

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

DISCIPLINE COMMITTEE

IN THE MATTER OF: Charges against **JACK ALLEN LAMBE, CA**, a member of the Institute, under **Rules 201.1 and 204.1** of the Rules of Professional Conduct, as amended.

TO: Mr. Jack Allen Lambe
1 Pine Crest Road
Chatham, ON N7M 4H4

AND TO: The Professional Conduct Committee, ICAO

REASONS
(Decision and Order made January 23, 2008)

1. This panel of the Discipline Committee of the Institute of Chartered Accountants of Ontario met on January 15, 16, 17 and 23, 2008, to hear charges of professional misconduct brought by the Professional Conduct Committee against Jack Allen Lambe, CA, a member of the Institute.
2. Mr. Paul Farley appeared on behalf of the Professional Conduct Committee, and was accompanied by the investigator appointed by the Professional Conduct Committee, Ms. Jodie Wolkoff, CA.
3. Mr. Lambe was present 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.
4. The decision of the panel was made known at the conclusion of the hearing on January 23, 2008, and the written Decision and Order sent to the parties on January 25, 2008. These reasons, given pursuant to Bylaw 574, contain the charges, the decision, the order, and the reasons of the Discipline Committee.

CHARGES

5. The following charges were laid against Mr. Lambe by the Professional Conduct Committee on May 29, 2007:

1. THAT, the said Jack A. Lambe, in or about the period May 1, 2006 through February 1, 2007, while engaged to provide professional services to "RW Products", failed to conduct himself in a manner which will maintain the good reputation of the profession and its ability to serve the public interest, in that he misappropriated from "RW Products", money in the approximate amount of \$58,500; contrary to Rule 201.1 of the rules of professional conduct.

2. THAT, the said Jack A. Lambe, in or about the period March 1, 1995 through October 31, 2005, while performing the audit of the financial statements of "C.G.P. Buses Ltd.", for the years ended August 31 1995 through August 31, 2005 inclusive, failed to remain independent and free of any influence, interest or relationship which, in respect of the engagements, impaired his professional judgment or objectivity or would be seen by a reasonable observer to impair his professional judgment or objectivity, contrary to Rule 204.1 of the rules of professional conduct as amended, in that:
 - i) In or about 1995 he arranged with "C.G.P. Buses Ltd." a mortgage loan to his company, 1116614 Ontario Inc., in the amount of \$120,000, which loan remained outstanding, in whole or in part, during the period until December of 2004.
 - ii) In January 2000 he borrowed from "C.P.", a Director of "C.G.P. Buses Ltd. and P.B. Sales Limited", \$80,000, which loan remained outstanding, in whole or in part, during the period from January 2000.
3. THAT, the said Jack A. Lambe, in or about the period March 1, 1995 through October 31, 2005, while performing the audit of the financial statements of "P.B. Sales Limited." for the years ended August 31 1995 through August 31, 2005 inclusive, failed to remain independent and free of any influence, interest or relationship which, in respect of the engagements, impaired his professional judgment or objectivity or would be seen by a reasonable observer to impair his professional judgment or objectivity, contrary to Rule 204.1 of the rules of professional conduct as amended, in that:
 - i) In or about 1995 he arranged with "C.G.P. Buses Ltd." a mortgage loan to his company, 1116614 Ontario Inc., in the amount of \$120,000, which loan remained outstanding, in whole or in part, during the period until December of 2004.
 - ii) In January 2000 he borrowed from "C.P.", a Director of "P.B. Sales Limited and C.G.P. Buses Ltd.", approximately \$80,000, which loan remained outstanding, in whole or in part, during the period from January 2000.
4. THAT, the said Jack A. Lambe, in or about the period July 1, 2004 through June 30, 2005, while performing the review of the financial statements of "O. Mechanical Limited", as at February 28, 2005, failed to remain independent and free of any influence, interest or relationship which, in respect of the engagement, impaired his professional judgment or objectivity or would be seen by a reasonable observer to impair his professional judgment or objectivity, contrary to Rule 204.1 of the rules of professional conduct, in that:
 - i) In July 2004 he borrowed from the company approximately \$60,000, which loan remained outstanding, in whole or in part, during the period

PLEA

6. Mr. Lambe entered a plea of not guilty to each of the four charges.

PROCEEDINGS

7. Mr. Farley made an opening statement outlining the nature of the case and the evidence which he expected would be called. Thereafter, he filed a Document Brief consisting of three volumes, entered as Exhibits 9, 10 and 11, respectively.

