

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF ONTARIO
THE CHARTERED ACCOUNTANTS ACT, 2010

DISCIPLINE COMMITTEE

IN THE MATTER OF: An allegation against **BRENT ALBERT BERTRAND**, a former member of the Institute, under **Rules 201.1** of the Rules of Professional Conduct, as amended.

TO: Mr. Brent A. Bertrand

AND TO: The Professional Conduct Committee, ICAO

REASONS

(Decision and Order made December 12, 2012)

1. This tribunal of the Discipline Committee of the Institute of Chartered Accountants of Ontario met on December 12, 2012 to hear an allegation of professional misconduct brought by the Professional Conduct Committee against Brent Albert Bertrand, a former member of the Institute.

2. Ms. Alexandra Hersak appeared on behalf of the Professional Conduct Committee (PCC). Mr. Bertrand attended without counsel. He confirmed that he knew that he had the right to attend with counsel and waived that right. Mr. Glenn Stuart 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 12, 2012, and the written Decision and Order sent to the parties on December 17, 2012. These reasons, given pursuant to Rule 20.04 of the Rules of Practice and Procedure, include the allegation, the decision, the order, and the reasons of the tribunal for its decision and order.

Allegation

4. The following allegation was laid against Mr. Bertrand by the Professional Conduct Committee on August 3, 2012:

THAT, the said Brent A. Bertrand, on or about the 26th day of November, 2010, was convicted of the offence of fraud as set out in Schedule "A" attached, and did thereby fail to act in a manner which will maintain the good reputation of the profession and its ability to serve the public interest contrary to Rule 201.1 of the Rules of Professional Conduct.

Preliminary Matter

5. Ms. Hersak filed a copy of Section 19 of *The Chartered Accountants Act 2010* (Exhibit 1) which gives the Institute continuing jurisdiction over former members of the Institute in respect of an investigation or disciplinary proceeding arising from their conduct while a member.

6. Ms. Hersak referred to a letter from the Vice-President and Registrar (Exhibit 2) which advised Mr. Bertrand of his revocation of membership on January 27, 2011 for his failure to comply with an Order of the Discipline Committee. Ms. Hersak advised that the conduct which is the subject of this hearing arose prior to the revocation of Mr. Bertrand's membership.

7. Mr. Bertrand stated that he understood the provisions of the Act and had no basis to dispute the matter.

Plea

8. Mr. Bertrand entered a plea of guilty to the allegation.

Evidence

9. Ms. Hersak advised the tribunal that the case for the PCC would be presented by way of a certified copy of the certificate of conviction, which was set out in Schedule "A" to the allegation and a Document Brief which contained the transcripts of the proceedings before the Ontario Court of Justice. She then filed a true copy of the Certificate of Conviction (Exhibit 3) and the Document Brief (Exhibit 4).

10. In presenting the case for the PCC, Ms. Hersak reviewed the Certificate of Conviction and made reference to the relevant documents in the Document Brief. No other evidence was called on behalf of the PCC.

11. Ms. Hersak submitted that the evidence was clear, cogent and convincing and, as Mr. Bertrand acknowledged by his plea of guilty, he should be found guilty. Ms. Hersak also submitted that under Rule 201.2, when a certificate of conviction is filed with the Discipline Committee, there is a rebuttable presumption that the member failed to maintain the good reputation of the profession. Mr. Bertrand made no submissions.

The relevant facts

12. The relevant facts in this case were not in dispute. Mr. Bertrand, from 2003 to 2009, was employed as the property manager for a condominium corporation and also served as secretary to the Board of Directors. He provided spreadsheets including budgets, operating statements and balance sheet documents, and was in charge of arranging contractors for maintenance of the building, accepting mail, monthly bank statements, bills and preparing minutes for board meetings. He was also responsible for assisting the auditors at the end of the fiscal year by providing them with various documents.

13. In 2009, the condominium required substantial roof repairs and the work was commenced. In the fall of 2009, the condominium board became concerned when two cheques were returned NSF by the roofing company. Mr. Bertrand had been responsible for accumulating reserve fund money for the condominium and over the course of the years had provided a copy of a CIBC GIC document to the board and the auditors. When the cheques were returned, the board looked into the GIC, which should have contained funds of at least \$239,000, and found that the GIC(s) never existed. It was also discovered that approximately ten cheques made out to Mr. Bertrand or his company had not been properly issued in that they did not have the correct signatures on them. The board contacted the police, the bank and the auditors. The exact amount of the loss to the board is still in dispute; however, the auditors paid \$225,000 to the board in relation to this matter.

