

Allan Samuel Cheskes: Summary, as Published in *CheckMark*

Allan Samuel Cheskes, of North York, was found guilty of two charges under Rule 206 of failing to perform his professional services in accordance with generally accepted standards of practice of the profession, including the Recommendations set out in the *CICA Handbook*. The charges related to insufficient work done by Mr. Cheskes to support a succession of audit reports for a client, including such deficiencies as failing to obtain sufficient appropriate audit evidence to support balance sheet and financial statement items, and improperly including in the financial statements expenses of the company incurred but mistakenly not recorded in prior fiscal periods. Mr. Cheskes was fined \$5,000, charged costs of \$21,400, and ordered to complete two professional development courses.

CHARGE(S) LAID re Allan Samuel Cheskes

The Professional Conduct Committee hereby makes the following charges against Allan S. Cheskes, CA, a member of the Institute:

1. THAT, the said Allan S. Cheskes, in or about the period January 1, 1999 to August 31, 2000, while engaged to perform an audit of the financial statements of Lydia Consolidated Diamond Mines of Canada Ltd. for the years ended May 31, 1995, 1996, 1997, 1998 and 1999, failed to perform his professional services in accordance with generally accepted standards of practice of the profession, including the Recommendations set out in the CICA Handbook, contrary to Rule 206 of the Rules of Professional Conduct, in that;
 - (i) for the years ended May 31, 1995, 1996, 1997, 1998 and 1999 he failed to obtain sufficient appropriate audit evidence to support the balance sheet item "Exploration Charges";
 - (ii) for the years ended May 31, 1995, 1996 and 1997 he failed to obtain sufficient appropriate audit evidence to support the financial statement item "Financing and Travel Expenses";
 - (iii) for the year ended May 31, 1999 he failed to obtain sufficient appropriate audit evidence to support the balance sheet item "Capital Assets Additions" ;
2. THAT, the said Allan S. Cheskes, in or about the period August 1, 2000 to August 31, 2001, while engaged to perform an audit of the financial statements of Lydia Consolidated Diamond Mines of Canada Ltd. for the fiscal period ended May 16, 2001, failed to perform his professional services in accordance with generally accepted standards of practice of the profession, including the Recommendations set out in the CICA Handbook, contrary to Rule 206 of the Rules of Professional Conduct, in that;
 - (i) he improperly included expenses of the company in the amount of approximately \$130,900.00, incurred but mistakenly not recorded in the 1998, 1999 and 2000 fiscal periods, in the Statements of Operations item "Office and General - \$504,140".

Dated at Windsor, this 30th day of October, 2003;

D. D. MELOCHE, CA - DEPUTY CHAIR
PROFESSIONAL CONDUCT COMMITTEE

DISCIPLINE COMMITTEE re Allan Samuel Cheskes

DECISION AND ORDER IN THE MATTER OF: Charges against **ALLAN SAMUEL CHESKES, CA**, a member of the Institute, under **Rule 206** of the Rules of Professional Conduct, as amended.

DECISION AND ORDER MADE MAY 10, 2004

DECISION

THAT, having seen and considered the evidence, including the agreed statement of facts, filed, and having heard the plea of guilty to charges Nos. 1 and 2, the Discipline Committee finds Allan Samuel Cheskes guilty of charges Nos. 1 and 2.

ORDER

IT IS ORDERED in respect of the charges:

1. THAT Mr. Cheskes be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Cheskes be and he is hereby fined the sum of \$5,000, to be remitted to the Institute within six (6) months from the date this Decision and Order becomes final under the bylaws.
3. THAT Mr. Cheskes be and he is hereby charged costs fixed at \$21,400, inclusive of GST in the amount of \$1,400, to be remitted to the Institute within one (1) year from the date this Decision and Order becomes final under the bylaws.
4. THAT Mr. Cheskes be and he is hereby required to complete, by paying for and attending in their entirety, within one (1) year from the date this Decision and Order becomes final under the bylaws, the following professional development courses made available through the Institute, or, in the event a course listed below becomes unavailable, the successor course which takes its place:
 - (a) Assurance & Accounting Issues for Public Companies; and
 - (b) Analytical Procedures.
5. THAT notice of this Decision and Order, disclosing Mr. Cheskes' name, be given after this Decision and Order becomes final under the bylaws, in the form and manner determined by the Discipline Committee:
 - (a) to the Public Accountants Council for the Province of Ontario;
 - (b) to the Canadian Institute of Chartered Accountants; and
 - (c) by publication in CheckMark.
6. THAT in the event Mr. Cheskes fails to comply with any of the requirements of this Order, he shall thereupon be expelled from membership in the Institute, and notice of his expulsion, disclosing his name, shall be given in the manner specified above, and in a newspaper distributed in the geographic area of Mr. Cheskes' practice or employment.

