

CHARTERED PROFESSIONAL ACCOUNTANTS OF ONTARIO
(THE INSTITUTE OF CHARTERED ACCOUNTANTS OF ONTARIO)
THE CHARTERED ACCOUNTANTS ACT, 2010

DISCIPLINE COMMITTEE

IN THE MATTER OF: Allegations against **PETER KYLE SMILEY, CPA, CA**, under **Rule 201.1** and **206.1** of the Rules of Professional Conduct, as amended.

TO: Mr. Peter K. Smiley, CPA, CA

AND TO: The Professional Conduct Committee

REASONS

(Decision and Order made December 10, 2014)

1. This tribunal of the Discipline Committee met on December 10, 2014 to hear allegations of professional misconduct brought by the Professional Conduct Committee against Peter Kyle Smiley, a Member.

2. Ms. Alix Hersak appeared on behalf of the Professional Conduct Committee (PCC). Mr. Smiley attended without counsel. He confirmed that he knew he had the right to attend with counsel and waived that right. Mr. Robert Peck attended the hearing as counsel to the Discipline Committee.

3. The decision of the tribunal was made known at the conclusion of the hearing on December 10, 2014, and the written Decision and Order sent to the parties on December 15, 2014. These reasons, given pursuant to Rule 20.04 of the Rules of Practice and Procedure, include the allegations, the decision, the order, and the reasons of the tribunal for its decision and order.

Allegations

4. The following allegations were made against Mr. Smiley by the Professional Conduct Committee on June 17, 2014:

1. THAT the said Peter K. Smiley, in or about the period April 1, 2007 through November 30, 2012, while engaged in the practice of public accounting, failed to maintain the reputation of the profession and its ability to serve the public interest contrary to Rule 201.1 of the Rules of Professional Conduct in that he failed to maintain a public accounting license as required by the *Public Accounting Act*, S.O. 2004, c.8 as amended.
2. THAT the said Peter K. Smiley, in or about the period December 31, 2011 through November 30, 2012, while engaged to perform a review of the financial statements of "TT #XX9" for the year ended December 31, 2011, 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 ensure disclosure of the basis of presentation of the financial statements in accordance with the Canadian accounting standards for not-for-profit organizations;
 - (b) he failed to comply with the requirements for "first-time adoption" of Part III of the *Handbook*, including the required disclosures;
 - (c) he failed to ensure required disclosure of the balance sheet item "Cash and cash equivalents 227,033";
 - (d) he failed to ensure proper classification of the balance sheet item "Other assets: -due from TTSC (note 6) 1,869,227";
 - (e) he failed to ensure required disclosure of related party transactions;
 - (f) he failed to ensure adequate disclosure of significant accounting policies;
 - (g) he failed to ensure required disclosure of financial instruments;
 - (h) he failed to ensure adequate disclosure of the statement of revenue, expenditures and members' equity item "Investment income 101,856";
 - (i) he failed to ensure adequate disclosure of the balance sheet items "Hospital Patient Transportation Fund (14,402)" and "Life Membership Fund 19,122";
 - (j) although the organization controlled another not-for-profit organization which was not consolidated, he failed to ensure presentation of financial information for the controlled entity;
 - (k) he failed to adequately document the agreement with the client on the services to be provided or discussions with management of existing terms of the engagement;
 - (l) he failed to obtain written representations from management as required by the *CICA Handbook*; and
 - (m) he failed to document sufficient enquiry, analysis and discussion to support his Review Engagement Report.
3. THAT the said Peter K. Smiley, in or about the period December 31, 2011 through November 30, 2012, while engaged to perform a review of the financial statements of "TTSC" for the year ended December 31, 2011, 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 ensure disclosure of the basis of presentation of the financial statements in accordance with the Canadian accounting standards for not-for-profit organizations;
 - (b) he failed to comply with the requirements for "first-time adoption" of Part III of the *Handbook*, including the required disclosures;

