

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

DISCIPLINE COMMITTEE

IN THE MATTER OF: An Allegation against **WM. J. TROTTER & ASSOCIATES**, under Rule 502 of the Rules of Professional Conduct, as amended.

An Allegation against **PETER R.W. ANDERSON, CPA, CA**, under Rule 406 of the Rules of Professional Conduct, as amended.

An Allegation against **WILLIAM J. TROTTER, CPA, CA**, under Rule 406 of the Rules of Professional Conduct, as amended.

TO: Mr. Peter R.W. Anderson, CPA, CA
Mr. William J. Trotter, CPA, CA
Wm. J. Trotter & Associates

AND TO: The Professional Conduct Committee

REASONS

(Decision and Order made November 12, 2014)

1. This tribunal of the Discipline Committee met on November 12, 2014 to hear allegations of professional misconduct brought by the Professional Conduct Committee against Peter R.W. Anderson and William J. Trotter, Members of CPA Ontario, and the firm of Wm. J. Trotter & Associates.

2. Ms. Diana Soos appeared on behalf of the Professional Conduct Committee (PCC), accompanied by the investigator, Mr. Robert G. Robertson. Messrs. Anderson and Trotter attended with their counsel Ms. Lindsay Kantor. Mr. Glenn Stuart attended the hearing as counsel to the Discipline Committee.

3. On consent of all parties present, Mr. Russ Carrington replaced Ms. Gloria Hinton, the public representative who had attended at the previous motion hearing.

4. The decision of the tribunal was made known at the conclusion of the hearing on November 12, 2014, and the written Decision and Order sent to the parties on November 21, 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.

Allegation

5. The following allegation of professional misconduct was made against Mr. Anderson by the Professional Conduct Committee on April 25, 2013:

1. THAT, the said Peter R.W. Anderson, in or about the period March 1, 2007 through September 30, 2011, while engaged in the practice of public accounting and while associated in such practice with a non-member "GD", failed to ensure that "GD" abided by the Rules of Professional Conduct of the ICAO contrary to

Rule 406 of the Rules of Professional Conduct and in particular:

- a) "GD" failed to conduct himself in a manner which will maintain the good reputation of the profession and its ability to serve the public interest in the course of providing services to "KD," "LS," and "WVI"; and
- b) "GD" failed to perform his professional services with due care in the course of providing services to "KD," "LS," and "WVI".

6. The following allegation of professional misconduct was made against Mr. Trotter by the Professional Conduct Committee on April 25, 2013:

1. THAT, the said William J. Trotter, in or about the period March 1, 2007 through September 30, 2011, while engaged in the practice of public accounting and while associated in such practice with a non-member "GD", failed to ensure that "GD" abided by the Rules of Professional Conduct of the ICAO contrary to Rule 406 of the Rules of Professional Conduct and in particular:
 - a) "GD" failed to conduct himself in a manner which will maintain the good reputation of the profession and its ability to serve the public interest in the course of providing services to "KD," "LS," and "WVI"; and
 - b) "GD" failed to perform his professional services with due care in the course of providing services to "KD," "LS," and "WVI".

7. The following allegation of professional misconduct was made against the firm of Wm. J. Trotter & Associates (WJT&A) by the Professional Conduct Committee on April 25, 2013:

1. THAT, the said firm William J. Trotter & Associates, in or about the period March 1, 2007 through December 4, 2012, failed to establish, maintain and uphold appropriate policies and procedures designed to ensure that, in the conduct of the practice, the members and students of the Institute who are associated with the firm and any other employees of the firm or other persons with whom the firm contracts to carry out its professional services comply with the Rules of Professional Conduct, contrary to Rule 502 of the Rules of Professional Conduct, in particular:
 - a) that they conduct themselves in a manner which will maintain the good reputation of the profession and its ability to serve the public interest; and
 - b) that they perform their professional services with due care.

Plea

8. Mr. Anderson entered a plea of guilty to the allegation, Mr. Trotter entered a plea of guilty to the allegation and a plea of guilty to the allegation was entered on behalf of the firm.

The case for the PCC

9. Ms. Soos advised the tribunal that the case for the PCC would be presented by way of an Agreed Statement of Facts, and there would be no other evidence submitted by the parties on the issue of professional misconduct. She then filed the Agreed Statement of Facts and Document Book (Exhibit 9), signed by Mr. Trotter and by Mr. Anderson on their own behalf, and on behalf of the firm, and by Ms. Soos on behalf of the PCC. (Exhibits 1 through 8 had been filed at a motion hearing.)

10. In presenting the case for the PCC, Ms. Soos reviewed the Agreed Statement of Facts. No other evidence was called on behalf of the PCC.