8. On January 15, 2008, Mr. Farley called Mr. Wayne Robinson, the President of Resistance Welding Products (RWP) and Ontario Engineering Systems (OES) as his first witness. Thereafter, he called Mrs. Shirley Robinson, Mr. Robinson's wife, and Mr. Al McGuigan, the operations manager of RWP. Each gave evidence on behalf of the Professional Conduct Committee. They were cross-examined by Mr. Lambe.

9. On January 16, 2008, Mr. Farley called Ms. Lissa Van Rijn, formerly Mr. Lambe's assistant and, at the time of the hearing, the comptroller of RWP; Mr. Albert O'Phee, the founder and owner of the company referred to in the fourth charge as "O. Mechanical Limited"; and, Brian Sloan who had been the comptroller of RWP prior to March 2006. He also called Mr. Burton Cudmore, a partner of Collins Barrow. Mr. Lambe cross-examined Ms. Van Rijn, Mr. O'Phee and Mr. Sloan. Mr. Lambe had no questions by way of cross-examination for Mr. Cudmore.

10. On January 17, 2008, Mr. Farley called Ms. Jodie Wolkoff, CA, and Mr. John Douglas, CA, the investigators appointed by the Professional Conduct Committee. Mr. Lambe cross-examined both witnesses. Mr. Lambe also testified and was cross-examined by Mr. Farley.

11. When the hearing resumed on January 23, 2008, Mr. Farley made submissions with respect to the issue of whether or not the charges had been proven. Mr. Lambe also made submissions on this issue. After hearing the submissions, the panel deliberated.

DECISION

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

THAT, having seen, heard and considered the evidence, and having heard the plea of not guilty to charges Nos. 1, 2, 3, and 4, the Discipline Committee finds Mr. Jack Allen Lambe guilty of charges Nos. 1, 2, 3, and 4.

REASONS FOR DECISION

13. The relevant facts, as the panel has found, and the panel's analysis of those facts, are set out below.

14. Mr. Lambe received his designation as a chartered accountant in 1971. He articulated with a small firm and became a partner of that firm. In 1990, he commenced practice as a sole proprietor. In 1999, he agreed to become a partner of Collins Barrow in Chatham, Ontario. The clients he had as a sole proprietor, for the most part, became clients of Collins Barrow. He retired as partner of Collins Barrow on January 1, 2006.

Charge No. 1

15. RWP and OES were located diagonally across the street from each other in Blenheim, Ontario. Mr. Wayne Robinson was the President of both companies. The shareholders of the

two companies were essentially the same. Other than Mr. Robinson, who lived in Texas, the shareholders were local residents.

16. Prior to March 2006, it had been decided that OES, which had a work force of approximately 170 people, would be closed. RWP, which had a work force of about 40 people, was to remain in operation.

17. Mr. Brian Sloan, who had been the comptroller of both RWP and OES, had completed his MBA course of study and, with the good wishes of the shareholders of RWP, was looking to move on to greater challenges. Accordingly, RWP was looking for a new comptroller. It was thought that the position of comptroller, after OES had closed, would be a part-time position.

18. Collins Barrow, the auditors of RWP and OES, recommended Mr. Lambe. Mr. Sloan interviewed Mr. Lambe and recommended to Mr. Robinson that Mr. Lambe be retained.

19. Mr. Lambe set out the terms of the arrangement with RWP in a letter which he sent to Wayne Robinson. That letter is set out in Exhibit 9, Tab 1.

20. Mr. Robinson agreed to the terms outlined by Mr. Lambe. As far as RWP was concerned, until late January 2007, Mr. Lambe was a significant success as the comptroller. Mr. Lambe attended the shareholders meeting of RWP in July 2006. Mr. Robinson described the meeting as a "love in" with Mr. Lambe.

21. Mr. Lambe was compensated for the work he did as a comptroller for OES. In addition, it turned out that in the winding down of OES, there was other work that needed to be done which Mr. Lambe could do for a lower cost than an outside professional would charge. He performed this work and was compensated at a more lucrative rate than he was for his work as a comptroller. No issue arises either with the respect to the work he did as a comptroller for OES, or the additional work he did in the winding down of OES.

