

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

**APPEAL COMMITTEE**

**IN THE MATTER OF:** An appeal by **IAN ROBERT MCCUTCHEON**, a suspended member of the Institute, of the Order of the Discipline Committee made on March 3, 2010 pursuant to the bylaws of the Institute, as amended.

**TO:** Mr. Ian Robert Mccutcheon

**AND TO:** The Professional Conduct Committee, ICAO

**REASONS**  
**(Order made October 20, 2010)**

1. This appeal was heard by a panel of the Appeal Committee of the Institute of Chartered Accountants of Ontario on October 20, 2010. Alexandra Hersak appeared on behalf of the Professional Conduct Committee. Mr. McCutcheon attended and was unrepresented by counsel. He confirmed he understood that he had the right to be represented by counsel, and that he was waiving that right.

2. The following charge was laid against Mr. McCutcheon by the Professional Conduct Committee on March 3, 2010:

1. THAT, the said Ian R. McCutcheon, in or about the period January 26, 2007 through March 26, 2009, while engaged as the controller for [XX] Limited., failed to act at all times in a manner which will maintain the good reputation of the profession and its ability to serve the public interest in that, he misappropriated approximately \$204,000 from his employer, contrary to Rule 201.1 of the Rules of Professional Conduct.

3. The Decision and Order appealed from, dated April 8, 2010, reads as follows:

**DECISION**

THAT, having heard the plea of guilty to the charge and having seen and considered the evidence, the Discipline Committee finds Ian Robert McCutcheon guilty of the charge.

**ORDER**

1. THAT Mr. McCutcheon be reprimanded in writing by the chair of the hearing.
2. THAT Mr. McCutcheon be and he is hereby fined the sum of \$5,000 to be remitted to the Institute within one (1) year from the date this Decision and Order becomes final under the bylaws.
3. THAT Mr. McCutcheon be and he is hereby expelled from membership in the Institute.

4. THAT notice of this Decision and Order, disclosing Mr. McCutcheon'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 all provincial institutes/Ordre,and shall be made available to the public.
5. THAT notice of the expulsion, disclosing Mr. McCutcheon's name, be given by publication on the Institute's website, and in a newspaper distributed in the geographic area of Mr. McCutcheon's employment and/or residence. All costs associated with the publication shall be borne by Mr. McCutcheon and shall be in addition to any other costs ordered by the committee.
6. THAT Mr. McCutcheon 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.

AND IT IS FURTHER ORDERED:

7. THAT Mr. McCutcheon be and he is hereby charged costs fixed at \$2,500 to be remitted to the Institute within one (1) year from the date this Decision and Order becomes final under the bylaws.
4. On this appeal, Mr. McCutcheon seeks to have the quantum of the fine imposed and the costs assessed reduced. He also appeals the order of expulsion and publicity.

***Submissions***

5. With respect to the fine and costs, Mr. McCutcheon submits that the amounts are impossible for him to pay. While he is gainfully employed, there are other prior commitments (including repaying the company from which he misappropriated) on his funds. He also takes the position that, as he attempted to resign his membership, the investigation was unnecessary and he should not bear that cost.
6. With respect to expulsion, it is Mr. McCutcheon's position that he attempted to resign, and still wishes to do so, and that the Institute should have accepted his resignation.
7. With respect to publicity, his submission is that it will rebound negatively on the company he wronged. Further, he submits that full disclosure will destroy him.
8. Ms. Hersak, on behalf of the Professional Conduct Committee, submits that the quantum of the fine is at the low end of the appropriate range, and that the Discipline Committee considered all relevant factors, including Mr. McCutcheon's ability to pay, before determining that quantum. Likewise, the Discipline Committee ordered Mr. McCutcheon to pay a small fraction of the actual costs of the investigation and hearing, also due to his ability to pay.
9. Ms. Hersak submits that, in cases of misappropriation, the precedents indicate expulsion is the appropriate sanction, and that granting permission to resign would not satisfy the principle of general deterrence. Further, she notes that publication is to be made unless the member satisfies the tribunal that publication is not required to protect the public interest and would be unfair to the member. Mr. McCutcheon made the request for non-publication to the Discipline Committee, which

considered his request and determined he had not met the onus. That decision should not be disturbed.

### ***Order***

10. This panel of the Appeal Committee considered all the submissions, as well as the material filed in this matter and, after deliberations, dismissed the appeal. The parties were informed of the decision at the conclusion of the appeal, and were provided with a written Order dated November 4, 2010, as follows:

HAVING heard and considered the submissions made by Ian R. McCutcheon and on behalf of the Professional Conduct Committee, and having reviewed all of the documentation provided by the parties, the Appeal Committee dismisses the appeal of the Order of the Discipline Committee made on March 3, 2010.