14. Mr. Bertrand had pleaded guilty and was found guilty by the court of one count of fraud over \$5,000 and the remaining counts were withdrawn. A victim impact statement was filed by the condominium board. Mr. Bertrand was not subject to a restitution order. Mr. Bertrand was given an 18-month conditional sentence followed by 12 months of probation and a requirement to return any outstanding documentation to the board through his supervisor, and to have no direct contact with the condominium corporation.

15. Mr. Bertrand had no comments to add with respect to the facts.

16. Ms. Hersak stated that this case is based on a criminal conviction whereby Mr. Bertrand, a chartered accountant in a position of trust, falsified GIC certificates in order to defraud the corporation. Ms. Hersak submitted that his actions fail to maintain the good reputation of the profession and its ability to serve the public interest. There is a rebuttable presumption, when there is a criminal conviction, that guilt is presumed unless Mr. Bertrand brings any evidence to prove otherwise. Ms. Hersak stated that based on the evidence before the tribunal, Mr. Bertrand should be found guilty of the allegation. Mr. Bertrand brought no contrary evidence and pleaded guilty to the allegation.

Finding

17. The tribunal accepted the uncontradicted evidence that Mr. Bertrand had been convicted on the 26th day of November, 2010 of the criminal offence of fraud.

Decision

18. The evidence in this matter is clear, cogent and convincing. The allegation has been proven and establishes the member is guilty of professional misconduct. After deliberating, the tribunal made the following decision:

THAT having heard the plea of guilty to the Allegation, and having seen and considered the evidence, the Discipline Committee finds Brent Albert Bertrand guilty of the Allegation.

Sanction

19. Ms. Hersak filed the Reasons of the Discipline Committee for the Decision and Order made on November 19, 2010 (Exhibit 5). Mr. Bertrand had failed to cooperate with the PCC investigation into allegations of fraud and had declined to meet with the investigator. At the hearing, Mr. Bertrand had stated he would cooperate if forced to but said that other bodies wait until criminal proceedings have been resolved. He was ordered to cooperate, pay a fine, pay costs and have the usual publicity. As a result of his continued failure to cooperate, Mr. Bertrand's membership was suspended and subsequently revoked, with newspaper publicity.

20. Ms. Hersak indicated the mitigating factors included that Mr. Bertrand pleaded guilty, he has now provided the documents to the condominium board and his actions were out of character as he had no discipline history prior to his 2010 hearing. Mr. Bertrand had been teaching accounting until the time of his conviction. Mr. Bertrand had been living well beyond his means in an effort to enhance his home situation. Both Mr. Bertrand and his wife suffer from a number of health-related problems, and his wife's condition has now worsened. Mr. Bertrand has lost his CA designation, lost his university teaching job and is presently not working.

21. Ms. Hersak indicated that the aggravating factors included the misappropriation of a significant amount of money over a period of many years. While Mr. Bertrand was teaching accounting at a university, was involved in his community and did appear to be of good character, he was concurrently involved in a long-term fraud. Although Mr. Bertrand did turn over material from the condominium corporation at the time of his arrest, the board was still not satisfied that all documents had been returned. The judge in the criminal case had ordered that the missing materials be brought on the day of sentencing, and two bankers' boxes and CDs were provided at that time.

22. Mr. Bertrand stated that no mention had been made that documents belonging to the

board might be missing until the time of sentencing by the court. No further contact had been made by the board through his lawyer or supervisor. He felt that this was brought up by the board to influence the sentence and was also brought up to this tribunal to influence the order. In response to a query from the tribunal, Mr. Bertrand stated that the materials had been stored in his home office and he thought the board had copies of everything. Mr. Bertrand submitted that the monetary loss to the condominium board was less than the \$225,000 recovered by them through the auditors.

23. 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 \$20,000; full publicity including newspaper publication and no application for readmission until five years from the date of this hearing. The PCC also sought an order for the costs of the investigation and hearing on a partial indemnity basis.

