to seek 2/3 of the costs incurred in the investigation and prosecution of the matter.
- [98] The PCC Costs Outline is found at Exhibit 3. It totals \$315,746.41, which includes investigative costs of \$163,311.41, and legal fees of \$152,435. The PCC seeks 2/3 of \$315,746.41, which amounts to \$210,497.61.
- [99] Mr. MacNeil opposes the PCC position. While he does not take issue with the investigative costs sought by the PCC, he submits that the PCC should not be entitled to any legal costs. Mr. MacNeil submits that the PCC took an unreasonable position by insisting that a suspension was a necessary sanction in this case, that there was no reasonable prospect the PCC could succeed in securing a suspension, and that absent this unreasonable position the matter could have settled without the need for a contested hearing on sanction.
- [100] The Panel accepts that the investigative costs for this case would be at the high end and that the predominant proportion of these costs should be borne by Mr. MacNeil as they arise solely as a result of his misconduct. The Panel considered awarding a higher proportion than two-thirds but settled on that amount (rounded to \$108,000) in part due to Mr. MacNeil's complete engagement and cooperation with the investigation.

[101] The Panel does not accept that the PCC's position on sanction was unreasonable and had no reasonable prospect of success. The Panel does, however, find that the PCC's legal costs for a one-day hearing on sanction, where the facts were settled by an ASF, are higher than would be expected, based on comparable cases. Accordingly, the Panel has awarded just under half of the legal costs incurred by the PCC, amounting to \$72,000. The total cost award is therefore \$180,000, payable within one year of the date of the Order.

Dated at Toronto this 25th day of March, 2021

A handwritten signature in black ink, appearing to read 'D. Handley', written in a cursive style.

David Handley
Discipline Committee – Panel Chair

Members of the Panel

Tiffany Cecchetto, CPA, CA, LPA
Brian Mbesha, CPA, CGA
Peter-John Vaillancourt, CPA, CGA
Catherine Kenwell (Public Representative)

Independent Legal Counsel

John Dent, Barrister & Solicitor