- (c) he failed to document the basis for his conclusion to continue the client relationship and determination of his compliance with the required ethical standards including independence;
 - (d) he failed to adequately document planning of the engagement;
 - (e) he failed to ensure proper classification of the balance sheet item "Investment, In Co-Tenancy (Note 5) 2,427,954";
 - (f) he failed to ensure required disclosure of financial instruments;
 - (g) he failed to ensure adequate disclosure of significant accounting policies;
 - (h) he failed to adequately document the agreement with the client on the services to be provided or discussions with management of existing terms of the engagement;
 - (i) he failed to properly record a not-for-profit's investment in a profit oriented corporation and to provide adequate disclosure of the accounting policy followed and the nature of the relationship with the controlled enterprise;
 - (j) he failed to properly record a not-for-profit's investment in a profit oriented joint venture and to provide adequate disclosure of the accounting policy followed and the nature of the relationship with the controlled enterprise;
 - (k) he failed to obtain written representations from management as required by the *CICA Handbook*; and
 - (l) he failed to document sufficient enquiry, analysis and discussion to support his Review Engagement Report.
4. THAT the said Peter K. Smiley, in or about the period December 31, 2011 through November 30, 2012, while engaged to perform a review of the financial statements of "PWD Inc." for the year ended December 31, 2011, 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 ensure disclosure of the basis of presentation of the financial statements in accordance with the Canadian Accounting Standards for Private Enterprises;
 - (b) he failed to ensure compliance with the requirements of Part II of the *CICA Handbook* with respect to first-time adoption of Accounting Standards for Private Enterprises;
 - (c) he failed to adequately disclose significant accounting policies;
 - (d) he failed to ensure required disclosure of financial instruments;
 - (e) he failed to ensure required disclosure of related party transactions;

- (f) he failed to ensure required disclosure of issued share capital;
 - (g) he failed to ensure proper classification of the balance sheet item "Investment in Co-Tenancy 1,197,097";
 - (h) he accounted for a profit oriented corporation's investment in a joint venture using the equity method but failed to provide appropriate disclosure of the joint venture's amortization of its depreciable assets;
 - (i) he failed to adequately document the agreement with the client on the services to be provided or discussions with management of existing terms of the engagement;
 - (j) he failed to obtain written representations from management as required by the *CICA Handbook*; and
 - (k) he failed to document sufficient enquiry, analysis and discussion to support his Review Engagement Report.
5. THAT the said Peter K. Smiley, in or about the period December 31, 2011 through November 30, 2012, while engaged to perform a review of the financial statements of "XXX8 PWD" for the year ended December 31, 2011, 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 ensure disclosure of the basis of presentation of the financial statements in accordance with the Canadian Accounting Standards for Private Enterprises;
 - (b) he failed to ensure compliance with the requirements of Part II of the *CICA Handbook* with respect to first-time adoption of Accounting Standards for Private Enterprises;
 - (c) he failed to ensure required disclosure of related party transactions;
 - (d) he failed to ensure required disclosure of financial instruments;
 - (e) he failed to ensure required disclosure of the revenue recognition policy;
 - (f) he failed to ensure adequate disclosure of the balance sheet item "Accounts receivable 324,589";
 - (g) he failed to ensure proper disclosure of government remittances payable on the balance sheet;
 - (h) he failed to adequately document the agreement with the client on the services to be provided or discussions with management of existing terms of the engagement;

- (i) he failed to obtain written representations from management as required by the *CICA Handbook*; and
- (j) he failed to document sufficient enquiry, analysis and discussion to support his Review Engagement Report.

Plea

5. Mr. Smiley's response to the question of how he intended to plea was ambiguous. Accordingly, the Chair repeated the question and clarified his intention to ask for a plea with specific reference to each of the five allegations. Mr. Smiley then pleaded guilty to each of the five allegations in turn.

The Case for the PCC

6. Ms. Hersak opened the case for the PCC. She explained that the complaint had been made by a successor accountant and the Practice Inspection Committee. She advised that she intended to call one witness, the investigator, Mr. Robert Robertson. Ms. Hersak filed a Document Brief (Exhibit 1) which contained the relevant financial statements, reports and correspondence. She also filed a Brief of Authorities (Exhibit 2) which contained the relevant accounting and assurance provisions of the *CICA Handbook*.

7. Mr. Robertson was called as a witness for the PCC and filed a copy of his curriculum vitae (Exhibit 3). After reviewing his qualifications with him, Ms. Hersak asked that the tribunal recognize him as an expert witness. The tribunal did accept Mr. Robertson as an expert witness qualified to give opinion evidence.

8. Ms. Hersak filed a copy of Mr. Smiley's profile (Exhibit 4) showing a series of administrative suspensions and reinstatements, and Mr. Robertson testified about his interview with Mr. Smiley with respect to both the question of practising without a public accounting licence (Allegation No. 1) and the standards applicable to the financial statements and reports (Allegation Nos. 2 to 5).

