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

DISCIPLINE COMMITTEE

IN THE MATTER OF: Charges against **GRAHAM MCEWAN SEGGER, FCA**, a member of the Institute, under **Rules 201.1 and 208.1** of the Rules of Professional Conduct, as amended.

TO: Mr. Graham M. Segger, FCA
10 Abinger Crescent
ETOBICOKE, ON M9B 2Y5

AND TO: The Professional Conduct Committee, ICAO

REASONS
(Decision and Order Made December 5, 2007)

1. This panel of the Discipline Committee of the Institute of Chartered Accountants of Ontario, convened on December 5, 2007, to hear charges brought under Rules 201.1 and 208.1 of the Rules of Professional Conduct against Graham McEwan Segger, FCA, a member of the Institute.

2. Mr. Brian Bellmore appeared as counsel for the Professional Conduct Committee. Mr. Segger was present with his counsel, Mr. Peter Griffin, who was accompanied by his associate, Mr. Kris Borg-Olivier.

3. The decision with respect to the charge and the sanction imposed were made known at the hearing on December 5, 2007. These reasons, set out in writing pursuant to Bylaw 574, include a brief description of the procedure followed, the charge which was not withdrawn, the decision and the order, as well as the reasons of the Discipline Committee.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 charges, made by the Professional Conduct Committee against Mr. Segger, dated June 7, 2007, were marked as Exhibit 1.

5. Before the plea was taken, the parties indicated that they proposed to proceed by way of a Statement of Agreed Facts on the understanding that Mr. Segger would plead guilty to charge No. 2, in which case charge No. 1 would be withdrawn.

6. Mr. Segger entered a plea of guilty to charge No. 2, whereupon charge No. 1 was withdrawn. Mr. Segger confirmed that he understood that on the basis of his plea, and on that basis alone, he could be found guilty of professional misconduct.

7. Charge No. 1 identified Mr. Segger's firm as Deloitte & Touche LLP ("Deloitte & Touche"). The charge also identified the firm's client as the Canadian Bar Association ("CBA")

and the party to whom confidential information was disclosed as the Insurance Bureau of Canada ("IBC"). Charge No. 2, the charge which was not withdrawn, reads:

> THAT the said Graham McEwan Segger in or about the period September 23, 2003 to October 4, 2003, while assisting members of the firm of Deloitte & Touche in an engagement for its client, the CBA, disclosed confidential information concerning the affairs of the said client to officials of the IBC without the knowledge or consent of the client contrary to Rule 208.1 of the Rules of Professional Conduct.

8. Mr. Bellmore made an opening statement and filed a Statement of Agreed Facts With Exhibits as Exhibit 2. The Statement of Agreed Facts With Exhibits, dated December 5, 2007, was signed by Mr. Segger as well as by his counsel, Mr. Griffin, and by Mr. Bellmore on behalf of the Professional Conduct Committee. This Statement of Agreed Facts, which is 48 paragraphs long, refers to a number of documents which are set out as exhibits following Tabs 1 to 14. Mr. Bellmore reviewed the Statement of Agreed Facts and made reference to a number of the exhibits. He advised the panel that the case for the Professional Conduct Committee was set out entirely in the Statement of Agreed Facts With Exhibits and there would be no other evidence.

9. Mr. Griffin advised the panel that no evidence would be called on the member's behalf with respect to the question of guilt or innocence. He stated that Mr. Segger's concern had been with the accuracy of a Deloitte & Touche report which had been made public by the CBA. He also stated that when Mr. Segger gave confidential information to the IBC, he did not expect that the information would be given to the press. Mr. Griffin also stated that ultimately the firm withdrew the report and waived its fee to its client, the CBA.

10. The hearing adjourned while the members of the panel reviewed the Statement of Agreed Facts With Exhibits.

11. When the hearing reconvened, as the panel had no questions, Mr. Bellmore made brief submissions with respect to the question of whether or not the member was guilty as charged.

12. Mr. Griffin stated that Mr. Segger had made a clear admission in the Statement of Agreed Facts With Exhibits that he had disclosed confidential information in the period September 23 to September 25, 2003.

THE RELEVANT FACTS

13. The panel accepted the evidence set out in the Statement of Agreed Facts With Exhibits and hereinafter sets out, in paragraphs 14 to 32, the facts which it found to be relevant.

