

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF ONTARIO
THE CHARTERED ACCOUNTANTS ACT, 1956

APPEAL COMMITTEE

IN THE MATTER OF: An appeal by **DOUGLAS COMSTOCK MCINTYRE**, a member of the Institute against the Decision and Order of the Discipline Committee made on May 2, 2007 pursuant to the bylaws of the Institute, as amended.

TO: Mr. Douglas Comstock McIntyre
177 Legendary Trail
Stouffville, ON L4A 1N5

AND TO: The Professional Conduct Committee, ICAO

REASONS
(Decision Made September 29, 2008)

1. This appeal was heard by a panel of the Appeal Committee of the Institute of Chartered Accountants of Ontario on September 29, 2008. Mr. Paul Farley appeared on behalf of the Professional Conduct Committee. Mr. McIntyre attended and was unrepresented.

2. The following charge was laid against Mr. McIntyre by the Professional Conduct Committee on January 16, 2007.

1. THAT the said Douglas Comstock McIntyre, on or about the 30th day of May 2006, was convicted of the offences of fraud as set out in Schedule "A" attached to this charge and did hereby 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.

3. The Decision and Order appealed from, dated January 14, 2005, reads as follows:

DECISION

THAT, having seen, heard and considered the evidence, and having heard the plea of guilty to the charge, the Discipline Committee finds Douglas Comstock McIntyre guilty of the charge.

ORDER

IT IS ORDERED in respect of the charge:

1. THAT Mr. McIntyre be reprimanded in writing by the chair of the hearing.

2. THAT Mr. McIntyre be and he is hereby fined the sum of \$15,000, to be remitted to the Institute within twelve (12) months from the date this Decision and Order becomes final under the bylaws.
 3. THAT Mr. McIntyre be and he is hereby charged costs fixed at \$3,500, to be remitted to the Institute within twelve (12) months from the date this Decision and Order becomes final under the bylaws.
 4. THAT Mr. McIntyre be and he is hereby expelled from membership in the Institute.
 5. THAT notice of this Decision and Order, disclosing Mr. McIntyre's 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 all members of the Institute; and
 - (b) to all provincial institutes/Ordre,
and shall be made available to the public.
 6. THAT notice of the expulsion disclosing Mr. McIntyre's name, be given by publication on the Institute's website and in *The Globe And Mail* and *The Toronto Star*. All costs associated with the publication shall be borne by Mr. McIntyre and shall be in addition to any other costs ordered by the committee.
 7. Mr. McIntyre surrender his certificate of membership in the Institute to the Discipline Committee secretary within ten (10) days from the date this Decision and Order becomes final under the bylaws.
4. On this appeal, Mr. McIntyre is not seeking to have the Decision of the Discipline Committee overturned. His appeal is confined to seeking a reduction of the amount of costs and the fine levied by the Discipline Committee.

Submissions

5. With respect to the fine and costs levied by the Discipline Committee, Mr. McIntyre submitted:
- a. That during the Discipline Committee hearing, the panel was advised that he had signed the auditor's letter of representation (a point which Mr. Farley acknowledged during this hearing as being incorrect) in connection with the audit of the company for the year ended February 28, 2003. This allegation had a significant impact on the panel determining the amount of the fine to be levied on him.
 - b. The \$15,000 fine is extremely significant and punitive in view of the fact that he has lost \$108,000 in his investment, \$23,000 in unpaid expenses and incurred in excess of \$70,000 in legal fees.
 - c. He has suffered professionally in his role as a business coach to York Region companies, has experienced a reduction in his income level and continues to struggle in building a new business venture.

- d. That a fine of less than \$5,000 is a significant fine, which could be mitigated by engaging in public speaking or other community services to share his mistake and highlight the repercussions of making such a mistake.
- e. That by cooperating at all levels with the Professional Conduct Committee and the Discipline Committee he has reduced the costs of the various proceedings and that costs of \$1,000 is more than reasonable.

6. Mr. Farley submitted that the amount of the fine and costs levied are consistent with amounts levied in other cases of this nature.

7. Mr. Farley also referred to the fact that Mr. McIntyre was found guilty of fraud in a court of law, a charge which casts a severe blemish on a profession guided by the principle of integrity at all times under the rules of professional conduct.