24. Ms. Hersak stated that Mr. Bertrand's actions have put the reputation of chartered accountants in jeopardy. People trust CAs and being in a position of trust to handle the affairs of the condominium corporation enabled Mr. Bertrand to commit fraud. The condominium corporation had made a complaint to the Institute about not getting documents back, but it had never been fully investigated since Mr. Bertrand did not cooperate in the investigation. During the court proceedings, the purpose of the victim impact statement was to let the judge know how the board had been affected by Mr. Bertrand's actions.

25. In respect of the sanction requested by the PCC concerning readmission, Ms. Hersak filed a copy of Rule 21 – Reconsideration (Exhibit 6). Ms. Hersak stated that under the old rules, a former member could apply for readmission after two years. Under Rule 21, application for readmission can be made after five years. As a result of his failure to comply with the order of the Discipline Committee, Mr. Bertrand's membership was revoked in January 2011, and he would actually be eligible to apply for readmission in three years from the date of this hearing. The PCC was requesting that his eligibility to apply for readmission after five years would commence on the date of this hearing.

26. Ms. Hersak submitted that this is a case of moral turpitude. Mr. Bertrand, by means of a sophisticated fraud scheme involving a series of cheques, left the condominium corporation with no reserve fund. Every year, over a six-year period, false GIC certificates were presented to the board. No restitution was made to the board by Mr. Bertrand, but an amount was paid by the auditors.

27. Ms. Hersak stated that the PCC is disturbed that while these fraudulent activities were taking place, Mr. Bertrand was a professor at a business school teaching the elements of the accounting profession. Ms. Hersak also submitted that no part of the earlier Discipline Committee order has been complied with; the fine, costs and newspaper publicity have not been paid by Mr. Bertrand. At the 2010 hearing, Mr. Bertrand, through his counsel, had stated that his defense in court would be jeopardized if he cooperated in the Discipline hearing. However, seven days later he pleaded guilty in court and but still did not comply with the Discipline order to cooperate, which led to his suspension and then expulsion. Ms. Hersak stated that Mr. Bertrand did not show a significant level of remorse or respect for the process.

28. Ms. Hersak filed a Costs Outline (Exhibit 7) which showed that the costs incurred were approximately \$7,400 since this was based on a criminal conviction and did not require an investigation. The PCC was seeking an order for recovery of 50% of the costs in the amount of \$3,700. Ms. Hersak stated that the PCC was not opposed to giving Mr. Bertrand a reasonable

amount of time to pay any fine or costs but noted that there are still outstanding amounts from the previous Discipline Order.

29. Ms. Hersak distributed a case brief containing the decisions in *Silverberg*, *Roy*, *Doutre*, *Spensieri* and *McWilliams*, pointing out relevant items in each case included in the brief. Ms. Hersak stated that publicity is the best deterrent for like-minded members and requested that there be newspaper publicity in this case which would make reference to the fraud matter. Although there had been newspaper publicity at the time of Mr. Bertrand's membership revocation for failure to comply with the Discipline Committee's Order, Ms. Hersak felt it was important for the public to be aware of Mr. Bertrand's conviction for fraud. She stated that there are no rare or unusual circumstances that would preclude such publication.

30. Mr. Bertrand stated that he had not pleaded guilty or cooperated with the previous Discipline tribunal as he had been advised by his counsel not to respond. He did not want to incriminate himself but had meant no disrespect to that tribunal. His decision to plead guilty in court was made after the 2010 ICAO Discipline hearing. Mr. Bertrand had assumed that his revocation subsequent to the earlier hearing was the end of the matter since he is no longer a member. Mr. Bertrand stated that the eligible date for him to apply for readmission is not a practical concern since it is unlikely he would make such application in the future.

31. Mr. Bertrand stated that he is the author of his own misfortunes and has not paid the previous fine and costs due to his lack of assets and employment since his conviction. Mr. Bertrand felt he had made a significant contribution to the profession during his years of teaching accounting which earned him numerous awards. Mr. Bertrand had no issue with receiving a reprimand letter. Mr. Bertrand felt the fine requested was excessive since he has no employment and no money to pay but left it to the tribunal to decide on the amount of costs.

32. Concerning publicity, Mr. Bertrand stated that the Institute had already published on the website and in the newspaper. Mr. Bertrand submitted that since he has been through so much there is not much more that can be done to him. He expressed his concern for innocent parties who could be hurt and noted that his wife, who suffers from health problems, has not been made aware of these events.