22. RWP's bank was the Bank of Montreal. In late January 2007, Ms. Daphne Knight of the Bank of Montreal called Ms. Van Rijn of RWP because she had concerns about a cheque in the amount of \$18,062.96 payable to 1116614 Ontario Inc. (Exhibit 9, Tab 3), a supplier that Ms. Knight was not familiar with. The cheque was signed by Mr. Lambe. Ms. Van Rijn's desk was adjacent to Mr. Lambe's and during her conversation with Ms. Knight, Mr. Lambe told her that "the cheque is good".

23. After Ms. Van Rijn got off the phone, Mr. Lambe told her that he knew about the cheque and that the cheque was good. He said Mr. Robinson had authorized the cheque so that his salary would be topped up to equal the salary that Mr. McGuigan received. Later, Mr. Lambe suggested to Ms. Van Rijn that she should not discuss the matter with Mr. Robinson or Mr. Frank Uniac, one of the shareholders and directors who lived in the area and sometimes attended at RWP. Ms. Van Rijn remained curious about the cheque because it had not been processed in the normal way that purchases, accounts payable and cheque preparation were supposed to be processed. Normally she would have processed a purchase transaction and prepared the payment cheque, and would have known about the cheque in question. Until Ms. Knight called, Ms. Van Rijn was unaware of the cheque.

24. Ms. Van Rijn had the next day off, which was a Friday. She was bothered throughout the weekend by the cheque, the reaction of Mr. Lambe when he was asked about the cheque, and the explanation she received from Mr. Lambe. On Sunday night, she sent an email to herself at

work. On Monday morning, she stopped at the bank and reviewed the cheque. She concluded that it had not been produced on RWP's FACTS computer system. She sent an email to Mr. Robinson in Texas (Exhibit 9, Tab 6) asking if he had agreed to top up Mr. Lambe's contract.

25. Before receiving Ms. Van Rijn's email, Mr. Robinson knew that there had been a problem. He suspected that someone working for a supplier or an employee might have been involved; however, he did not suspect that Mr. Lambe was responsible. Upon receiving Ms. Van Rijn's email and a copy of the cheque from the Bank of Montreal, he concluded he had no alternative but to terminate Mr. Lambe's employment. He made notes to this effect as he travelled up by plane (Exhibit 9, Tab 7).

26. Mr. Robinson met with Ms. Van Rijn at RWP on the evening of January 31, 2007. The next day he met with Mr. Lambe at RWP and terminated his contract. Mr. McGuigan was also at this meeting with Mr. Lambe and Mr. Robinson on February 1, 2007.

27. Later that afternoon, Mr. Lambe wrote a two-page letter to Mr. Robinson and the members of the Board of Directors (Exhibit 9, Tab 8). In this letter, he explained that he was concerned about inventory and had conducted an investigation. He acknowledged that he did not have Mr. Robinson's or the Board's prior approval for the actions which he took. He enclosed two invoices with the letter which set out the basis for the amount he had charged for the investigation. Both invoices had been charged to costs of sales and not to professional services. His letter included two paragraphs which read as follows:

I enclose the invoices relating to the verification. I will state that I actually lost on the deal so no funds went into my pocket.

I am in the process of raising the funds personally to repay RWP for the invoices and should have the funds shortly.

28. On February 2, 2007, Mr. Lambe delivered a short note of explanation to Mr. McGuigan. He again referred to an investigation of inventory. His letter also stated (Exhibit 9, Tab 9):

I hired some people thru my consulting company to do a complete inventory analysis of RWP from May 1st on. (I lost money on the deal).

29. Mr. Lambe had not hired anyone through his consulting company to help him with an inventory analysis. He had not lost money on the deal and funds did go directly into his pocket. He did not repay RWP.

30. After a review of the records of RWP, Mr. Robinson and Ms. Van Rijn found four payments which Mr. Robinson concluded ought not to have been made. These payments were:

a) cheque number C019690, dated October 1, 2006, in the amount of \$27,376.62, payable to 1116614 Ontario Inc., and cashed in October 2006 (Exhibit 9, Tab 2);

b) cheque number C019691, dated October 1, 2007, in the amount of \$18,062.96, payable to 1116614 Ontario Inc., and cashed January 15, 2007 (Exhibit 9, Tab 3);

- c) cheque number C019695, dated November 21, 2006, in the amount of \$7,500, payable to Steve Lambe and cashed November 22, 2006 (Exhibit 9, Tab 4);
- d) cheque number C000209, dated January 25, 2007, in the amount of \$4,436.10, payable to 1116614 Ontario Inc., cashed in January 2007 (Exhibit 9, Tab 5).

