

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

DISCIPLINE COMMITTEE

IN THE MATTER OF: Charges against **JACQUELYNE A. ADAIR, CA**, a member of the Institute, under **Rules 201.1 and 205** of the Rules of Professional Conduct, as amended.

TO: Ms. Jacquelyne A. Adair

AND TO: The Professional Conduct Committee, ICAO

REASONS

(Decision and Order made August 16, 2011)

1. This panel of the Discipline Committee of the Institute of Chartered Accountants of Ontario met on August 16, 2011 to hear charges of professional misconduct brought by the Professional Conduct Committee (PCC) against Jacquelyne A. Adair, a member of the Institute.

2. Ms. Alexandra Hersak appeared on behalf of the PCC. Mr. Paul O'Marra represented Ms. Adair, who attended throughout the hearing. Mr. Robert Peck attended the hearing as counsel to the Discipline Committee.

3. The decision of the panel was made known at the conclusion of the hearing on August 16, 2011, and the written Decision and Order sent to the parties on August 19, 2011. These reasons, given pursuant to Rule 20.04 of the Rules of Practice and Procedure, contain the charges, the decision, the order, and the reasons of the panel for its decision and order.

Charges

4. Four charges were laid against Ms. Adair by the PCC on April 20, 2011. The amounts set out in particulars (a), (b) and (c) of Charge 2 were amended, on consent of all parties, at the hearing. The charges, as amended at the hearing, read as follows:

1. THAT the said Jacquelyne Adair, in or about the period January 31, 2002 through March 31, 2003, while working in finance and accounting roles for "GR" and/or his companies, associated herself with statements and representations which she knew or should have known were false or misleading, contrary to Rule 205 of the Rules of Professional Conduct in that:
 - a. she participated in creating, signed and cost-coded twelve invoices in a total amount of up to \$116,000 which contained false or misleading information, knowing that claims were to be submitted to a federal government agency (the "Agency") for reimbursement based on those invoices.
2. THAT the said Jacquelyne Adair, in or about the period November 1, 2001 through December 31, 2002, while working in finance and accounting roles for "GR" and/or his companies, associated herself with statements and representations which she knew or should have known were false or misleading, contrary to Rule 205 of the Rules of Professional Conduct in that:

- a. she authorized payment of ten invoices in respect of administration expenses in an amount up to \$27,812 which contained false or misleading information, knowing that claims were to be submitted to the Agency for reimbursement based on those invoices;
 - b. she authorized payment of fourteen invoices in respect of printing expenses in an amount up to \$12,500 which contained false or misleading information, knowing that claims were to be submitted to the Agency for reimbursement based on those invoices;
 - c. she authorized payment of two invoices in respect of computer expenses in an amount up to \$3,250 which contained false or misleading information, knowing that claims were to be submitted to the Agency for reimbursement based on those invoices; and
 - d. she signed cheques in payment of the above-noted invoices knowing that those invoices contained false or misleading information.
3. THAT, the said Jacquelyne Adair, in or about the period November 1, 2001 through September 30, 2002, while working in finance and accounting roles for "GR" and/or his companies, failed 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 in that she directed "GB," the external accountant for "GR" and/or his companies, to issue seven false or misleading invoices in an amount up to \$28,190 for services, knowing that claims were to be submitted to the Agency for reimbursement based on those invoices.
4. THAT, the said Jacquelyne Adair, in or about the period November 1, 2001 through June 30, 2003, while working in finance and accounting roles for "GR" and/or his companies, failed 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 in that she was aware that "GR" and/or his companies were submitting false claims to the Agency for reimbursement but did not take steps to stop those activities or to notify the Agency about the false claims.

Plea

5. Ms. Adair pleaded guilty to the four charges.

The proceedings

6. Ms. Hersak made an opening statement and explained that the case for the PCC would be presented by way of an Agreed Statement of Facts and a Document Brief. The Agreed Statement of Facts (Exhibit 1) was signed by Ms. Adair on her own behalf and by Ms. Hersak on behalf of the PCC. The Document Brief (Exhibit 2) contained documents referred to in the Agreed Statement of Facts. Ms. Hersak reviewed the Agreed Statement of Facts and in doing so made reference to the relevant documents from the Document Brief. There was no other evidence called by the PCC.
7. Ms. Adair herself gave evidence but called no other witnesses. Ms. Adair did answer questions asked by members of the panel.

8. Ms. Hersak made submissions. Mr. O'Marra agreed with Ms. Hersak's submissions and did not add anything further.

The Facts

9. The relevant facts, as the panel finds them to be, were not in dispute. The Peel Regional Police conducted an extensive investigation into an alleged fraud against the Agency which outsourced projects to companies and organizations ("Service Providers") to train and monitor the unemployed. Service Providers would propose projects to the Agency and if accepted a Contribution Agreement would be signed by both parties. Under the agreement, the Agency was to reimburse the Service Provider for the actual expenses directly related to the project. The funding was not a grant and the Service Provider was to retain proof of expenses claimed. The Contribution Agreement provided for the Agency to conduct audits of the Service Providers, but there was no clause providing for the Agency to audit subcontractors hired by the Service Providers.

10. Ms. Adair was the internal accountant for GR and companies which he, his wife and their sons owned and which he controlled ("GR Companies"). Ms. Adair was hired by GR to implement an effective accounting system which would enable GR to be aware of the companies' financial position at any given time. Ms. Adair was given the title of Director of Operations, and when another CA "PG" was hired as VP of Operations she was given the title of VP of Finance. Ms. Adair was responsible for a small accounting team, one staff accountant and two or three other employees.