The relevant facts

11. The relevant facts are fully set out in the Agreed Statement of Facts.

12. Messrs. Anderson and Trotter, Members of CPA Ontario (the Members), together as partners, own and operate WJT&A, preparing compilation engagements, tax returns, assurance engagements, audits and reviews. Non-assurance and income tax engagements are delegated to staff members, including non-designated staff. GD, who has no accounting accreditation, was employed as a staff accountant.

13. In March 2008, the client KD provided GD with required information to complete and file personal tax returns for KD and LS. GD also prepared 2007 Notice to Reader financial statements and corporate tax return for KD's company WVI. Mr. Anderson supervised some of the work done by GD by reviewing the financial statement, the working paper file and corporate tax return of WVI.

14. In 2008, KD and LS' child required extensive care and costly ongoing treatment. KD received advance funds from a gallery selling his artwork and the amounts were deposited in WVI's bank account, with GD's knowledge. In March 2009, KD submitted accounting records needed by GD to complete 2008 tax filings for WVI, and personal tax filings for KD and LS. GD said he set the records aside and then forgot he had them in his possession. In order to prepare the income tax returns, GD made an estimate of WVI's taxable income and recorded management fees on KD and LS' personal tax returns.

15. The personal tax returns were filed by GD without review by the Members, in accordance with firm policy. The Members did not supervise GD with respect to services provided to the clients. In 2008, the firm did not have policies and procedures in place to ensure appropriate supervision of the work performed by employees, including GD.

16. KD provided accounting records for WVI and personal tax information for KD and LS in March 2010. GD stated that he again set the records aside and did not complete the 2009 financial statements and corporate tax returns for WVI. GD again estimated WVI's taxable income in order to prepare KD and LS' personal tax returns, recording a salary and management fee on the tax returns.

17. The 2009 personal tax returns were filed by GD without the review of the Members, in accordance with firm policy. The Members did not supervise GD with respect to services rendered to the clients. There were no firm policies and procedures in place to ensure proper supervision of the work done by employees.

18. In March 2011, KD again submitted the accounting records for WVI and personal tax information for himself and LS. GD did not complete the financial statements and corporate tax return for the company, once again stating he had set the corporate records aside. GD told the clients that their 2010 income tax returns had not been filed due to an error in the firm's e-file system. This was untrue as the income tax returns had not been prepared.

19. The clients became increasingly concerned with the timeliness of GD's work and retained another accountant. The successor accountant advised the firm of his appointment, and KD contacted Mr. Trotter to advise of his concerns. Subsequently, GD completed the

personal tax returns and e-filed them in September, again estimating WVI's taxable income and the management fees on KD and LS' tax returns. The 2010 tax returns were filed by GD without review and supervision by the Members, and the firm did not have policies and procedures in place to ensure appropriate supervision.

20. Between March 2008 and May 2011, the firm had issued 14 invoices totaling nearly \$13,000 to WVI for services rendered. The invoices did not specify the details of those services and GD did not and was not required to maintain dockets.

21. Mr. Anderson had reviewed and approved the 2008 financial statements and corporate return for WVI, but between 2009 and 2011, GD's work for these clients was not reviewed or supervised. In 2011, after receipt of correspondence from the successor accountant expressing concerns about GD, Messrs. Anderson and Trotter met with GD and reviewed the files. At that time, it was discovered that GD had not completed financial statements and corporate tax returns for WVI, and had not registered WVI for GST/HST or prepared the necessary GST/HST returns, for the years 2008 to 2011.

22. Mr. Anderson prepared a list of accounting work to be completed for WVI and personally undertook to complete the accounting and tax filing work required. At that time, Mr. Anderson discovered additional issues relating to the work performed by GD, including that taxable income of WVI was well in excess of management fees and salaries recorded; money withdrawn by KD was in excess of management fees and salaries recorded as having been paid to KD and LS, false GST/HST numbers were provided to KD and the art gallery; and late registration resulted in WVI owing approximately \$35,000 in GST/HST.

23. The clients were unaware of the issues relating to their personal and corporate taxes as all communications from CRA were directly with the firm. Invoices to the clients stated only "For Services Rendered", and having received and paid the invoices, the clients had no reason to believe the accounting work had not been done.

24. Mr. Anderson made retroactive adjustments to the income tax returns that had been filed for the client, and completed work on KD's 2009 to 2011 personal income tax returns, and the 2008 to 2011 financial statements and corporate tax returns for WVI. Mr. Anderson estimated KD's total tax liability for the four-year period was over \$250,000. In addition, he registered WVI for GST/HST and completed the tax returns for 2007 to 2011. Although WVI was entitled to a GST/HST refund of \$17,000, due to GD's failure to register WVI the CRA disallowed the input credits and KD was liable for approximately \$35,000 in GST/HST collected.