31. The first three cheques set out above were not generated on RWP's FACTS computer system. Moreover, the cheque numbers were out of sequence as they were some of the last of an old series of cheques which Mr. Lambe had apparently set aside when the new cheques were received.

32. All of the cheques were signed by Jack Lambe. 1116614 Ontario Inc. was Mr. Lambe's company.

33. The first two cheques were in the amount set out in the invoices Mr. Lambe delivered with his letter of February 1, 2007 (Exhibit 9, Tab 8). The third cheque, in the amount of \$7,500 payable to Steve Lambe, Mr. Lambe's son, had been cashed in November. One of the two invoices, the one in the amount of \$18,062.96 refers to a \$7,500 credit (Exhibit 9, Tab 8).

34. The fourth cheque, in the amount of \$4,436.10, was generated on RWP's FACTS computer system. Mr. Lambe instructed Ms. Van Rijn, who generated the cheques, that it was appropriate for the two of them to receive a bonus for work they had done in connection with the group health plan and the savings they had achieved. Mr. Lambe dictated a memorandum with respect to the bonus (Exhibit 10, Tab 12), in which he said that Ms. Van Rijn did not think there had been appropriate recognition of her work and that she was thinking of leaving, that he proposed a bonus based on the savings from the group plan and that she would only accept a bonus if he got one as well. The memorandum says that he agreed that he would take a bonus but not take vacation pay.

35. Ms. Van Rijn was aware that Mr. Uniac had said that he would recommend a bonus, but as far as she knew the decision had not been made. Ms. Van Rijn, who had not demanded a bonus, felt uncomfortable about the cheque. When Mr. Lambe found out she had charged the bonuses to the account for legal and professional services, he suggested she should not have done so because the auditors always audit that account. Later, she asked Mr. Robinson if the bonus had been authorized, but he knew nothing about it. Ms. Van Rijn did not cash her cheque.

36. Mr. Lambe twice gave instructions that he be reimbursed for professional fees or dues which he had paid to the Institute. The cheque he received on May 23, 2006, included an amount of \$963.00 on account of such fees (Exhibit 9, Tab 13, page 1303). The cheque he received on November 29, 2006, included \$251.75 on account of dues and applicable GST payable to the Institute (Exhibit 9, Tab 13, page 1333, and Exhibit 9, Tab 11).

37. Mr. Lambe's defence to the first and most serious charge was that there was a problem with the inventory, and more specifically, that the amount of inventory shown on the books and records each month was substantially more than the actual value of the inventory on hand. It was his position that he had the authority to investigate the problem and compensate himself for the investigation. It was Mr. Lambe's position that if he had advised Mr. Robinson, the directors,

Mr. McGuigan, Mr. Sloan or any other employee of the investigation, it would have compromised the investigation.

38. The panel did not find Mr. Lambe to be a credible witness. It was well understood that there was a problem with the monthly inventory value generated by RWP's computer system. Mr. Robinson, Mr. McGuigan, and Mr. Sloan all testified that it was known that the computer system did not properly track the inventory each month, and as a result, the auditors wrote down the inventory significantly each year during the audit. Further, Mr. Lambe attempted to conceal the misappropriation by charging cost of sales with the "so called" costs of his investigation.

39. Even if Mr. Lambe had a valid reason to be concerned that someone was taking inventory or purposely manipulating the computer system to show an improper value for the inventory, he did not have the authority to pay himself for the investigation he asserts he carried out.

40. Mr. Lambe himself proposed the terms of his agreement with RWP. The basis for his compensation is clear. Any money he took beyond that provided in the agreement, without the knowledge and approval of Mr. Robinson, constituted misappropriation. It is also clear that Mr. Lambe was not entitled to holiday pay, nor was he entitled to reimburse himself for professional membership fees.

41. The panel did not believe Mr. Lambe's evidence with respect to the bonus and accepted Ms. Van Rijn's evidence that she did not seek a bonus and had not expressed discontent with any lack of recognition.

42. The panel understands that a finding of professional misconduct for the misappropriation of money requires it be established on a balance of probabilities, by clear and cogent evidence. In this case, the panel found the evidence of the misappropriation to be overwhelming.