DATED AT TORONTO THIS 19TH DAY OF MAY, 2004
BY ORDER OF THE DISCIPLINE COMMITTEE

BRYAN W. STEPHENSON, BA, LLB
SECRETARY – DISCIPLINE COMMITTEE

DISCIPLINE COMMITTEE re Allan Samuel Cheskes

REASONS FOR DECISION AND ORDER IN THE MATTER OF: Charges against **ALLAN SAMUEL CHESKES, CA**, a member of the Institute, under **Rule 206** of the Rules of Professional Conduct, as amended.

REASONS FOR THE DECISION AND ORDER MADE MAY 10, 2004

1. This panel of the discipline committee of the Institute of Chartered Accountants of Ontario met on May 10, 2004, to hear charges brought by the professional conduct committee against Allan Samuel Cheskes, a member of the Institute.
2. Mr. Brian Bellmore represented the professional conduct committee, and Mr. Ray Harris, the investigator appointed by the professional conduct committee, accompanied him. Mr. Cheskes was present and was represented by his council, Ms. Cynthia Amsterdam.
3. The decision of the discipline committee was made known at the hearing on May 10, 2004. The formal decision and order was signed by the secretary of the discipline committee and sent to the parties on May 19, 2004. These reasons, set out in writing pursuant to Bylaw 574, include the charges, the decision, and the order as well as the reasons of the discipline committee.

THE CHARGES AND THE PLEA

4. When the hearing was called to order, the notice of assignment hearing, the notice of hearing, and the charges were marked as Exhibits 1, 2 and 3, respectively.
5. When the parties indicated there were no preliminary issues to be dealt with, Mr. Cheskes was asked to plead to the charges. The charges, laid by the professional conduct committee on October 30, 2003, read as follows:
 1. THAT, the said Allan S. Cheskes, in or about the period January 1, 1999 to August 31, 2000, while engaged to perform an audit of the financial statements of Lydia Consolidated Diamond Mines of Canada Ltd. for the years ended May 31, 1995, 1996, 1997, 1998 and 1999, failed to perform his professional services in accordance with generally accepted standards of practice of the profession, including the Recommendations set out in the CICA Handbook, contrary to Rule 206 of the Rules of Professional Conduct, in that;
 - (i) for the years ended May 31, 1995, 1996, 1997, 1998 and 1999 he failed to obtain sufficient appropriate audit evidence to support the balance sheet item "Exploration Charges";
 - (ii) for the years ended May 31, 1995, 1996 and 1997 he failed to obtain sufficient appropriate audit evidence to support the financial statement item "Financing and Travel Expenses";
 - (iii) for the year ended May 31, 1999 he failed to obtain sufficient appropriate audit evidence to support the balance sheet item "Capital Assets Additions" ;

2. THAT, the said Allan S. Cheskes, in or about the period August 1, 2000 to August 31, 2001, while engaged to perform an audit of the financial statements of Lydia Consolidated Diamond Mines of Canada Ltd. for the fiscal period ended May 16, 2001, failed to perform his professional services in accordance with generally accepted standards of practice of the profession, including the Recommendations set out in the CICA Handbook, contrary to Rule 206 of the Rules of Professional Conduct, in that;
 - (i) he improperly included expenses of the company in the amount of approximately \$130,900.00, incurred but mistakenly not recorded in the 1998, 1999 and 2000 fiscal periods, in the Statements of Operations item "Office and General - \$504,140".

6. Mr. Cheskes entered a plea of guilty to both charges and confirmed that he understood that on the basis of his plea, and on that basis alone, he could be found guilty of professional misconduct.

THE CASE FOR THE PROFESSIONAL CONDUCT COMMITTEE

7. In opening the case for the professional conduct committee, Mr. Bellmore filed an agreed statement of facts and a document brief, which were marked as Exhibits 4 and 5, respectively.