14. In 2003, the Government of Alberta was considering imposing a cap on the amount that could be recovered for personal injuries suffered in automobile accidents. The CBA opposed a cap. The IBC favoured a cap. It was known that the CBA and the IBC were on opposite sides of this issue and that both the CBA and the IBC were lobbying the government advocating for the position they favoured.

15. In July 2003, the CBA engaged the Edmonton office of Deloitte & Touche to "provide analysis regarding the extent to which Bodily Injury Claims Costs are contributing to rising automobile insurance premiums".

16. The analysis was set out in a report prepared by the Edmonton office of Deloitte & Touche, which was entitled "Insurance Reform – Premium & Claim Analysis" dated September 16, 2003. As intended, the report was made public as the CBA published it on its website. The key finding of the report as expressed in the "Executive Summary" was:

> The increasing premiums for Third Party Liability coverage in 2002 and 2003 are not being driven by Bodily Injury claims in these years as claims costs have been falling since 1999 (on a per vehicle basis, removing general price inflation increases).

17. Mr. Segger had no knowledge of the CBA engagement or the report until he received an email (Exhibit 2, Tab 2) from Mr. Paul Kovacs, a senior IBC executive on September 23, 2003. The email, sent at 3:00 p.m. reads as follows:

> Graham
>
> The attached report by Deloitte & Touche is extremely disappointing and very shoddy work. This bizarre concept that your colleagues have created stating premiums that exceed claims are "gross profits" will certainly will [sic] cause a lasting harm to the reputation of Deloitte & Touche within the insurance industry and elsewhere where it has been assumed that others in your firm also understood the insurance industry. Please call if you have ideas of how we can minimize that damage that will be done to the development of good public policy for consumers in Alberta.
>
> Paul

18. Mr. Segger was known to the senior executives of the IBC as he served, in a volunteer capacity, as a special accounting advisor to the IBC's Financial Issues Subcommittee. The IBC was not a client of Deloitte & Touche. Mr. Segger did serve a number of Deloitte & Touche's insurance clients and was a frequent speaker at technical sessions of insurance associations such as the IBC.

19. Shortly after receiving the email, Mr. Segger left Mr. Kovacs a voice mail to the effect that he would look into the matter. That afternoon, September 23, 2003, Mr. Segger spoke with one of the authors of the report and pointed out the importance of Deloitte & Touche's insurance practice and the damage the report was doing. Later that afternoon, Mr. Segger participated in a conference call with personnel from the Edmonton office, and he critiqued the report and proposed an action plan which included requesting the CBA to withdraw the report. The CBA refused to withdraw the report, but said it would consider making certain revisions to the report.

20. The next day, September 24, 2003, at 7:33 a.m. Mr. Segger sent the first of four relevant emails to Mr. Kovacs. The email (Exhibit 2, Tab 3) reads as follows:

> Dear Paul:
>
> As mentioned in my earlier voice mail message to you, I have downloaded the report and read through it last night. I was not aware of the project. I have also spoken to the consultant involved in Edmonton and have taken steps to try to control the damage, including asking that the consultant contact the CBA today and request that the report be

> removed from the website so that it can be revised. I will provide you with another report later in the day.
>
> Graham

21. Mr. Segger reported to the IBC three more times in the next two days, and in doing so gave confidential information about Deloitte & Touche's dealing with its client to the IBC. In fact, Mr. Segger sent copies of his email reports to Mr. Paul Kovac to Mr. Stan Griffin, the President of the IBC and Ms. Jane Voll, the acting Vice-President and Chief Economist of the IBC.

22. On September 24, 2003, at 9:55 a.m. Mr. Segger sent his second email report to the IBC (Exhibit 2, Tab 6) which reads as follows:

> The Edmonton consultant has now spoken to the CBA and requested that they pull the report. Not surprisingly, they have refused but may allow us to replace it with an updated version. We are evaluating our options internally to determine whether this will be adequate or whether we need to take other public steps to deal with the report. In the mean time [sic] have provided review comments to the consultant who is working on revisions today. To the extent that you have additional specific concerns, please forward them through to me and I will consider them for inclusion with the revisions.
> We deeply regret the impact of this report as reflected in this morning's Edmonton Sun article.

23. Later in the morning of September 24, 2003, Mr. Segger received a list of the IBC's concerns with the report and forwarded it to the Edmonton office. However, the Edmonton office had already made revisions to the report and did not revise the report further.