### ***Reasons***

11. It has been stated on numerous occasions that the role of this Committee is not to retry the matter before it, but to determine whether the Discipline Committee committed any errors in its consideration of the evidence before it. Even greater deference is owed to the Discipline Committee in its consideration of sanctions and costs, and those orders should not be interfered with except in the clearest of instances. The mere fact the Appeal Committee might have reached a different conclusion on sanction does not justify altering the sanction imposed, unless that sanction is beyond the range of sanctions for similar conduct in similar circumstances.

12. As stated in the reasons of the Discipline Committee, Mr. McCutcheon committed professional misconduct by misappropriating money from his employer. Such an act goes to the heart of the profession – honesty, integrity, and trust. Mr. McCutcheon stole in excess of \$200,000 from his employer. While he has repaid \$105,000 and promised to make restitution for the balance, his conduct demonstrates moral turpitude, which is not to be tolerated among the members of the profession.

13. Mr. McCutcheon was fined \$5,000 and assessed costs of \$2,500. The panel considered both the amount of the fine and the costs assessed. In their deliberations, the panel took into consideration the fines and costs assessed on other appellants in similar circumstances. Mr. McCutcheon was assessed less than 40% of the costs incurred in the investigation and hearing of this matter. The investigation and hearing were occasioned solely by his conduct. The membership as a whole must bear the remainder of those costs. There is no basis upon which it would be appropriate for this panel to reduce the costs. The panel concluded that the amount of the fine and the costs assessed, although at the lower end of the range assessed on others found guilty of similar offences, were clearly within a reasonable range when compared to those levied in other similar situations.

14. Mr. McCutcheon requested that he be permitted to resign without being expelled as a member. There is precedent to permit a member to resign in circumstances where the inappropriate conduct of the member is mitigated by the compassion brought about by serious medical, mental, emotional or personal circumstances. In this particular instance, the member has neither been diagnosed nor sought treatment for his gambling addiction claim. Furthermore, this is a matter of misappropriation of a significant amount of money over a period of time from his employer. There is nothing to indicate his conduct was caused by any incapacity. Consequently, his conduct does not meet the threshold for compassionate consideration against the decision that he be expelled from membership.

15. The panel considered the request by the appellant and his former employer for non-publication. Publicity is required to protect the reputation of the profession and the public interest. The Appeal Committee was not made aware of any rare and unusual circumstances in this case which would lead it to alter the decision of the Discipline Committee in this matter. The panel agreed that the decision by the members of the Discipline Committee at the hearing of March 3, 2010 to refrain from disclosing the name of the employer but to insist on disclosure of the member's name was reasonable and one which should be expected by members in cases involving moral turpitude. This sanction is necessary for both specific and general deterrence and is consistent with that levied in similar circumstances.

16. Mr. McCutcheon's conduct was extremely serious, and must be sanctioned as such by this Institute. The Discipline Committee made no errors in considering the evidence before it, or in ordering an appropriate sanction and costs. Their order should not be disturbed. For these reasons, this panel of the Appeal Committee dismisses the appeal and confirms the order of the Discipline Committee.

### **Costs**

17. The panel considered whether costs associated with the appeal should be awarded against Mr. McCutcheon. In view of the fact that the jurisdiction of the Institute to seek costs of an appeal had been included in legislation proclaimed after the application to appeal was submitted but before the hearing was held the panel decided not to award costs of the appeal.

18. Had the panel decided to award costs, the factors it would have considered include:

- a) The complexity of the proceeding;
- b) The importance of the issues;
- c) The conduct of any party that tended to shorten or to lengthen unnecessarily the duration of the proceeding;
- d) Whether any step in the proceeding was improper, vexatious or unnecessary or taken through negligence, mistake or excessive caution;
- e) A party's denial or refusal to admit anything that should have been admitted;
- f) The experience of the party's lawyer; and
- g) Any other matter relevant to the question of costs.

DATED AT TORONTO THIS 16th DAY OF DECEMBER, 2010.

BY ORDER OF THE APPEAL COMMITTEE

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

### **MEMBERS OF THE PANEL:**

K.N. ARMSTRONG (PUBLIC REPRESENTATIVE)  
R.D. DAWE, CA  
M.A. MANERA, FCA.  
D.A. ROBERTSON, FCA

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

**DISCIPLINE COMMITTEE**

**IN THE MATTER OF:** A charge against **IAN ROBERT MCCUTCHEON, CA** a member of the Institute, under **Rule 201.1** of the Rules of Professional Conduct, as amended.