8. Mr. Bellmore reviewed the agreed statement of facts in some detail, and made reference to a number of the relevant documents in the document brief as he did so.

9. After Mr. Bellmore had concluded the case for the professional conduct committee, Ms. Amsterdam briefly reviewed the agreed statement of facts.

10. Mr. Bellmore made brief submissions to the effect that the evidence warranted a finding of guilty on both charges. Ms. Amsterdam declined the opportunity to make submissions.

DECISION ON THE CHARGES

11. When the parties had withdrawn, the panel deliberated and concluded that the charges had been proven. The member's specific failures to adhere to the standards of the profession are set out as particulars in the charges. As auditor he identified aspects of the audit which were high risk but failed to do the appropriate work.

12. The audited financial statements of Lydia Consolidated Diamond Mines of Canada Ltd. for the three years ending May 31, 1998, 1999 and 2000 were included in a Joint Management Information Circular issued by Lydia and Acadia Minerals Ltd. in August 2000 in connection with the amalgamation of the two companies. Investors later raised questions with respect to the financial affairs of the corporation and the audit became an issue at a hearing of the Ontario Securities Commission. The work of the auditors was reviewed and found to be deficient.

13. There is no question that the auditor's work fell below the required standard of the profession, and accordingly the member was found guilty of the charges. When the hearing reconvened, the chair gave the decision of the panel, which reads as follows:

DECISION

THAT, having seen and considered the evidence, including the agreed statement of facts, filed, and having heard the plea of guilty to charges Nos. 1 and 2, the Discipline Committee finds Allan Samuel Cheskes guilty of charges Nos. 1 and 2.

ORDER AS TO SANCTION

14. Mr. Bellmore advised the panel that he had instructions from the professional conduct committee to seek an order which included a reprimand, a fine in the range of \$3,000 to \$5,000, two specified professional development courses, and the usual order as to notice including publication in *CheckMark* disclosing Mr. Cheskes' name. Mr. Bellmore also indicated that he had instructions to ask for costs, and the chair indicated that it would be appropriate to deal with costs after the sanction had been determined.

15. Mr. Bellmore reviewed a number of decisions involving a breach of Rule 206, including the decision in *Parisi*. He specifically stated that the professional conduct committee did not consider this to be a case in which a suspension was necessary or appropriate.

16. Ms. Amsterdam said the member agreed the order sought was appropriate and called Mr. Cheskes as a witness.

17. Mr. Cheskes said that he knew he was fortunate to be a member of the profession, and indicated that he had been involved as a CA in his community and in the profession, having served as a member of both the professional conduct and practice inspection committees.

18. Mr. Cheskes testified that he recognized his mistakes, and that he and the members of his firm understood the need for increased vigilance. He also spoke to the impact his misconduct and the resulting loss of reputation had had and would continue to have on his professional life, particularly with respect to engagements as an expert witness and consultant. He apologized to the discipline committee and to the profession and said that he was deeply embarrassed.

The Order

19. After deliberation, the hearing reconvened and the chair set out the essential terms of the order on the record. The formal order reads as follows:

ORDER

IT IS ORDERED in respect of the charges:

1. THAT Mr. Cheskes be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Cheskes be and he is hereby fined the sum of \$5,000, to be remitted to the Institute within six (6) months from the date this Decision and Order becomes final under the bylaws.
3. THAT Mr. Cheskes be and he is hereby charged costs fixed at \$21,400, inclusive of GST in the amount of \$1,400, to be remitted to the Institute within one (1) year from the date this Decision and Order becomes final under the bylaws.

4. THAT Mr. Cheskes be and he is hereby required to complete, by paying for and attending in their entirety, within one (1) year from the date this Decision and Order becomes final under the bylaws, the following professional development courses made available through the Institute, or, in the event a course listed below becomes unavailable, the successor course which takes its place:
 - (a) *Assurance & Accounting Issues for Public Companies*; and
 - (b) *Analytical Procedures*.
5. THAT notice of this Decision and Order, disclosing Mr. Cheskes' name, be given after this Decision and Order becomes final under the bylaws, in the form and manner determined by the Discipline Committee:
 - (a) to the Public Accountants Council for the Province of Ontario;
 - (b) to the Canadian Institute of Chartered Accountants; and
 - (c) by publication in *CheckMark*.
6. THAT in the event Mr. Cheskes fails to comply with any of the requirements of this Order, he shall thereupon be expelled from membership in the Institute, and notice of his expulsion, disclosing his name, shall be given in the manner specified above, and in a newspaper distributed in the geographic area of Mr. Cheskes' practice or employment.