9. Mr. Robertson confirmed that Mr. Smiley held a public accounting licence until 2007 when it was revoked. Mr. Smiley had advised Mr. Robertson that although he did not pay any subsequent licence renewal fees, he was unaware it had been revoked. He performed and issued assurance engagement reports without holding a licence and continued to do so after he became aware in 2011 that he no longer held a licence.

10. A summary of the relevant standards and the reports and financial statements for seven clients was filed (Exhibit 5). Mr. Robertson made specific reference to the relevant documents and authorities, and opined that Mr. Smiley had not maintained the standards of the profession as alleged in Allegation Nos. 2 to 5. At the conclusion of his examination-in-chief, Mr. Smiley was given the opportunity to cross-examine Mr. Robertson but he did not do so.

The Case for Mr. Smiley

11. Mr. Smiley then gave evidence on his own behalf. In doing so, while he explained that he thought he had a licence to practise public accounting, and was critical of CPA Ontario and the practice inspectors for not making it clear to him that he did not have a licence, he acknowledged that he had not maintained his licence. In 2012, Mr. Smiley had issued financial statements after receiving a direction from a practice inspector not to do so. Mr. Smiley stated that he was ill and working from home for part of 2011, and was not always aware of what was being done at his office during that time. He also acknowledged that some of the work he did was not documented as required.

Submissions

12. At the conclusion of the evidence Ms. Hersak made submissions, essentially making the point that the evidence was clear, cogent and convincing to support the allegations, and that it was apparent, indeed as Mr. Smiley recognized at least in part, that the member was guilty as alleged.

Decision

13. Given the evidence, including the fact that Mr. Robertson's testimony was not challenged and Mr. Smiley's admissions, the tribunal found that the allegations had been proven. After deliberating, the tribunal announced the following decision:

THAT having heard the plea of guilty to Allegation Nos. 1, 2, 3, 4 and 5, and having seen, heard and considered the evidence, the Discipline Committee finds Peter Kyle Smiley guilty of the Allegations of professional misconduct.

Reasons for Decision

14. The facts of the case were not in dispute. Even though there was no Agreed Statement of Facts, the member pleaded guilty to each allegation, and each component thereof, and there was no disagreement of the facts as presented by Ms. Hersak and the expert in his testimony.

15. The tribunal considered two distinct periods of time with respect to Allegation No. 1. During the period 2007 to 2011, it was clear that Mr. Smiley did not have a public accounting licence, and it was also clear that he did in fact practise public accounting, contrary to the *Public Accountancy Act*. The case could be made that during this period Mr. Smiley did so inadvertently. Even so, the infraction during this time was unacceptable as every professional has the responsibility to ensure that he or she is operating under the rules of the profession as they are then enacted. Although CPA Ontario provides guidance and help in this regard to foster compliance, this in no way exonerates the individual professional from the responsibility to practise in compliance with the rules. Not knowing the rules is not an excuse for abusing them and, in the opinion of the tribunal, not knowing is of itself an indication of carelessness in professional practice.

16. The second time frame is during 2012. During that year, the evidence clearly shows that Mr. Smiley was aware of the rule requiring him to have a public accounting licence in order to practise public accounting. He did not possess a licence and he nevertheless issued Review Engagement Reports attached to financial statements he had either reviewed or compiled. This willful breach of the Rules of Professional Conduct and flagrant disregard for the impact his actions might have, and did have, on the profession was found to be particularly repugnant by the tribunal.

17. There also was no disagreement about the errors found in financial reporting and documentation related to the financial statements Mr. Smiley had reported on, culminating in Allegation Nos. 2 through 5. Again, the tribunal found a compelling case for a finding of guilt on each of the allegations because the rules are clear, and the rules were clearly broken by Mr. Smiley. Mr. Smiley should have been aware of the rules and further, there is a pervasive sense that carelessness and a general disregard for the profession permeated Mr. Smiley's actions and or lack of compliance with the profession's rules.

18. The tribunal unanimously found that that the nature and extent of the departures from the required standards of the profession clearly constituted professional misconduct and accordingly Mr. Smiley was found guilty of Allegation Nos. 1 through 5.

Sanction

19. Ms. Hersak and Mr. Smiley did not call any additional evidence with respect to sanction. Both made submissions.

20. Mr. Smiley submitted that his practice has lost significant clients and his income is now greatly reduced. Since he is suffering financial hardship at this time, he stated that he would appreciate any assistance the tribunal could provide in considering sanctions. As a consequence of the "fiasco" resulting from the review of the financial statements referred to in the allegations, Mr. Smiley indicated he is now performing income tax work and only issuing Notice to Reader statements.