25. The actions of GD, and the Members' failure to supervise the work performed, placed the clients in serious financial difficulty and possible bankruptcy, requiring KD to retain a Trustee in Bankruptcy to negotiate financing arrangements with CRA. The clients' credit cards and line of credit were cancelled, their ability to pay for their child's care required financial assistance from family, and valuable artwork had to be sold at reduced prices which adversely affected the business.

26. In addition, significant legal and accounting fees were incurred by the clients. In August 2012, the Members offered to reimburse the clients approximately \$75,000 for the fees and liability to CRA incurred. In December 2012, a further settlement offer was made by the Members.

27. Prior to 2012, it was common practice at the firm for Mr. Trotter to meet all new clients, gain an understanding of their requirements and assign the clients to staff members. Mr. Trotter

was regularly involved with a number of the firm's larger engagements or clients requiring his assistance. The firm's smaller clients were assigned to staff members and Mr. Anderson was responsible for ensuring compliance with practice and regulatory requirements. Staff members worked independently, contacting the client and obtaining necessary information to provide services on a timely basis. It was not the firm's practice to always prepare engagement letters for compilation engagements and engagement letters were not prepared for personal income tax clients. No formal review by senior CA staff was done of personal tax returns prepared by non-CA staff.

28. Although Mr. Anderson was responsible for reviewing and approving all compilation engagements completed by non-CA designated staff, there were no firm policies and procedures in place to ensure that all such engagements came to Mr. Anderson's attention. The firm employed four CA staff members, and the two who held public accounting licences were permitted to prepare and issue compilation and assurance engagements without review by either Mr. Trotter or Mr. Anderson. It was left up to non-CA designated staff to present financial statements to Mr. Anderson for review and approval. If employees identified issues relating to engagements, they were to bring them to the attention of the Members.

29. Prior to 2012, staff were themselves responsible for scheduling and completing work assigned to them, with no formal schedule of work or tracking procedures to ensure continuity of client work. Not all staff maintained detailed listing of clients assigned to them and work to be performed. Mr. Trotter was responsible for the issuance of the firm's invoices but there was no policy that staff had to detail work done in time dockets. Invoices issued to clients stated "For services rendered" with no detail of the work that had been done. The firm had no policies with respect to the use of firm letterhead or staff meeting with and providing information to client's financial planners, lawyers or creditors.

30. At the time the Members met with the PCC in December 2012, policies and procedures to resolve the problems raised were not fully implemented but were in process. The database requiring staff to list projects to be completed was being updated but on a hit and miss basis. However, Mr. Anderson was meeting monthly with senior staff members to review ongoing engagements and monitor the implementation of the practice management software by staff members.

Submissions

31. Ms. Soos submitted that based on the acknowledged facts as set out in the Agreed Statement of Facts, the evidence was clear, cogent and convincing that Mr. Anderson, Mr. Trotter and Wm. J. Trotter & Associates failed to comply with the rules.

32. Ms. Kantor agreed that the facts as set out are straightforward. This is not a case where the Members knowingly assisted and abetted a non-member in failing to perform his professional services with due care. The matters had not been brought to the attention of the Members, and they were unaware of GD's conduct. Mr. Anderson and Mr. Trotter have done everything possible to ensure that this does not happen again by implementing new procedures, and the clients have been compensated. Ms. Kantor stated that the Members acknowledge their responsibility for the actions of GD, who is no longer employed with the firm.

Decision

33. After deliberating, the tribunal found, on the uncontested evidence, that the allegations had been proven. The tribunal announced the following decision:

THAT having determined to hear the allegations against Mr. Anderson, Mr. Trotter and

Wm. J. Trotter & Associates together, pursuant to Rule 6, and having heard the plea of guilty made by each of the named parties to the allegation regarding that party, and having seen and considered the evidence, including the Agreed Statement of Facts, filed, the Discipline Committee finds each of Peter R.W. Anderson, William J. Trotter, and Wm. J. Trotter & Associates guilty of the allegations of professional misconduct.

Reasons for Decision

34. The tribunal found that the Agreed Statement of Facts set out in a clear, cogent and convincing manner that Mr. Anderson and Mr. Trotter were each guilty of the allegation that they failed to ensure that GD, a non-member employee, abided by the Rules of Professional Conduct, contrary to Rule 406. The tribunal also found that the firm Wm. J. Trotter & Associates failed to maintain and uphold policies and procedures designed to ensure that Members, students and employees performed services with due care and conducted themselves in a manner which would maintain the good reputation of the profession, contrary to Rule 502.

