

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

DISCIPLINE COMMITTEE

IN THE MATTER OF: Allegations against **CARMAN ALLAN MCKECHNIE**, a member of the Institute, under **Rules 201.1 and 205** of the Rules of Professional Conduct, as amended.

TO: Mr. Carman McKechnie

AND TO: The Professional Conduct Committee, ICAO

REASONS

(Decision and Order made February 26, 2013)

1. This tribunal of the Discipline Committee of the Institute of Chartered Accountants of Ontario met on February 26, 2013 to hear allegations of professional misconduct brought by the Professional Conduct Committee against Carman McKechnie, a member of the Institute.

2. Ms. Alexandra Hersak appeared on behalf of the Professional Conduct Committee (PCC). Mr. McKechnie attended without counsel. He confirmed that he knew that 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 February 26, 2013, and the written Decision and Order sent to the parties on March 1, 2013. 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. McKechnie by the Professional Conduct Committee on October 18, 2012:

1. THAT the said Carman A. McKechnie, on or about February 21, 2008, while engaged to perform a review of the financial statements of "DT" for the year ended December 31, 2007, associated himself with a review engagement report which he knew to be false or misleading contrary to Rule 205 of the Rules of Professional Conduct in that the report falsely purported to be signed by "RI", CA when it was not.
2. THAT the said Carman A. McKechnie, in or about the period October 1, 2009 through September 30, 2010, while engaged to perform a review of the financial statements of "DTI" for the years ended June 30, 2009, and 2010 signed or associated himself with review engagement reports which he knew to be false or misleading contrary to Rule 205 of the Rules of Professional Conduct in that the reports falsely purported to be signed by "RI", CA when they were not.
3. THAT the said Carman A. McKechnie, in or about the period September 1, 2008 through November 25, 2010, while engaged to perform a review of the financial statements of "SN" for the years ended July 31, 2008, 2009 and 2010, signed or associated himself with review engagement reports which he knew to be false or misleading contrary to Rule 205 of the Rules of Professional Conduct in that the

reports falsely purported to be signed by "RI", CA when they were not.

4. THAT the said Carman A. McKechnie, in or about the period February 1, 2008 through November 25, 2010, while engaged to review the financial statements of "DT," "DTI" and "SN," failed to conduct himself in a manner that will maintain the good reputation of the profession and its ability to serve the public interest in that he issued six review engagement reports for use by a regulator when he did not hold a public accounting license but knew that the regulator required that a licensed public accountant issue the reports, contrary to Rule 201.1 of the Rules of Professional Conduct.
5. THAT the said Carman A. McKechnie, in or about the period March 1, 2006 through November 25, 2010, 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.

Plea

5. Mr. McKechnie entered a plea of guilty to the allegations.

Evidence

6. Ms. Hersak made an opening statement. She advised the panel that the case for the PCC would be presented by way of an Agreed Statement of Facts and a Document Brief. She then filed the Agreed Statement of Facts (Exhibit 1) and the Document Brief (Exhibit 2). The Agreed Statement of Facts was signed by Mr. McKechnie on his own behalf and by Ms. Hersak on behalf of the PCC.

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

8. Ms. Hersak submitted that the evidence was clear, cogent and convincing and, as Mr. McKechnie acknowledged, both in the Agreed Statement of Facts and by his plea of guilty, he should be found guilty. Mr. McKechnie made no submissions.

The relevant facts

9. The facts are fully set out in the Agreed Statement of Facts. The misconduct, as the tribunal finds it to be, can be succinctly summarized. In the relevant period, March 1, 2006 to November 25, 2010, Mr. McKechnie provided services to the investment industry as a financial advisor. He had done so since 1995. He held a licence to practise public accounting from 1995 until 1997 but he had not held a licence subsequent to 1997 and he was not subject to the ICAO practice inspection process.