21. Ms. Hersak, on behalf of the PCC, submitted that an appropriate sanction in this matter would be: a written reprimand; a fine in the amount of \$10,000; that Mr. Smiley take the professional development course *Managing Professional Risk in Our Practice*, a restriction from performing audit and review engagements and full publicity including publication in the local newspaper, *The Ottawa Citizen*. Ms. Hersak stated that newspaper publicity is required under Regulation 7-3, section 23, for restriction of a practice.

22. Ms. Hersak filed a Costs Outline (Exhibit 6) showing that the actual costs were just over \$24,000, and stated that the PCC was seeking an order for approximately half the costs in the amount of \$12,000. Ms. Hersak stated that there would be no objection to giving Mr. Smiley a reasonable amount of time to pay the fine and costs, although he has provided limited information on his ability to pay.

23. Ms. Hersak submitted that the sanctions proposed by the PCC appropriately deal with the principles of general and specific deterrence, and rehabilitation. The professional development course would assist in Mr. Smiley's rehabilitation. The practice restriction would allow Mr. Smiley to perform work for which a public accounting licence is not required as he would no longer be allowed to do assurance engagements. Protection of the public is paramount and publicity on the CPA Ontario website, and newspaper publicity in the area of Mr. Smiley's practice, will inform the public that his work is restricted to Notice to Reader and income tax preparation.

24. Ms. Hersak stated that Members must comply with the regulations and the responsibility to comply with the *Public Accounting Act* rests on the shoulders of the Member to ensure yearly licence renewal. Ms. Hersak submitted that Mr. Smiley's history of administrative suspensions and reinstatements should have heightened his awareness of the necessity to ensure that membership and licence fees were up to date.

25. Ms. Hersak submitted that the PCC recommendation to restrict Mr. Smiley's practice, rather than require him to practice under supervision for a period of time, was appropriate given that Mr. Smiley's standard of practice was so far below the required standard of the profession and supervision did not seem practicable or necessary as he has given up assurance work.

26. Ms. Hersak stated that the aggravating factors included the standards of practice, no public accounting licence since 2007, and continuing to do assurance work and issue financial statements, despite being aware in 2011 that his licence had expired. Mr. Smiley's staff member had been placed in a difficult position with clients when she became aware of the licensing situation and attempted to have Mr. Smiley rectify the situation.

27. Ms. Hersak stated that the mitigating factors were that Mr. Smiley has no history before the Discipline Committee, he did plead guilty to the allegations which indicates remorse, had cooperated fully with the PCC, the investigator and in today's proceedings, and has indicated that health factors were involved. Mr. Smiley is now only doing compilations, rather than assurance engagements.

28. Ms. Hersak referred to the case brief containing *Lange, Vanek, Radvany, Hubbard and Morgan*, noting that the precedents contained a common theme involving practising without a public accounting licence and financial statement deficiencies.

29. The tribunal commenced deliberations but called the parties back to ask for submissions on why the fine requested was not a higher amount as this case involved two separate types of allegations.

30. Mr. Smiley submitted that the precedent cases cited were far more serious, as in his case no clients had been harmed. He stated that although he did continue to practise public accounting without a licence, he was never sent a renewal notice and during two practice inspections, nothing was said about a licence.

31. Ms. Hersak submitted that the PCC felt a fine of \$10,000 and practice restriction was an appropriate sanction. In the *Hubbard* case, which included a higher fine of \$15,000, there had been a prior discipline case, Mr. Hubbard had allowed a non-member to sign and issue financial statements in his name for a period of 15 years, and there were significant deficiencies in the standards of practice. Ms. Hersak stated that while there are no completely analogous cases to that of Mr. Smiley, the fine requested is within the range.

Order

32. After deliberating, the tribunal made the following order:

IT IS ORDERED in respect of the allegations:

1. THAT Mr. Smiley be reprimanded in writing by the Chair of the tribunal.
2. THAT Mr. Smiley be and he is hereby fined the sum of \$12,000 to be remitted to CPA Ontario within eighteen (18) months from the date this Decision and Order is made.
3. THAT Mr. Smiley be and he is hereby required to complete, by paying for and attending in its entirety, within eighteen (18) months from the date this Decision and Order is made, the professional development course made available through CPA Ontario *Managing Professional Risk in Our Practice* or, in the event the course becomes unavailable, the successor course which takes its place.
4. THAT Mr. Smiley's practice be and is hereby restricted to non-assurance engagements, restricting him from performing audit or review engagements.
5. THAT notice of this Decision and Order, disclosing Mr. Smiley's name, 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; and
 - (c) to all provincial bodies;
 and shall be made available to the public.