35. No evidence, other than the Agreed Statement of Facts, was presented by either party. The tribunal was satisfied that there were no other relevant matters not contained in the Agreed Statement of Facts that would bear on the tribunal's decision.

36. The details set out in the Agreed Statement of Facts, together with the Members' plea of guilty to each of the allegations, left the tribunal in no doubt that the allegations had been proven and constituted professional misconduct.

Submissions on Sanction

37. Ms. Soos, on behalf of the PCC, submitted that an appropriate sanction in this matter, agreed to by the parties, would be: a written reprimand; a fine in the amount of \$7,500 for Mr. Anderson; a fine in the amount of \$7,500 for Mr. Trotter and a fine in the amount of \$5,000 for the firm, a reinvestigation by the PCC within one year with no additional cost and the usual publicity to all Members and the public. The PCC also sought an order for costs of \$25,000. Ms. Soos said the time period for payment of the fines and costs could be 30 days.

38. Ms. Soos distributed a Book of Authorities containing the CPA Ontario case of *Hubbard*, along with the *College of Nurses of Ontario v. Pace*, *Ontario College of Pharmacists v. Oduro* and *Law Society of Upper Canada v. Lacaria*. Ms. Soos submitted that all joint submissions should be accepted by the tribunal unless they were felt to be unreasonable and would bring disrepute to the profession. Ms. Soos noted that the fine and costs requested in this matter are within the range ordered in the *Hubbard* case.

39. Ms. Kantor submitted that this matter involves a lack of oversight by the Members, who were unaware of their employee's conduct. The Members have taken full responsibility for their conduct, cooperated fully and have entered into an Agreed Statement of Facts. This is unlike the *Hubbard* case where he had a prior discipline history, a pattern of egregious behavior and was ungovernable. Ms. Kantor asked the tribunal to accept the proposed sanctions.

Order

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

1. THAT Mr. Anderson and Mr. Trotter be reprimanded in writing by the Chair of the tribunal.
2. THAT Mr. Anderson and Mr. Trotter be and they are hereby each fined the sum

of \$7,500, and Wm. J. Trotter & Associates is hereby fined the sum of \$5,000, to be remitted to the Chartered Professional Accountants of Ontario (registered business name of The Institute of Chartered Accountants of Ontario) ("CPA Ontario") within thirty (30) days from the date this Decision and Order is made.

3. THAT Mr. Anderson, Mr. Trotter and Wm. J. Trotter & Associates be reinvestigated by the Professional Conduct Committee, or by a person retained by the Professional Conduct Committee, on one occasion within one (1) year from the date this Decision and Order is made.
4. THAT notice of this Decision and Order, disclosing the name of Mr. Anderson, Mr. Trotter and Wm. J. Trotter & Associates, 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.
5. THAT in the event a party fails to comply with the requirements of this Order, that party shall be suspended from membership in CPA Ontario and his public accounting licence shall thereupon be suspended until such time as he does comply, provided that he complies within thirty (30) days from the date of his suspension. In the event that party does not comply within the thirty (30) day period, his membership in CPA Ontario and public accounting licence shall thereupon be revoked, and notice of the revocation of his membership and public accounting licence, disclosing his name, shall be given in the manner specified above, and in a newspaper distributed in the geographic area of the party's practice. All costs associated with this publication shall be borne by the party so revoked, and shall be in addition to any other costs ordered by the tribunal.

IT IS FURTHER ORDERED:

6. THAT Mr. Anderson and Mr. Trotter be and they are hereby charged, jointly and severally, costs fixed at \$25,000, to be remitted to CPA Ontario within thirty (30) days from the date this Decision and Order is made.

Reasons for Sanctions

41. The tribunal agreed that the sanctions of reprimand, fines to each member and to the firm, Trotter & Associates, were reasonable and within the range of sanctions currently being imposed.

42. The tribunal also agreed that joint submissions should not be overturned or amended unless they fall outside the range of reasonable sanctions. The sanctions imposed should remind the Members that the protection of the public is very critical to the reputation of the profession

Reasons for Costs

43. The tribunal agreed that the costs of \$25,000 as agreed to by the parties were reasonable in the circumstances.

DATED AT TORONTO THIS 17TH DAY OF FEBRUARY, 2015
BY ORDER OF THE DISCIPLINE COMMITTEE



S.F. DINELEY, FCPA, FCA – DEPUTY CHAIR
DISCIPLINE COMMITTEE

MEMBERS OF THE TRIBUNAL:

J.C. BLACKWELL, CPA, CA
R.H. CARRINGTON (PUBLIC REPRESENTATIVE)
C. DANCHUK, CPA, CA
G. KROFCHICK, CPA, CA