Decision on the Appeal by Mr. McIntyre

8. Mr. McIntyre has been ordered expelled from the Institute by the Discipline Committee for reasons which have been clearly outlined in the Reasons of that Committee of May 2, 2007. The panel considered the statement by Mr. McIntyre that he had not signed the letter of representation as was alleged during the Discipline Committee hearing. The panel accepted the submission by Mr. Farley that the Discipline Committee had erred in finding that Mr. McIntyre had signed that letter. While this issue has caused great concern to Mr. McIntyre it must be remembered that the primary issue in this case is the fact that Mr. McIntyre was charged and entered a plea of guilty in a court of law to three counts of fraud, none of which relate to the erroneous finding that he signed the audit representation letter. The panel considered the impact, if any, that this error would have on a determination of the amount of the fine to be levied against Mr. McIntyre. After consideration, the panel determined that the error did not have any material impact on the amount of fine to be levied. Rather, the amount of the fine is based on the fraud charges laid against Mr. McIntyre to which he had entered a plea of guilty in a court of law.

9. As indicated previously, a determination of guilt is not a factor in this case. Mr. McIntyre at all times in the court of law, in discussions with representatives of the Professional Conduct Committee and throughout the Discipline Committee hearing acknowledged his guilt to the charges which had been laid against him. The issue in this appeal is whether the amount of the fine and the costs levied against Mr. McIntyre is appropriate.

10. The Appeal Committee has considered the principles of sentencing: rehabilitation, general deterrence and specific deterrence. The main consideration in this case is the principle of general deterrence. Mr. McIntyre has expressed great remorse for his past actions in this matter. He acknowledges his errors which resulted in this situation and took steps to extricate himself from the situation. It is unlikely he would repeat such a course of conduct in the future.

11. None the less, there must be fines and costs awarded to serve as both a general and specific deterrent against the type of conduct demonstrated in this case. This conduct strikes at the heart of the CA profession and the message must be loud and clear that under absolutely no circumstances will this type of conduct be tolerated within the profession.

12. The Appeal Committee considered the comments in several previous hearings and referred to in the principles of administrative tribunal laws:

...an appellate body should only interfere with the trial judge's discretionary powers as to sentencing if it is apparent that the judge has misapplied one or other of the accepted principles of sentencing, in all the circumstances of the case, with the result that the sentence imposed is outside the range of sentencing for that type of offence. (Exhibit 3)

13. After reviewing applicable precedent cases (Exhibit 4), and considering the serious nature of the charges levied against Mr. McIntyre, the Appeal Committee concluded that the amount of the fine levied was within an acceptable range and consistent with that in other similar cases.

14. The Appeal Committee considered the amount of the costs levied against Mr. McIntyre. The committee also considered the quantum of the costs incurred by the Institute related to this matter. These costs were incurred because of the conduct of Mr. McIntyre. Had he acted in a different manner none of the costs would have been incurred. The Discipline Committee considered the cooperation received from Mr. McIntyre as a mitigating factor in determining the amount of costs to be awarded. The amount of costs of \$5,018.41 reported by the Professional Conduct Committee did not include all the costs of the Discipline Hearing. The allocation by the Discipline Committee of only a portion of the costs incurred to Mr. McIntyre is reasonable and fair in the circumstances.

15. The Appeal Committee acknowledges that Mr. McIntyre has already suffered financial losses from his actions, but the penalty and costs levied in this case will serve as a general and specific deterrence against this type of conduct and are within the range to be expected. The Institute must govern its members in the public interest and be seen by the public as doing so. The fines and costs levied in this case serve to assist in meeting that objective.

16. Having found that the Discipline Committee has not committed any error in principle and that the sanction imposed was within the normal range for cases involving conduct of this nature, the Appeal Committee dismisses this appeal.

DATED AT TORONTO THIS 30th DAY OF OCTOBER, 2008
BY ORDER OF THE APPEAL COMMITTEE

S.R. MEEK, FCA - DEPUTY CHAIR
APPEAL COMMITTEE

MEMBERS OF THE PANEL:

E. ARCHIBALD, CA
K. ARMSTRONG, DVM (Public Representative)

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF ONTARIO
THE CHARTERED ACCOUNTANTS ACT, 1956

DISCIPLINE COMMITTEE

IN THE MATTER OF: A charge against **DOUGLAS COMSTOCK MCINTYRE**, a suspended member of the Institute, under **Rule 201.1** of the Rules of Professional Conduct, as amended.