**TO:** Mr. Ian R. McCutcheon

**AND TO:** The Professional Conduct Committee, ICAO

**REASONS**  
**(Decision and Order made March 3, 2010)**

1. This panel of the Discipline Committee of the Institute of Chartered Accountants of Ontario met on March 3, 2010, to hear a charge of professional misconduct brought by the Professional Conduct Committee against Ian Robert McCutcheon, a member of the Institute.
2. Alexandra Hersak appeared on behalf of the Professional Conduct Committee.
3. Mr. McCutcheon attended and was not represented by counsel. He acknowledged that he understood that he had the right to be represented by counsel, and that he waived that right.
4. The decision and the terms of the order were made known at the hearing on March 3, 2010. The written Decision and Order was sent to the parties on March 9, 2010. These reasons, given pursuant to Bylaw 574, include the charge, the decision, the order, and the reasons of the panel for its decision and order.

**CHARGES**

5. The following charge was laid against Mr. McCutcheon by the Professional Conduct Committee on December 8, 2009:

THAT, the said Ian R. McCutcheon, in or about the period January 26, 2007 through March 26, 2009, while engaged as the controller for [XX] Limited., failed to act at all times in a manner which will maintain the good reputation of the profession and its ability to serve the public interest in that, he misappropriated approximately \$204,000 from his employer, contrary to Rule 201.1 of the Rules of Professional Conduct.

**PLEA**

6. Mr. McCutcheon entered a plea of guilty to the charge.

**EVIDENCE**

7. The evidence of the Professional Conduct Committee was presented by way of an Agreed Statement of Facts (Exhibit 1) and accompanying Document Brief (Exhibit 2). Mr. McCutcheon presented no evidence.

**FACTS**

8. The facts in this matter are straightforward and uncontested. Mr. McCutcheon was the controller for [XX] Limited from 1999 to 2009. Between January 2007 and March 2009, Mr. McCutcheon misappropriated \$204,110.94 from his employer.

9. Mr. McCutcheon misappropriated funds by preparing and signing company cheques to himself, each for less than \$5,000. He chose the amount as he could act as sole signatory for cheques under \$10,000, and knew the auditors would not review cheques under \$5,000. Mr. McCutcheon also avoided making out the cheques for round figures, to assist in avoiding detection. He created fictitious cheque stubs, and destroyed the cancelled cheques when they were returned from the bank. He wrote in excess of 40 cheques to himself.

10. In April 2009, Mr. McCutcheon confessed to his employer, provided it with a complete listing of his misappropriations, and promised to make restitution. He resigned from the company, but continued to work there for three months to aid in the transition to a new controller. He worked at a reduced salary, which represented a repayment of \$5,000 to the company.

11. Mr. McCutcheon liquidated assets and repaid \$105,000 to the company. He has stated that he misappropriated due to a gambling addiction. He has not sought treatment for that addiction.

**FINDING**

12. The evidence is clear that Mr. McCutcheon misappropriated money from his employer. That is professional misconduct.

**DECISION**

13. After deliberating, the panel made the following decision:

THAT, having heard the plea of guilty to the charge and having seen and considered the evidence, the Discipline Committee finds Ian Robert McCutcheon guilty of the charge.

## **SANCTION**

14. Mr. McCutcheon testified and stated he still owed his former employer \$83,000. He also has other significant debts. He stated that he no longer gambles and would be willing to get help for his addiction. He acknowledged that what he had done was “horrible”, and had destroyed his life. He was very concerned with the effect any publicity of the matter would have on his former employer.

15. The Professional Conduct Committee called no evidence on sanction. Ms. Hersak submitted that an appropriate sanction would be: a written reprimand; a fine in the amount of \$5,000; expulsion from membership; and publicity, including newspaper publication. She also sought costs in the amount of \$8,000, and filed a Costs Outline (Exhibit 4).

16. Ms. Hersak submitted that Mr. McCutcheon had stolen from his employer, a serious breach of trust. The public has a right to expect honesty from chartered accountants and such dishonesty is a matter of moral turpitude. Any sanction must, first and foremost, protect the public.

17. In aggravation, Ms. Hersak noted that the misappropriations went on for over two years; that Mr. McCutcheon had taken well thought out steps to avoid detection; that he wrote over 40 cheques; and that the quantum was significant. In mitigation she noted that Mr. McCutcheon confessed to his employer; he was fully cooperative and has pleaded guilty; he has made partial restitution; and he has no discipline history.