43. The panel concluded, based on Mr. Lambe's demeanor while giving evidence, the inconsistencies in his evidence, the problems inherent with his evidence, and the contrary evidence given by Mr. Robinson, Mr. McGuigan, Mr. Sloan and Ms. Van Rijn, all of whom the panel found to be credible, that Mr. Lambe could not be believed.

44. It is noteworthy that Mr. Lambe did not call a single witness to substantiate the investigation he asserted he had carried out. He said that he suspected someone at RWP was manipulating the inventory or removing inventory, however, he said that he left the only documents which would be evidence of an investigation at RWP. An extensive search of the office (shelves, desks, storage areas, etc.) by Ms. Van Rijn and the Institute's investigator did not uncover any documents or working papers related to an inventory investigation. If Mr. Lambe had serious concerns about the inventory, he could have made those concerns known to a trustworthy person and he could have taken steps to document and preserve the documents he made during the investigation. The panel finds Mr. Lambe guilty of this charge.

Charge Nos. 2 and 3

45. Mr. Lambe audited the financial statements of the corporation referred to in charge 2 as "C.G.P. Buses Ltd." either as a sole proprietor or as the partner of Collins Barrow responsible for the audit, for the years ended August 31, 1995 to August 31, 2005, inclusive. Mr. Lambe also audited the financial statements of the corporation referred to in charge 3 as "P.B. Sales

Limited" either as a sole proprietor or as the partner of Collins Barrow responsible for the audit, for the years ending August 31, 1995 to August 31, 2005.

46. C.G.P. Buses Ltd. owned 100% of the shares of P.B. Sales Limited. The directors of the two corporations were the same people. The two corporations were in effect owned by the same family. One of those directors, C.P., who owned 10% of the shares of C.G.P. Buses Ltd., was the father of the family and founder of the two corporations.

47. Mr. Lambe's corporation, 1116614 Ontario Inc., borrowed \$120,000 from C.G.P. Buses Ltd. in May 1995, for the purpose of buying an office building in Blenheim, Ontario. This loan was evidenced by a promissory note from the corporation guaranteed by Mr. Lambe, dated May 1, 1995 (Exhibit 11, Tab 26). The loan was secured by a mortgage in the amount of \$125,000 which was registered on May 1, 1995 (also Exhibit 11, Tab 26). This loan and the mortgage securing it was reduced to \$95,200 in July 2000 and was discharged in November 2004 (Exhibit 11, Tab 27).

48. In January 2000, Mr. Lambe borrowed \$80,000 from C.P. (Exhibit 11, Tab 20). The loan was to pay the debts of his proprietorship so that he could transfer the assets to Collins Barrow. Mr. Lambe had been unable to arrange financing with a financial institution. This loan was reduced by \$30,000, but not paid off completely until November 2006.

49. Mr. Lambe had signed off on the statement approval form of Collins Barrow for C.G.P. Buses Ltd. for each of the years ending August 31, 2000 to August 31, 2005 (Exhibit 11, Tab 14). He also signed off on the statement approval forms for P.B. Sales Limited for the years August 31, 2000 to August 31, 2005 (Exhibit 11, Tab 6). In addition, he completed the independence questionnaire for C.G.P. Buses Ltd. for the year ending August 31, 2005 (Exhibit 11, Tab 8) and for P.B. Sales Limited for the year ending August 31, 2005 (Exhibit 11, Tab 8).

50. Mr. Cudmore testified that it was contrary to the policy of Collins Barrow to have loans from clients. The \$120,000 mortgage loan from C.G.P. Buses Ltd. and the \$80,000 loan from P.B. Sales Limited came to light in late 2005 when one of the managers of Collins Barrow was assisting Mr. Lambe who was being audited by Canada Revenue Agency.

51. Mr. Lambe asserted by way of defence that C.G.P. Buses Ltd. made loans in the normal course of their business and that he thought C.P. had resigned as a director of the companies. The panel rejected the contention that C.G.P. Buses Ltd. made loans in the normal course of its business. On the evidence it appeared the only loan made, other than a loan between the related companies, was to Mr. Lambe's company. The evidence also disclosed that C.P. had not resigned as a director.