10. Mr. McKechnie had a client who was required to file with its regulatory authority, the Travel Industry Council of Ontario (TICO) financial statements reviewed by a public accountant licensed under the *Public Accounting Act*, 2004. Mr. McKechnie filed the financial statements with his review engagement report for the year ended December 31, 2005 and it was accepted by TICO. He did the same for the year ended December 31, 2006, but in April 2007 TICO rejected the filing because the review had not been performed by a licensed public accountant (LPA). Mr. McKechnie told his client he would rectify the problem and had a friend, who was a Chartered Accountant and Licensed Public Accountant (CA LPA), perform a review. Mr. McKechnie sent the financial

statements and the review engagement report of the CA LPA to TICO but not to his client.

11. For the years ended June 30, 2009 and June 30, 2010, Mr McKechnie used the review engagement report, including the letterhead, of the CA LPA for the year 2006, to fabricate a review engagement report, purportedly from and signed by the CA LPA. He sent these fabricated review engagement reports with the relevant financial statements to TICO. He sent his client a copy of his own review engagement reports and the relevant financial statements. The CA LPA had no knowledge of Mr. McKechnie's deception which came to light when the regulatory authority rejected the financial statements for 2010 because they did not have the required notes and ultimately learned from the CA LPA that he had not reviewed the financial statements or issued the review engagement report.

12. TICO also discovered that Mr. McKechnie had fabricated review engagement reports for another of his clients for the years ended July 31, 2008, July 31, 2009 and July 31 2010. He had for each of those years fabricated a review engagement report purportedly from the CA LPA and signed by him and submitted it with the relevant financial statements. As with the other client, he provided this client with his own review engagement report. Again, the CA LPA had no knowledge that Mr. McKechnie was fabricating review engagement reports using his name and letterhead.

13. In short, Mr. McKechnie knowingly practised public accounting without a licence in the period February 2006 to November 2010, on at least seven occasions and on six occasions (three for one client and three another) fabricated review engagement reports of a CA LPA and submitted the fabricated reports together with the relevant financial statements to the regulatory authority. He knowingly and intentionally misled the regulatory authority and his own clients. Mr. McKechnie breached the trust of his clients and the regulator, and, in effect, he stole the name and letterhead of a CA LPA who was also a friend.

Decision

14. The tribunal found, on the uncontradicted evidence which was clear, cogent and convincing, that the allegations had been proven. As the misconduct set out above in paragraphs 9 to 13 makes clear, Mr. McKechnie associated himself with review engagement reports which were false and misleading contrary to Rule 205, as alleged in Allegations 1, 2 and 3. He also issued six review engagement reports to a regulator when he knew that he did not hold a licence to practise public accounting and that the regulator required the financial statements received to be accompanied by a review engagement report. This conduct, which contravenes the requirements of the profession and the *Public Accounting Act, 2004*, failed to maintain the reputation of the profession and its ability to serve the public interest contrary to Rule 201.1 as alleged in Allegations 4 and 5. This egregious misconduct constitutes professional misconduct. 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, and considered the evidence, including the Agreed Statement of Facts, filed, the Discipline Committee finds Carman Allan McKechnie guilty of the allegations.

Sanction

15. Ms. Hersak and Mr. McKechnie did not call any additional evidence with respect to sanction.

16. 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 \$7,500; revocation of membership; and full publicity including newspaper publication. The PCC also sought an order for the costs of the investigation and hearing on a partial indemnity basis. Ms. Hersak filed a Costs Outline (Exhibit 3) which showed that the costs of the investigation and hearing were approximately \$22,000. The

PCC was seeking an order for recovery of approximately 50% of the costs in the amount of \$10,000. Ms. Hersak said the PCC had no objection to a time period deemed acceptable by the tribunal for Mr. McKechnie to pay the fine and costs.

17. Ms. Hersak submitted that the proposed sanctions would satisfy the applicable principles of sentencing: specific and general deterrence. Protection of the public is paramount and publicity will advise the public that Mr. McKechnie is no longer a CA. The profession values honesty and integrity above all else and Mr. McKechnie has damaged his reputation and that of other CAs.