24. On September 24, 2003, a reporter from the Calgary Herald interviewed the President of the CBA, Mr. Don Higa. The reporter asked Mr. Higa whether the CBA had been asked by Deloitte & Touche to remove the report from its website. Mr. Higa and one other colleague were the only CBA personnel aware of the request. Mr. Higa assumed, correctly, that the information reached the reporter through Deloitte & Touche. Mr. Higa was surprised that Deloitte & Touche would disclose confidential client communications and he was embarrassed by the disclosure.

25. A revised report was sent by the Edmonton office of Deloitte & Touche to the CBA on the afternoon of September 24, 2003. Mr. Segger approved releasing the revised report to the CBA and it was the firm's position that the revised report should replace the report which was published on the website.

26. On September 24, 2003, at 8:08 p.m., Mr. Segger sent his third email report to the IBC. This email (Exhibit 2, Tab 8) included information about the specific changes Deloitte & Touche proposed for the report and the fact that the CBA had declined to remove the report from its website, but had tentatively agreed that certain changes could be made to it.

27. On September 25, 2003, the Calgary Herald ran an article (Exhibit 10) on the controversy which included the statement that: "Deloitte & Touche asked the CBA to take the report off its website for corrections." The article revealed that the information about the request of Deloitte & Touche had been provided by an IBC executive. Mr. Segger acknowledges that he was the source of this information.

28. On September 25, 2003, at 7:22 p.m., Mr. Segger sent his fourth email report to the IBC (Exhibit 2, Tab 11) which stated:

> 1) We have held discussions and a meeting with the CBA today and proposed a number of changes to the report. They have, perhaps not surprisingly, not accepted all of the proposed changes.
>
> 2) As a result, we are now considering the other options available to us. This involves consultations with firm legal counsel and senior management.

29. On October 4, 2003, Mr. Segger sent another email (Exhibit 2, Tab 12) to the IBC which reads as follows:

> I presume that you are keeping up on the Alberta press coverage of this sorry affair, including the press release from the CBA. There was a particularly difficult article in this morning's Edmonton Journal. For better or worse the spotlight seems to have been shifted from auto insurance to ourselves.

30. Mr. Segger had kept his partners apprised of the concerns expressed by the IBC and what he was doing about them. On September 24, 2003, at 9:16 a.m., Mr. Segger sent an email (Exhibit 2, Tab 5) to partners in Deloitte & Touche's Edmonton, Toronto and National offices. The introductory paragraph stated:

> As discussed last night, I received a call yesterday afternoon from the Insurance Bureau of Canada about the Insurance Reform – Premiums & Claim Analysis report issued by D&T Edmonton on September 16, 2003 and posted on the Canadian Bar Association website (see link below). This report represents a significant risk to the firm from several aspects. I have also included a copy of an article from the Edmonton Sun which appeared this morning. The P&C insurance industry, which represents $10 million a year of fees for us, are very upset with the report, partly because of the biased nature of the report and mainly because they believe the methodology is deeply flawed (I agree with that assessment). Following are a few comments based upon a quick read of the report last night.

31. The CBA complained to the Institute of Chartered Accountants of Alberta (ICAA). After an investigation, four charges of unprofessional conduct were made against Deloitte & Touche. On June 30, 2006, the Discipline Tribunal of the ICAA found the firm not guilty of the first two charges. With respect to the third and fourth charges, the Tribunal's decision (Exhibit 2, Tab 13, page 17) reads as follows:

> And after due consideration of the verbal and written evidence and the submissions placed before it, the Tribunal finds Deloitte & Touche LLP Chartered Accountants guilty of unprofessional conduct in having failed to maintain the good reputation of the profession with respect to an engagement in 2003 for the Canadian Bar Association to report on Insurance Reform – Premium and Claim Analysis by:

(3) failing to ensure policies were in place and adhered to that would have prevented members of the firm from discussing the report with persons outside the firm without the consent of the Canadian Bar Association; and

(4) having acted in conflict by compromising the interest of a client in favour of the perceived interests of other clients, self-interest, or both.

32. The Alberta Discipline Tribunal fined Deloitte & Touche $20,000 for each conviction, the maximum amount permitted per conviction. In addition to the fines totalling $40,000, Deloitte & Touche was assessed the full costs of the investigation and hearing. The Discipline Tribunal also directed its Secretary to make a complaint to the Institute of Chartered Accountants of Ontario with respect to Mr. Segger's conduct, particularly the conduct relating to the breach of client confidentiality.