52. The wording of Rule 204.1 changed at least twice in the period March 1, 1995 to October 31, 2005. However, the requirements of the rule did not change. Whether as a sole proprietor, as Mr. Lambe was prior to joining Collins Barrow, or as a partner responsible for the engagements, he was required to hold himself free of any influence, interest or relationship in respect of the engagements which would impair his professional judgment or objectivity or would be seen by a reasonable observer to do so.

53. It is acknowledged that the subjective test, whether a member's actual judgment or objectivity was impaired, is difficult and perhaps impossible to determine. The reasonable observer requirement is an objective test. There is no doubt that in the period March 1, 1995 to October 31, 2005 the profession regarded a loan from a client, or a loan from a director and

shareholder of a client, to the member performing an audit, whether the member was a sole proprietor or the partner of the firm, as an influence, interest or relationship which impaired professional judgment and objectivity.

54. Both the \$120,000 loan from C.G.P. Buses Ltd. secured by a mortgage and the \$80,000 loan from C.P. were material to Mr. Lambe. It is relevant that he was unable to borrow \$80,000 from a financial institution in January 2000. Accordingly, the panel found that a reasonable observer would conclude that Mr. Lambe had failed to hold himself free of any influence, interest or relationship which would impair his professional judgment or objectivity while engaged, as a sole proprietor and later as a partner of Collins Barrow, to perform an audit of both C.G.P. Buses Ltd. and P.B. Sales Limited. The panel finds Mr. Lambe guilty of these charges.

Charge No. 4

55. Mr. Lambe had known Mr. O'Phee, the founder and owner of O Mechanical Limited, since the mid 1970's. He had provided professional services to him and his businesses since that time and they became friends.

56. Collins Barrow was engaged to perform a review engagement of the financial statements of O Mechanical Limited for the year ending February 28, 2005. Mr. Lambe was the partner responsible for the engagement. He had signed off on Collins Barrow's statement approval form with respect to independence on June 22, 2005 (Exhibit 11, Tab 30). He wrote to Mr. O'Phee on June 14, 2005 (Exhibit 11, Tab 31) confirming that in Collins Barrow' opinion there were no relationships which would reasonably be thought to bear on their independence (Exhibit 11, Tab 31). The engagement report was dated June 14, 2005 (Exhibit 11, Tab 28).

57. Mr. Lambe received a cheque in the amount of \$60,000 (Exhibit 11, Tab 32) from O Mechanical Limited dated July 23, 2004. Prior to receiving the cheque, he gave a promissory note (Exhibit 11, Tab 33) to O Mechanical Limited dated July 20, 2004. The promissory note provided for interest at the rate of 4.5% per annum to be paid on the anniversary date. The note was due on July 20, 2007.

58. The money was borrowed to assist Mr. Lambe's daughter, a chiropractor, Dr. Susan Stonitsch (Exhibit 11, Tab 34). Dr. Stonitsch herself signed a promissory note, purporting to be dated July 20, 2004 to a numbered company 1600979 Ontario Inc. The promissory note was in the same terms as the promissory note signed by Mr. Lambe: interest was to be paid at the rate of 4.5% per annum on the anniversary date and the note was due on July 20, 2007. The numbered company, 1600979 Ontario Inc., was Mr. O'Phee's numbered company, but it was not incorporated until February 2005.

59. It was the evidence of Mr. O'Phee and Mr. Lambe that while the loan was intended to benefit Mr. Lambe's daughter, that Mr. O'Phee looked to Mr. Lambe for payment and that Mr. Lambe accepted the obligation to make sure the promissory note was paid. As of the date of the hearing, the loan had not been repaid.

60. Mr. Lambe's defence to the charge was that the loan had been made to his daughter.

61. The loan from O. Mechanical Limited, which Mr. Lambe secured and guaranteed, was material to Mr. Lambe. He borrowed money from a client, or guaranteed a loan from a client, because he, or his daughter, had no other source of money. Accordingly, the panel found that a reasonable observer would conclude that Mr. Lambe had failed to hold himself free of any

influence, interest or relationship which would impair his professional judgment or objectivity while performing the review engagement. The panel finds Mr. Lambe guilty of this charge.

SUBMISSIONS ON SANCTION

62. Neither Mr. Farley nor Mr. Lambe called evidence with respect to sanction.

63. Mr. Farley submitted that of the principles which apply when imposing sanction, the principle of general deterrence should have priority in this case. More particularly, he submitted that the sanction imposed must be such that other members will be deterred from similar misconduct.