18. Mr. McCutcheon asked that he be allowed to resign and that there not be publicity of the matter. He stated that he wanted to complete restitution, and promised to: disclose this matter to any prospective employer; not accept financial signing authority; and enter a treatment program. He asked that the stigma of expulsion and publicity be avoided.

## **ORDER**

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

IT IS ORDERED in respect of the charge:

1. THAT Mr. McCutcheon be reprimanded in writing by the chair of the hearing.
2. THAT Mr. McCutcheon be and he is hereby fined the sum of \$5,000 to be remitted to the Institute within one (1) year from the date this Decision and Order becomes final under the bylaws.
3. THAT Mr. McCutcheon be and he is hereby expelled from membership in the Institute.
4. THAT notice of this Decision and Order, disclosing Mr. McCutcheon'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 all provincial institutes/Ordre,

and shall be made available to the public.

5. THAT notice of the expulsion, disclosing Mr. McCutcheon's name, be given by publication on the Institute's website, and in a newspaper distributed in the geographic area of Mr. McCutcheon's employment and/or residence. All costs associated with the publication shall be borne by Mr. McCutcheon and shall be in addition to any other costs ordered by the committee.
6. THAT Mr. McCutcheon 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.

AND IT IS FURTHER ORDERED:

7. THAT Mr. McCutcheon be and he is hereby charged costs fixed at \$2,500 to be remitted to the Institute within one (1) year from the date this Decision and Order becomes final under the bylaws.

## REASONS

20. Mr. McCutcheon stole from his employer. Regardless of any excuse he might have had, or any actions he took afterwards to confess or repay the money, the fact remains that, over a period of two years, Mr. McCutcheon deliberately and with planning breached the trust his employer had placed in him by, on more than 40 occasions, taking funds he had no right to.

21. Chartered accountants have a reputation for honesty and integrity. Without that reputation, the profession could not function, and members could not practise. Without the public trust that the reputation is well-earned and zealously guarded, the profession has nothing. Mr. McCutcheon's actions are an assault on the reputation of each and every member of the profession. Mr. McCutcheon's membership devalues all members. He must be removed.

22. Mr. McCutcheon has asked to be allowed to resign rather than face the ultimate sanction of expulsion. That request must be denied. Resignation should be permitted in those cases where expulsion is the appropriate sanction for the conduct but is mitigated by the compassion engendered by the serious medical, mental, emotional, or personal circumstances of the member. An undiagnosed, untreated claim of addiction does not meet this threshold. That Mr. McCutcheon embarked on a lengthy and profitable scheme both to steal and to conceal the theft from his employer is also a persuasive argument against permitting him to resign. He must be expelled.

23. A fine is required to demonstrate to Mr. McCutcheon, and to any other like-minded member, the grave nature of the conduct. The quantum of the fine is far less than it would have been, had Mr. McCutcheon's circumstances not been as seriously straitened. Were it not for our wish to encourage Mr. McCutcheon to make complete restitution, the fine would have been much greater than the fine imposed.

24. Mr. McCutcheon has asked to be spared the stigma of publicity in this matter. Publicity is one of the most valuable and effective aspects of sanction. It sends a clear message to all other members of the profession that such conduct will be dealt with swiftly and severely. More importantly, it assures the public that the Institute is an effective guardian of the integrity and probity of the profession and so restores the public trust in that profession. Only in the most



rare and unusual of circumstances is publicity not ordered. Mr. McCutcheon is guilty of one of the most egregious offences of professional misconduct. He has not provided any persuasive reason why he should be spared the publication of that misconduct. Nor has he provided any reason why the public should be precluded from knowing of the conduct and its result. There will be publication.

25. The panel has made a very modest order as to costs. The amount sought by the Professional Conduct Committee was itself reasonable, and has only been reduced bearing in mind Mr. McCutcheon's ability to pay and our desire that he make complete restitution to his former employer.

DATED AT TORONTO THIS 8<sup>TH</sup> DAY OF APRIL, 2010  
BY ORDER OF THE DISCIPLINE COMMITTEE

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S.F. DINELEY, FCA – DEPUTY CHAIR  
DISCIPLINE COMMITTEE

MEMBERS OF THE PANEL:

S.R. LOWE, CA  
W.K. MCDOUGALL, CA  
S.B. WALKER (PUBLIC REPRESENTATIVE)  
R.A. WORMALD, FCA