TO: Mr. Doug C. McIntyre
177 Legendary Trail
Stouffville, ON L4A 1N5

AND TO: The Professional Conduct Committee, ICAO

REASONS
(Decision and Order Made May 2, 2007)

1. This panel of the Discipline Committee of the Institute of Chartered Accountants of Ontario met on May 2, 2007, to hear a charge of professional misconduct brought by the Professional Conduct Committee against Douglas Comstock McIntyre, a suspended member of the Institute.
2. Ms. Alix Hersak appeared on behalf of the Professional Conduct Committee. Mr. McIntyre attended and was unrepresented. He stated that he understood he had the right to be represented by counsel and that he wished to proceed on his own behalf.
3. The decision of the panel was made known at the conclusion of the hearing and the written Decision and Order sent to the parties on May 4, 2007. These reasons, given pursuant to Bylaw 573, contain the charge, the decision, the order, and the panel's reasons for its decision and order.

CHARGE

4. The following charge was laid against Mr. McIntyre was laid by the Professional Conduct Committee on January 16, 2007:

1. THAT, the said Doug C. McIntyre, on or about the 30th day of May 2006, was convicted of the offences of fraud as set out in Schedule "A" attached to this charge 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.

PLEA

5. Mr. McIntyre entered a plea of guilty to the charge and acknowledged that he understood that, on the basis of the plea and on that basis alone, he could be found guilty of the charge.

EVIDENCE

6. The evidence in this matter was presented by way of a Document Brief (Exhibit 4). The Professional Conduct Committee called no further evidence. Mr. McIntyre testified on his own behalf, and provided some insight and background into his actions.

7. On May 30, 2006, Mr. McIntyre pleaded guilty to three counts of fraud exceeding \$5,000. He was convicted on those counts and, on July 10, 2006, was sentenced to a period of 18 months conditional imprisonment on each count, concurrent with the others. By operation of Rule 201.2 and 102.1 of the *Rules of Professional Conduct*, the fact of the conviction for fraud creates a rebuttable presumption that he failed to maintain the good reputation of the profession and its ability to serve the public interest.

8. While employed as the Chief Financial Officer of a reporting issuer, Mr. McIntyre became aware that three fictitious invoices had been created for total sales of \$1.1 million. He did not make the external auditors of the corporation aware of the false information. Instead, he signed the audit confirmation requests addressed to each of the fictitious suppliers.

9. Mr. McIntyre used the draft financial statements, which included the false information, to obtain two significant loans. He also filed the statements with SEDAR, knowing they contained false information.

10. When the fraud was discovered, the lenders called their loans, and the corporation was placed into receivership and sold. There was a shortfall of \$1.4 million, and the company was petitioned into bankruptcy. Shares in the company, which had been worth \$20 million, became worthless.

11. Mr. McIntyre, along with the President and the Chief Operating Officer of the company, was charged criminally. Mr. McIntyre alone has pleaded guilty; the others have been committed for trial.

12. In his testimony, Mr. McIntyre stated that he had pleaded guilty in part due to a recurrence of a serious illness and his inability to cope with the stress of criminal proceedings. He admitted full responsibility for the filing of misleading financial statements.

13. Mr. McIntyre further stated that he was not involved in the conception or the creation of the false invoices, and that he had become uncomfortable with the management of the company and had removed himself from the day-to-day operations, to give himself what he called “plausible deniability”. He had decided to resign his position, and did so the day after he filed the financial statements with SEDAR.

DECISION

14. The evidence in this matter is clear, cogent and compelling. The presumption that Mr. McIntyre failed to maintain the good reputation of the profession and its ability to serve the public interest has not been rebutted. The extent of that failure constitutes professional misconduct. After deliberating, the panel made the following decision:

THAT, having seen, heard and considered the evidence, and having heard the plea of guilty to charge No. 1, the Discipline Committee finds Mr. Douglas Comstock McIntyre guilty of the charge.

SANCTION

15. Counsel for the Professional Conduct Committee has submitted that a sanction of: a written reprimand; a fine in the amount of \$15,000 to \$20,000; expulsion from membership; and full publicity of this matter, including notice in the newspaper, is both appropriate and required in this case. She has also sought costs of the process in the amount of \$3,500.

16. Ms. Hersak has submitted that this is a matter of serious moral turpitude, and that the principle of rehabilitation must cede to those of general and specific deterrence. Mr. McIntyre's actions were a significant breach of trust, and his dishonesty affects the reputation of every member of the profession, as well as the public trust.

17. In mitigation, Ms. Hersak has noted that Mr. McIntyre entered a plea of guilty to both the criminal proceedings and this one, that he has cooperated fully, and that he has no disciplinary history.