18. Ms. Hersak stated that both clients had relied on Mr. McKechnie to provide documents to TICO, the travel industry regulator that the public relies on. Mr. McKechnie's clients were unaware that he had falsified the documents and did not hold a public accounting licence. Ms. Hersak submitted that the sanctions requested reflect the seriousness of Mr. McKechnie's breach of trust and his lack of integrity. This conduct amounts to moral turpitude by an ungovernable member.

19. Ms. Hersak indicated that the aggravating factors included the association of Mr. McKechnie with review engagement reports which he knew to be false or misleading over a period of years for two clients. Each time he forged the signature of a professional colleague, Mr. McKechnie should have considered whether what he was doing was right or wrong. His actions only stopped when he was found out and his clients were alerted by TICO. Mr. McKechnie performed review engagements without a licence which he knew was required. He knowingly contravened both the PA Act and the regulations of TICO.

20. Ms. Hersak identified several mitigating factors. Mr. McKechnie did cooperate with the investigator and the PCC at every stage of the proceedings. He advised early on that he would plead guilty knowing that the PCC was seeking revocation. He signed the Agreed Statement of Facts which shortened the proceedings. Ms. Hersak noted that Mr. McKechnie attended the discipline hearing and expressed remorse to the tribunal. Mr. McKechnie had no previous disciplinary history.

21. Ms. Hersak stated that a reprimand addresses the seriousness of the conduct and acts as a specific deterrent. The fine requested by the PCC falls within the range of similar cases. Ms. Hersak stated that the PCC has asked for revocation of Mr. McKechnie's membership. His dishonesty, which continued until he was caught, constitutes moral turpitude and he has proved to be ungovernable by ignoring the PA Act and TICO regulations.

22. Publicity is the most effective way to inform other members and the public of a member's actions. Ms. Hersak stated that unless there are rare and unusual circumstances, which there are not in this case, publication will be made on the Institute's website and in a local newspaper.

23. Ms. Hersak noted that costs are an indemnity and a portion of the costs incurred should be paid by the member involved. The amount being requested is less than half the actual costs incurred and Ms. Hersak stated that Mr. McKechnie should be allowed a reasonable time to pay of 12 to 18 months.

24. Ms. Hersak distributed a case brief containing *Vanek, Orland, Jean-Baptiste, Strohjy* and *Shorrocks*, pointing out relevant items in each case included in the brief but noting that there is no case with the identical circumstances.

25. Mr. McKechnie stated that he does not know why he had such a bad lapse of judgment. He said there was no personal gain and he was only trying to help his clients by preparing and submitting financial statements. Mr. McKechnie said that at the time he was unaware that a public

accounting licence was needed.

26. Mr. McKechnie stated that in some of the prior cases referred to by Ms. Hersak, the members had not been cooperative and the circumstances were not the same as his case. Mr. McKechnie stated that in trying to help his clients, he circumvented the TICO requirements. Mr. McKechnie said he did not want to be penalized more severely than other cases where suspension had been ordered. Mr. McKechnie noted that the newspaper publication could cause financial ruin. He requested 12 to 18 months to pay any fine or costs assessed.

Order

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

IT IS ORDERED in respect of the allegations:

1. THAT Mr. McKechnie be reprimanded in writing by the Chair of the hearing.
2. THAT Mr. McKechnie be and he is hereby fined the sum of \$7,500 such fine to be paid to the Institute in 18 equal instalments, the first such instalment to be paid on or before March 31, 2013, with equal payments to be made on or before the last day of each of the 17 succeeding months.
3. THAT Mr. McKechnie's membership in the Institute be and are hereby revoked.
4. THAT notice of this Decision and Order, disclosing Mr. McKechnie's name, be given after this Decision and Order is made:
 - (a) to all members of the Institute;
 - (b) to the Public Accountants Council for the Province of Ontario;
 - (c) to all provincial institutes/Ordre;
 and shall be made available to the public.
5. THAT notice of the revocation of membership disclosing Mr. McKechnie's name, be given by publication on the Institute's website and in the *Ottawa Citizen*. All costs associated with the publication shall be borne by Mr. McKechnie and shall be in addition to any other costs ordered by the committee.
6. THAT Mr. McKechnie surrender his certificates of membership in the Institute to the Discipline Committee Secretary within ten (10) days from the date this Decision and Order is made.

IT IS FURTHER ORDERED:

7. THAT Mr. McKechnie be and he is hereby charged costs fixed at \$8,500 such costs to be paid to the Institute in 18 equal instalments, the first such instalment to be paid on or before March 31, 2013, with equal payments to be made on or before the last day of each of the 17 succeeding months.

Reasons for Sanction

28. The egregious misconduct of Mr. McKechnie, which demonstrated both moral turpitude and a refusal to be governed by the requirements of the profession and the law, is set out in paragraphs 9 to 13 above. As Mr. McKechnie did not inform the ICAO he was practising public

accounting, his review work was not subject to the profession's Practice Inspection Program. His misconduct thwarted the profession's governance which has been put in place to protect the public.

29. The actions of Mr. McKechnie cannot be tolerated. They reflect badly on the whole profession and have the potential to destroy public trust in the integrity of every member of the profession. An unequivocal message must be sent to the profession and to the public. Accordingly, as a matter of general deterrence for the profession and public confidence in the profession, the tribunal concluded that revocation of Mr. McKechnie's membership in our profession was required.

30. The principles of general and specific deterrence require that members who conduct themselves as Mr. McKechnie did, in addition to membership revocation, must face a financial penalty. The tribunal felt the aggravating factors that included Mr. McKechnie repeating his offence over several years, doing so while he clearly understood the requirements of the regulator and continuing his deceit until he was caught, although there were many occasions when he could have stopped, call for a significant fine. The tribunal gave full weight to the mitigating factors including that Mr. McKechnie not only admitted his guilt on a timely basis and provided his full cooperation in the investigation and proceedings; he signed an Agreed Statement of Facts. He communicated early in the process his intention to plead guilty even with the knowledge that revocation was being sought by the PCC. Mr. McKechnie's expressions of remorse and regret were respectfully communicated in person at the hearing, even though he needed to travel some distance and at a very busy time of the year for him, in order to do so. Accordingly, the tribunal concluded that a fine of \$7,500 was appropriate, meeting both the principles of specific and general deterrence.

31. The tribunal concluded, in light of the misconduct which required revocation of his membership, the principle of rehabilitation was not applicable in this case. The tribunal also concluded a reprimand is necessary to stress the unacceptability of Mr. McKechnie's conduct as a chartered accountant.

32. Publicity is necessary as a general deterrent for other members. Notice to the public is important both to let the public know that Mr. McKechnie's membership has been revoked and that the Institute takes its role as a governing body seriously. There were no rare and unusual circumstances which suggested the usual publicity, including publication in a newspaper where the member resides or practiced, was not appropriate in this case. Accordingly, the tribunal ordered the usual publication of the decision and order.

33. McKechnie cooperated with the investigation, signed the agreed statement and pleaded guilty to all allegations, all of which helped control costs. The recovery of a portion of the costs at \$8,500 was therefore considered by the tribunal to be appropriate in the circumstances.

DATED AT TORONTO THIS 19TH DAY OF JUNE 2013
BY ORDER OF THE DISCIPLINE COMMITTEE


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

MEMBERS OF THE TRIBUNAL:

P.A. BUSCH, CPA, CA
G. HINTON (PUBLIC REPRESENTATIVE)
A.B. MINTZ, CPA, CA
H.L. PRATT, CPA, CA