Reprimand

20. The panel ordered that Mr. Cheskes be reprimanded in writing by the chair of the hearing in order to stress the unacceptable nature of his actions.

Fine

21. Mr. Bellmore recommended a fine in the range \$3,000 to \$5,000, which Ms. Amsterdam indicated was within the range of fines imposed in similar cases. The panel felt that Mr. Cheskes exercised poor judgment when carrying out his professional services. A significant monetary penalty of \$5,000 was warranted in the circumstances to serve both as a specific and general deterrent.

Professional Development Courses

22. The disciplinary process can, in appropriate cases, serve to encourage rehabilitation. This benefits both the member and the public the member serves. With this in mind the panel agreed with the request of the professional conduct committee, and ordered Mr. Cheskes to complete two professional development courses in order to upgrade his auditing skills to a standard expected of those in the profession.

Notice

23. Publishing names of members found guilty of professional misconduct is often the single most significant penalty that can be administered, and is one which addresses both the individual issues of specific deterrence and rehabilitation, and the wider needs of general deterrence and education of the membership at large. The panel therefore ordered the normal publication of these proceedings.

Costs

24. Mr. Bellmore submitted a bill of costs which totalled \$31,968.83, and reviewed the various element of the costs.

25. Mr. Bellmore pointed out that the matter was only resolved in February and March of this year, and that the agreed statement of facts which is 78 paragraphs long was executed by both counsel and Mr. Cheskes on April 30, 2004.

26. Ms. Amsterdam did not dispute the jurisdiction to award costs, or the appropriateness of an award of costs, but she submitted that in this case the quantum was tantamount to a penalty. She reviewed the non-exhaustive list of factors to be considered in the awarding of costs which was set out in the case of *Jaswal v. Medical Board (Newfoundland)*, and submitted that the costs of \$16,000 requested in the bill of costs in respect of the agreed statement of facts was not in keeping with previous cases or the appropriate principles, but amounted to a penalty. In her view, this was a very different case than *Parisi* where there was an award made of \$40,000 for costs. She submitted that a costs award in the amount requested by the professional conduct committee in the circumstances of this case would send the wrong message, and would in effect penalize this member who attempted to minimize the expense by entering into an agreed statement of facts.

27. Ms. Amsterdam submitted that the more appropriate range for costs was in the neighbourhood of \$7,000 to \$10,000, and that on the facts of this case it was even appropriate to consider the awarding of no costs. She submitted that the financial impact of the discipline proceedings on this member was substantial.

28. Mr. Bellmore submitted that the bill of costs was not proposed as a penalty but as straight reimbursement for costs that the Institute had incurred. He submitted that the amount sought for the agreed statement of facts was reasonable.

29. After deliberation, the panel ordered that the member pay the sum of \$20,000 plus GST, to be remitted to the Institute within a year of the decision and order becoming final. An agreed statement of facts serves many purposes. The professional conduct committee is saved the expense of calling witnesses, the member knows what evidence will be before the panel for its consideration, and the proceedings are usually shortened. Whether a lengthy negotiation over a proposed agreed statement of facts is worthwhile or will serve a party's interest is a decision which that party must make. Whether an agreed statement will facilitate or shorten a hearing in which the charges are not contested and the investigator can take the panel through the relevant facts with reference to the documentary evidence may be a difficult call. In this case, the panel thought the costs requested with respect to the agreed statement of facts was excessive.

DATED AT TORONTO THIS 30TH DAY OF NOVEMBER, 2004
BY ORDER OF THE DISCIPLINE COMMITTEE

H.B. BERNSTEIN, CA – DEPUTY CHAIR
THE DISCIPLINE COMMITTEE

MEMBERS OF THE PANEL:

L.G. BOURGON, CA
M.S. LEIDERMAN, CA
M.L. MACKAY BREHM, FCA
D.J. ANDERSON (Public representative)