18. In aggravation, she has pointed out that the false statements were of a public company, that Mr. McIntyre was the CFO of that company and thus in a position of great trust, that he misled the auditors (by signing the confirmation letters) and the public (by filing with SEDAR), that the scheme was carefully thought out and took place over a year, the magnitude of the fraud, the lack of any attempt to reveal it, and the publicity when the matter did come to light.

19. It is her final submission that "dishonesty has a tendency to reproduce itself", and that nothing less than expulsion is appropriate for this criminal activity. The fine and publicity are required to address the magnitude and public nature of the fraud.

20. Mr. McIntyre, on his own behalf, has asked for the panel's compassion and mercy, and seeks to be allowed to resign. He has submitted that he did not benefit from the fraud, but has lost his employment, salary owed to him, and a large loan he had made to the company. Further, he has had his health suffer badly.

ORDER

21. After deliberating, the panel made the following order:

IT IS ORDERED in respect of the charge:

1. THAT Mr. McIntyre be reprimanded in writing by the chair of the hearing.
2. THAT Mr. McIntyre be and he is hereby fined the sum of \$15,000 to be remitted to the Institute within twelve (12) months from the date this Decision and Order becomes final under the bylaws.
3. THAT Mr. McIntyre be and he is hereby charged costs fixed at \$3,500 to be remitted to the Institute within twelve (12) months from the date this Decision and Order becomes final under the bylaws.
4. THAT Mr. McIntyre be and he is hereby expelled from membership in the Institute.

5. THAT notice of this Decision and Order, disclosing Mr. McIntyre's 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 all members of the Institute; and
 - (b) to all provincial institutes/Ordre,
and shall be made available to the public.
6. THAT notice of the expulsion disclosing Mr. McIntyre's name, be given by publication on the Institute's website and in *The Globe and Mail* and *The Toronto Star*. All costs associated with the publication shall be borne by Mr. McIntyre and shall be in addition to any other costs ordered by the committee.
7. THAT Mr. McIntyre surrender his certificate of membership in the Institute to the Discipline Committee secretary within ten (10) days from the date this Decision and Order becomes final under the bylaws.

REASONS FOR THE ORDER

22. Mr. McIntyre participated in committing a fraud on the public and on two institutional lenders. He did so while the CFO of a public company that intended to profit from that fraud. He has been convicted criminally of the fraud and has been sentenced to a period of incarceration, albeit a conditional one. Mr. McIntyre also signed the auditors' Representation Letter as well as the audit confirmations, and, in doing so, misled his professional colleagues in carrying out their audit responsibilities. He has breached the most fundamental precept of this profession, that of integrity. He cannot remain a member.

Expulsion

23. Mr. McIntyre has asked to be allowed to resign, rather than suffer the stigma of expulsion. But only expulsion can wipe away the even greater stigma he has caused every member of this profession to suffer. The Institute must and does express its denunciation of his behaviour in the strongest possible terms. That can only be achieved by expelling him from the membership.

Certificate of Membership

24. The certificate of membership is the property of the Institute, provided to a member as proof of his membership. As Mr. McIntyre will no longer be a member, it is inappropriate for him to retain a document stating that he is. The certificate is to be returned.

Reprimand

25. A written reprimand will serve to express to Mr. McIntyre that panel's disapprobation of his actions, and emphasize the extremely grave nature of his conduct.

Publicity

26. Mr. McIntyre's actions have harmed each and every member of this profession. The public needs to be assured that such behaviour is intolerable and will be treated as such by the Institute. Only then can public trust be restored and maintained. As well, other members of the profession need to be aware of the consequences of such conduct, and reminded that members in industry are held to the same high standards, so that they are deterred from considering any similar action. The

publication and notice as ordered will satisfy this requirement.

Fine

27. A fine is required to act as both a specific and general deterrent. While Mr. McIntyre has suffered financially, as a result of his conduct, he does have the means to pay a fine. Given the role he played in the perpetuating of the fraud, we have determined that \$15,000 is an amount appropriate to adequately address the necessary principles.

Costs

28. It was Mr. McIntyre's conduct which caused the investigation and hearing. It is appropriate that he, rather than the membership as a whole, bear a portion of those costs. The costs sought by the Professional Conduct Committee will not even partially indemnify the Institute for the costs incurred, but are reasonable in the circumstances and will be ordered.

DATED AT TORONTO THIS 25th DAY OF JUNE, 2007
BY ORDER OF THE DISCIPLINE COMMITTEE

M.B. MARTENFELD, FCA – DEPUTY CHAIR
DISCIPLINE COMMITTEE

MEMBERS OF THE PANEL:

S.R. LOWE, CA

B.M. SOLWAY (Public Representative)