Order

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

IT IS ORDERED in respect of the Allegation:

1. THAT Mr. Bertrand be reprimanded in writing by the Chair of the hearing.
2. THAT Mr. Bertrand be and he is hereby fined the sum of \$20,000 to be remitted to the Institute within twelve (12) months from the date this Decision and Order is made.
3. THAT notice of this Decision and Order, disclosing Mr. Bertrand's name, be given after this Decision and Order is made:
 - (a) to all members of the Institute;
 - (b) to all provincial institutes/Ordre;
 and shall be made available to the public.
4. THAT notice of the Decision and Order, disclosing Mr. Bertrand's name and the

fact that his membership in the Institute was previously revoked pursuant to an Order of the Discipline Committee dated November 9, 2010, be given by publication on the Institute's website and in the *Mississauga News*. All costs associated with the publication shall be borne by Mr. Bertrand and shall be in addition to any other costs ordered by the committee.

IT IS FURTHER ORDERED:

5. THAT Mr. Bertrand be and he is hereby charged costs fixed at \$3,700 to be remitted to the Institute within twelve (12) months from the date this Decision and Order is made.

Reasons for Sanction

34. The misappropriation of funds from the condominium corporation and the creation of false documents to hide the misappropriation are offences that strike at the very heart of the chartered accountancy profession. As noted in paragraph 12 of these reasons and in the transcript of Mr. Bertrand's criminal proceedings on November 26, 2010, it has been identified that Mr. Bertrand was hired to manage the building and the accounts for the condominium corporation. Between the years 2003 and 2009 he managed their accounts, served as Secretary to the condominium Board of Directors, provided spreadsheets including budgets, operating statements and balance sheets. He managed the finances and bank accounts of the condominium. During these years he issued 10 cheques made out to himself or his company that totaled over \$100,000. He then proceeded to issue fraudulent GIC's to cover up the misappropriation. Such conduct cannot be tolerated. Mr. Bertrand's conduct reflects badly on the whole profession and has the potential to destroy public trust in the integrity of every member of the profession. Mr. Bertrand's membership had already been revoked at his previous hearing pursuant to an Order dated November 9, 2010.

35. The principles of general and specific deterrence require that a member who conducts himself or herself as Mr. Bertrand did must face a financial penalty. The tribunal felt the aggravating factors of misappropriating the funds and perpetrating a fraud to cover up the misappropriation through the creation of fictitious GIC's over the period 2003 to 2009 called for a significant fine. Accordingly, the tribunal concluded that a fine of \$20,000 was appropriate, meeting both the principles of specific and general deterrence.

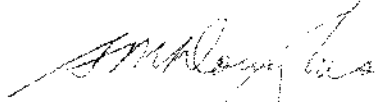
36. The tribunal was of the view that a reprimand is necessary to stress the unacceptability of his conduct as a chartered accountant whose membership had already been revoked for other reasons; however, the ICAO had not dealt with the matter of the criminal conviction for fraudulent conduct by Mr. Bertrand at a time while he was a member of the Institute..

37. The tribunal reviewed the Costs Outline submitted and concluded the charges were appropriate and that the request for 50% sharing with Mr. Bertrand was within the appropriate range of partial indemnification and consequently so ordered costs of \$3,700.

38. The tribunal did not order that Mr. Bertrand would not be eligible to apply for readmission for five years from the date of this hearing. As Mr. Bertrand's membership had been revoked as the result of an Order made in November 2010, the timing for his eligibility to apply for readmission pursuant to this previous Order could occur in November 2015. The tribunal did not extend this timeline as they believed that this Order and Reasons would be considered by the hearing tribunal considering an application, should Mr. Bertrand choose to apply for

readmission in or after November 2015. The tribunal believed that an appropriate decision regarding timing for application for readmission would be made at that point.

DATED AT TORONTO THIS 4TH DAY OF FEBRUARY, 2013
BY ORDER OF THE DISCIPLINE COMMITTEE



S.M. DOUGLAS, (FCPA) FCA – DEPUTY CHAIR
DISCIPLINE COMMITTEE

MEMBERS OF THE TRIBUNAL:

A.R. DAVIDSON, CPA, CA

R.A. FERNANDES, CPA, CA

J.H. FRIDAY, FCPA, FCA

B. SOLWAY (PUBLIC REPRESENTATIVE)