DECISION ON THE CHARGE

33. When the hearing reconvened, the Chair stated for the record that Mr. Segger had been found guilty of the charge. The formal written Decision of the Discipline Committee, dated December 5, 2007, reads as follows:

> THAT, having seen and considered the evidence, including the agreed statement of facts, filed, charge No.1 having been withdrawn by the Professional Conduct Committee, and having heard the plea of guilty to charge No.2, the Discipline Committee finds Mr. Graham McEwan Segger guilty of charge No.2.

SANCTION

34. Mr. Bellmore indicated that the Professional Conduct Committee would not call evidence with respect to sanction.

35. Mr. Griffin filed Mr. Segger's Curriculum Vitae (Exhibit 3) and four letters (Exhibit 4), two from clients and two from partners of Mr. Segger.

36. Mr. Bellmore had advised the panel in his opening statement of the sanction sought by the Professional Conduct Committee namely: a reprimand; a fine of $25,000; costs of $39,000 which represented all of the costs of the investigation and hearing; and notice of the decision disclosing Mr. Segger's name to be published in *CheckMark* and given to the Public Accountants Council.

37. Mr. Bellmore stated that the Professional Conduct Committee regarded the breach of the rule as a very serious matter. Mr. Segger had breached the trust that the CBA had placed in Deloitte & Touche to respect its confidences. Moreover, the breach of trust and violation of Rule 208.1 was egregious in that Mr. Segger had disclosed the confidential information to the client's adversary, the IBC, and predictably it had been used by the IBC to the detriment of the CBA, and to the embarrassment, even humiliation, of the President of the CBA.

38. Mr. Bellmore advised the panel that there were no relevant precedents and that the sanction recommended, in the view of the Professional Conduct Committee was at the high end of the appropriate range of sanction short of suspension.

39. Mr. Griffin emphasized that there was no question of moral turpitude or lack of integrity. He pointed out that the sanction to be imposed was for the acknowledged disclosure of confidential information; and in these proceedings, unlike the hearing in Alberta, the broader issue of whether or not Mr. Segger had put his interests, or his firm's interests, ahead of the interest of his client was not an issue.

40. Mr. Griffin referred to the letters which had been filed as support for the common position of both the prosecution and the member, namely that the misconduct was an aberration in the otherwise exemplary record of a competent and ethical practitioner who had no previous history with the discipline process.

41. Mr. Griffin emphasized that Mr. Segger acknowledged that he had breached Rule 208.1 and was genuinely remorseful. Further, Mr. Griffin submitted that Mr. Segger had acted because of a complaint received about a public report done by his firm which Mr. Segger thought was flawed, and that Mr. Segger had already received substantial public criticism from the press in Alberta which covered the story and from the Discipline Tribunal of the Alberta Institute.

42. Mr. Griffin emphasized that as the submission with respect to sanction was a joint submission, as a matter of law the panel should not interfere with a proposed sanction unless it offended public policy and was not in the public interest. He submitted that the proposed sanction was appropriate in the circumstances.

43. In its deliberations, the panel accepted that a reprimand, costs of $39,000 and the publication of a notice in *CheckMark* disclosing Mr. Segger's name were appropriate.

44. The panel struggled with the question of whether or not the fine, particularly in the absence of a suspension, was significant enough as a matter of general and specific deterrence to achieve what is in the public interest namely: maintaining the public's trust that chartered accountants will adhere to the Rules of Professional Conduct in general, and in particular maintain the confidences of their clients; and adherence by chartered accountants to the Rules of Professional Conduct generally and the maintenance of client confidentiality in particular.

45. The panel was well aware that there was only one charge and that the Professional Conduct Committee did not contend that Mr. Segger put the interests of his firm or himself ahead of the interests of Deloitte & Touche's client and thus this case was different than the case decided by the Alberta Discipline Tribunal.

46. The panel was also aware that it was Mr. Segger's position that he was motivated to act because he thought a report of his firm which was public needed to be revised. However, this is not the point which jumps out of the email that Mr. Segger sent to his partners. Further, as far as the IBC was concerned there was reason for clients of Deloitte & Touche to question why they should continue to use Deloitte & Touche.

47. Mr. Segger's communication to his partners of September 24, 2003 (Exhibit 2, Tab 5) stated as follows: "The P&C insurance industry, which represents $10 million a year of fees for us…". Mr. Segger said that this was intended to emphasize that Deloitte & Touche was regarded as knowledgeable with respect to insurance matters and that the report was not something which would be expected or accepted from knowledgeable practitioners. He chose what the panel considered to be peculiar language to make this point.