64. Mr. Farley pointed out a number of aggravating circumstances. These include: Mr. Lambe's conduct was a serious breach of trust; the amount of money taken was significant; the money was taken on four separate occasions over a period of many months; Mr. Lambe did not recognize his misconduct and cease, rather he only stopped because he was caught. He also submitted that Mr. Lambe showed no remorse and pointed out that that he had made no restitution.

65. On behalf of the Professional Conduct Committee, Mr. Farley requested an order which included: a reprimand; a fine of \$25,000; an order for costs in the amount of \$40,000; expulsion; full publicity including the disclosure of Mr. Lambe's name in a notice to be published in *CheckMark*, as well as notice to the Public Accountants Council for the Province of Ontario, the Canadian Institute of Chartered Accountants and the other provincial institutes. Further, Mr. Farley asked that notice be published on the Institute's website and also published in a newspaper in Chatham, Ontario.

66. Mr. Farley also submitted a bill of costs of over \$100,000 (Exhibit 18). He acknowledged that it was appropriate that the profession bear a share of the costs, and in light of Mr. Lambe's financial position, asked that the costs be fixed at \$40,000.

67. Mr. Farley referred to a number of precedent cases including: *Garside, McLeod, Rasul and Greenidge*.

68. Mr. Lambe did not make submissions with respect to sanction.

ORDER

69. After deliberation, the panel made the following order:

IT IS ORDERED in respect of the charges:

1. THAT Mr. Lambe be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Lambe be and he is hereby fined the sum of \$25,000 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. Lambe be and he is hereby charged costs fixed at \$10,000 to be remitted to the Institute within one (1) year from the date this Decision and Order becomes final under the bylaws.

4. THAT Mr. Lambe be and he is hereby expelled from membership in the Institute.

5. THAT notice of this Decision and Order, disclosing Mr. Lambe'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.

6. THAT notice of the expulsion disclosing Mr. Lambe's name, be given by publication on the Institute's website and in the Chatham Sun. All costs associated with the publication shall be borne by Mr. Lambe and shall be in addition to any other costs ordered by the committee.

7. THAT Mr. Lambe 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

Reprimand

70. The panel ordered that the member be reprimanded in writing by the Chair of the panel to stress that his misconduct was wholly unacceptable.

Expulsion

71. The Discipline Committee has often held that a member who misconducts himself or herself as Mr. Lambe did in this case, who breaches the trust of his or her employer and misappropriates money, should be expelled. An order of expulsion is appropriate because Mr. Lambe has shown that he should not be entrusted with the designation chartered accountant.

Fine

72. As with the expulsion, a fine is required as both a general and specific deterrent. With respect to the breach of Rule 204.1, Mr. Lambe and other members of the Institute must realize that the breach of the independence and objectivity requirements of the Institute is a serious matter and will warrant a significant fine. It is also evident from the cases that Mr. Lambe's breach of Rule 201.1 requires not only expulsion but the imposition of a significant fine both as a specific deterrent to him and as a general deterrent to others. In the circumstances, the panel concluded that a fine in the amount of \$25,000 was appropriate. Given Mr. Lambe's financial position, he has been given a year to pay the fine.

Notice

73. The panel concluded that there were no unusual circumstances in this case which would warrant withholding Mr. Lambe's name from publication. Indeed, as a matter of general

deterrence, as well as a matter of notice to the public, it was important that Mr. Lambe's name be published.

Certificate

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

Costs

75. The panel is aware that costs are not imposed as a sanction, but as a partial indemnity for the costs of the investigation and prosecution. In this case, the understandable costs of the investigation and prosecution have been substantial. However, Mr. Lambe's financial position is not such that he can readily pay a fine of \$25,000 and the requested amount of \$40,000 for costs. In the circumstances, given his financial position, the appropriate order for costs is \$10,000, and, as with the fine, Mr. Lambe is given one year to pay the costs.

DATED AT TORONTO THIS 3RD DAY OF FEBRUARY 2009
BY ORDER OF THE DISCIPLINE COMMITTEE

A.D. NICHOLS, FCA – DEPUTY CHAIR
DISCIPLINE COMMITTEE

MEMBERS OF THE PANEL:

C. DANCHUK, CA
S.J. HOLTOM, CA
R.A. VICKERS, FCA
S.B. WALKER (PUBLIC REPRESENTATIVE)