6. THAT notice of the restriction on Mr. Smiley's practice, disclosing Mr. Smiley's name, be given by publication on the CPA Ontario website and in *The Ottawa Citizen*. All costs associated with the publication shall be borne by Mr. Smiley and shall be in addition to any other costs ordered by the committee.
7. THAT in the event Mr. Smiley fails to comply with the requirements of this Order, he shall be suspended from membership in CPA Ontario until such time as he does comply, provided that he complies within thirty (30) days from the date of his suspension. In the event he does not comply within the thirty (30) day period, his membership in CPA Ontario shall thereupon 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 Mr. Smiley's practice and/or residence. All costs associated with this further publication shall be borne by Mr. Smiley and shall be in addition to any other costs ordered by the committee.

IT IS FURTHER ORDERED:

8. THAT Mr. Smiley be and he is hereby charged costs fixed at \$12,000 to be remitted to CPA Ontario within eighteen (18) months from the date this Decision and Order is made.

Reasons for Sanction

33. Mr. Smiley's willful disregard for the profession's Rules of Professional Conduct and his careless approach to his practice of public accounting made the tribunal question if Mr. Smiley should be allowed to continue to hold his CPA/CA designation. We believe that Mr. Smiley's actions are very close to showing us that he is not governable. However, in recognition of the mitigating factors including Mr. Smiley's previous long career without prior discipline history with CPA Ontario, the respect he has shown by attending at the hearing and otherwise cooperating with the proceedings, and his acknowledgment of his guilt through his plea thereby taking the first step to rehabilitation, the tribunal concluded, after much discussion, that an Order that balanced Mr. Smiley's rehabilitation and protection of the public would be appropriate.

34. The tribunal ordered a written reprimand from the Chair to assist in the rehabilitation process of Mr. Smiley.

35. The tribunal ordered a fine in the amount of \$12,000. The PCC had requested a lesser fine and after deliberation the tribunal concluded that it did not find the requested fine sufficient relative to the seriousness of the rule breaches and in particular the willful and careless disregard of those rules. The tribunal asked for further input from Ms. Hersak and Mr. Smiley and after hearing those submissions agreed on an amount between that requested by the PCC and the initial amount considered appropriate by the tribunal. The tribunal wishes to make it very clear to the member and to the membership at large that the rules, particularly those that are intended to protect the public, will be upheld scrupulously in a rigorous effort to protect the public. The tribunal determined a fine of \$12,000 meets those goals.

36. The tribunal believed it was an essential element to Mr. Smiley's rehabilitation that he attend the course *Managing Professional Risks in Our Practice*. We hope that by attending this course, Mr. Smiley will embrace a renewed approach to achieving a high level of professional standards in his practice. There was no evidence to suggest that Mr. Smiley's tax practice was deficient but the standards of practice are universal, and so for rehabilitation purposes and to

protect the public the tribunal has made this order.

37. By restricting Mr. Smiley's practice to non-assurance engagements, the tribunal believes it is striking a balance between being respectful of Mr. Smiley's long service without complaint or blemish and his most recent deviation from that level of performance, and the tribunal's adamant approach to protect the public from a practitioner who has disregarded the professional standards with assurance engagements.

38. Notice is an important part of an order that seeks to protect the public interest, rebuild the profession's reputation and, in the case of an order to restrict a member's practice, is a required part of the order under CPA Ontario's Regulations. The cost of newspaper publication is to be borne by the Member, and is in addition to any other costs ordered.

39. The tribunal members thought it was appropriate in the circumstances that the total costs involved culminating in the hearing be shared on a 50/50 basis by Mr. Smiley and CPA Ontario's membership.

40. Although there was little evidence provided to substantiate the claim by Mr. Smiley of financial hardship, he did state under oath that his financial circumstances were diminished. Consequently, the tribunal ordered that Mr. Smiley be given 18 months to pay the fine ordered and the same amount of time to make restitution of his share of the costs.

DATED AT TORONTO THIS 25TH DAY OF MARCH, 2015
BY ORDER OF THE DISCIPLINE COMMITTEE



R.J. ADAMKOWSKI, CPA, CA – DEPUTY CHAIR
DISCIPLINE COMMITTEE

MEMBERS OF THE TRIBUNAL:

M.I. FELDSTEIN, CPA, CA

R.A. FERNANDES, CPA, CA

A.B. MINTZ, CPA, CA

S.B. WALKER (PUBLIC REPRESENTATIVE)