48. The panel made it known to the parties that it questioned the suitability of the proposed sanction given the evidence which suggested that concern for the potential loss of substantial income was one of the factors which prompted the disclosure of confidential information. A fine which could be seen to approach a licence fee, given the very substantial fees potentially at risk, would not be a sufficient general or specific deterrent.

49. The parties addressed the panel's concern and Mr. Segger himself spoke to this issue. Ultimately, the panel concluded that the sanction would sufficiently serve the purposes of general and specific deterrence.

REASONS FOR THE ORDER

50. After considering the submissions, the circumstances of the misconduct and the circumstances of the member, the panel made the following order:

IT IS ORDERED in respect of the charge:

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

2. THAT Mr. Segger be and he is hereby fined the sum of $25,000 to be remitted to the Institute within forty-five (45) days from the date this Decision and Order becomes final under the bylaws.

3. THAT Mr. Segger be and he is hereby charged costs fixed at $39,000 to be remitted to the Institute within forty-five (45) days from the date this Decision and Order becomes final under the bylaws.

4. THAT notice of this Decision and Order, disclosing Mr. Segger'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;
(b) to the Public Accountants Council for the Province of Ontario; and
(c) to all provincial institutes/Ordre,
and shall be made available to the public.

5. THAT in the event Mr. Segger fails to comply with any of the requirements of this Order, he shall thereupon be suspended from the rights and privileges of membership in the Institute until such time as he does comply, provided that he complies within three (3) months from the date of his suspension, and in the event he does not comply within the three month period, 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. Segger's practice, employment and/or residence. All costs associated with the publication shall be borne by Mr. Segger and shall be in addition to any other costs ordered by the committee.

51. The misconduct in this case is extremely serious. The requirement not to disclose confidential information concerning the affairs of any client, former client, employer or former employer, is fundamentally important both to the profession and the public it serves. The disclosure by Mr. Segger of a client's confidential information to that client's adversary, on several occasions, is egregious misconduct. Moreover, while Mr. Segger may have thought that the report was flawed, it was apparent to the panel that a motive, if not the dominant motive, for his misconduct was to retain the goodwill and future business opportunities with an organization that represented a substantial client base to Mr. Segger and his firm.

52. Initially, several members of the panel did not believe that the sanction requested by the Professional Conduct Committee adequately reflected the severity of the misconduct and thus would not have the general deterrent effect that the order should have. However, ultimately the panel was persuaded that it should accept the joint submission. It was satisfied that the order, taken as a whole, would be an adequate general deterrent.

53. The panel recognized that there was a complete lack of precedent relating to the breach of this rule. As this is the first case of such a breach, it is important that the profession and the public know that, in the panel's view, the jointly recommended sanction fell within the lower end of the range of sanction which is appropriate for the egregious misconduct in this case. In the future, a similar breach of this rule by a member, student, firm or professional corporation, may well require a more severe sanction.

Reprimand

54. A reprimand is necessary to express to Mr. Segger the extent and depth of the misconduct, and its consequences for him, the profession and the public.

Fine

55. As is set out above, several members of the panel had doubts that the sanction, and in particular that the fine in the absence of a suspension, adequately reflected the gravity of the misconduct in this case. In concluding that a fine of $25,000 fell within the lower end of the range of fine appropriate for the misconduct, the panel bore in mind that a $25,000 fine is at the upper end of the range of fines imposed on first offenders for the breach of other rules, that Mr. Segger is a first offender, and that he cooperated throughout.

Costs

56. The costs sought by Professional Conduct Committee in this matter reflect a full recovery for the costs of the investigation and the hearing. The nature of the misconduct suggests that a full recovery is appropriate.

Notice

57. In all but the most rare and unusual of circumstances, the member's name and misconduct are made public. This is a case for which publication is important for both general and specific deterrence. The member must recognize the severity of his misconduct and the public and membership, which have a heightened interest in this case, must see that the Institute takes the precept of maintaining clients' affairs confidential as a fundamental one and one which will be dealt with severely if offended.

DATED AT TORONTO THIS 25TH DAY OF MARCH, 2008
BY ORDER OF THE DISCIPLINE COMMITTEE

M.B. MARTENFELD, FCA – CHAIR
DISCIPLINE COMMITTEE

MEMBERS OF THE PANEL:
L.G. BOURGON, CA
J.G. SEDGWICK, CA
B.M. SOLWAY (PUBLIC REPRESENTATIVE)