11. The police alleged that the GR companies were set up to make them appear unrelated and thus enable some to act as Service Providers and others to act as subcontractors whose false or inflated invoices could not be verified by the Agency. The police also alleged that, where real expenses were incurred by GR Companies, they were sometimes asked to provide false invoice descriptions to be used in support of a claim for an Agency project. The police also alleged that some employees of the Agency were complicit and participated in the fraud. The investigation by the police was extensive. Ms. Adair, who was not charged criminally, was a cooperative witness for the police. Ultimately, convictions were obtained against the corporate entities charged, but the charges against GR and the other individuals were dropped.

Charge 1

12. PG, the VP of Operations, who was not an employee, issued invoices through a company that he owned. Ms. Adair participated in creating descriptions on 12 invoices to be submitted to the Agency for reimbursement which she knew or should have known contained false or misleading information. Three invoices billed for one project, which totaled \$60,000, were back-dated and the work described in the invoices was not done. Work described in three other invoices, totaling \$21,000, were improperly charged to a project. Six invoices totaling \$35,000 were submitted to the Agency for reimbursement, but the work performed by PG was part of his general role as VP of Operations and not for an Agency project.

Charge 2

13. GR used a GR Company to obtain Agency projects and other GR Companies submitted false invoices as subcontractors to use up remaining amounts in the Agency project's budget. Ms. Adair, who knew that services had not been provided, approved and paid these. The GR Company was reimbursed by the Agency for these fabricated invoices.

Charge 3

14. GR requested GB, the external accountant for the GR companies, to prepare invoices for the costs of his accounting services but with descriptions that would allow reimbursement to be claimed from Agency projects. GB performed services for the monetary equivalent of the amounts invoiced but his services were not directly attributable to Agency projects. Ms. Adair, who was aware of GB's arrangement with GR, provided direction as to which company an invoice should be issued, the description of services and the amount of the invoice, knowing that false information was being submitted to the Agency for reimbursement.

Charge 4

15. Ms. Adair knew for over 20 months that GR and the GR companies were submitting false claims; however she did not take steps to stop these activities or notify the Agency.

16. Ms. Adair agreed that she had failed to comply with the Rules of Professional Conduct as set out in the charges. Ms. Adair told the panel that she was not making excuses for her behavior, which she described as out of character, but that she had significant health issues at the time which were a contributing factor to her behaviour. She regretted her actions and was extremely remorseful for what she did. Ms. Adair said that she did not regret her cooperation with the police which involved more than 20 interviews over 80 days. Ms. Adair stated she received no personal benefit from the scheme. She also said that she believed in the programs funded by the Agency and thought she had been "brainwashed" by her employer as she accepted his explanation when he told her this was how things were done. Ms. Adair stated that she was proud to be a CA and hoped to continue to be one.

Decision

17. After deliberating, the panel made the following decision

THAT, Charge No. 2 having been amended at the hearing, and having heard the plea of guilty to Charge Nos. 1, 2, 3 and 4, and having seen, heard and considered the evidence, including the agreed statement of facts filed, the Discipline Committee finds Jacquelyne Ann Adair guilty of the charges

Reasons for Decision

18. There was no dispute about the relevant facts which are set out above in paragraphs 9 to 15. The panel found the evidence presented, including and in particular the details of the fraud set out in the Agreed Statement of Facts and Document Brief, constituted clear, cogent and compelling evidence which proved the four charges made against Ms. Adair.

19. Ms. Adair's serious professional misconduct can be succinctly described. Over a period of many months she was an active participant in a fraud against a government agency. She knowingly prepared false documents, intending and expecting the agency to accept those documents and pay out in excess of \$110,000 on the basis of those false and misleading documents. She also approved fabricated invoices which were passed on to the agency for reimbursement. Further, over a period of many months, she provided direction to an external accountant, who provided services to her employer, to fabricate and submit invoices in excess of \$25,000 which would be submitted to the Agency for reimbursement, even though the work done was not for an Agency project. Finally, for a period of 20 months, despite having detailed specific knowledge of the significant fraud against a government agency she did not take any steps to stop the fraud or inform the agency of it.

20. Ms. Adair acknowledged that she associated herself with false and misleading statements as alleged in Charge Nos. 1 and 2 contrary to Rule 205. She also acknowledged that she failed to act in a manner which maintained the good reputation of the profession and its ability to serve the public interest, as alleged in Charge Nos. 3 and 4, contrary to Rule 201.1. There is no doubt that her misconduct constituted serious professional misconduct and accordingly Ms. Adair was found guilty of the charges.

Sanction

21. Neither party called evidence with respect to sanction. Ms. Hersak advised, and Mr. O'Marra confirmed, that the submission she was making with respect to sanction was a joint submission. The sanction submission was for an order including: a written reprimand, a fine of \$5,000, suspension from membership in the Institute for a period of 12 months, and the usual order regarding publicity. The PCC also sought an order for partial indemnity for costs of the investigation and hearing in the amount of \$10,000.

22. Ms. Hersak submitted that Ms. Adair had exhibited a serious lapse in judgment over a period of time in submitting false information to a government agency. She did not stop the scheme or alert the Agency to what was taking place. Although Ms. Adair said she received no monetary personal benefit, her actions did allow her to retain her job. Ms. Hersak stated that the integrity of chartered accountants is paramount and Ms. Adair has damaged her own and the profession's reputation.

23. Ms. Hersak also noted a number of mitigating factors. Ms. Adair did not devise the plan and she expressed remorse in words and deeds for her actions. She acknowledged her misconduct, pleaded guilty to the four charges, had no discipline history, and cooperated fully with the police and in the PCC investigation. Her actions have demonstrated her attempts to atone and willingness to be rehabilitated. The proposed sanctions would satisfy the specific and general deterrence principles of sentencing and protect the public interest. Suspension addresses the seriousness of the matter and would allow Ms. Adair to rejoin the profession after a significant period of time.

24. Ms. Hersak distributed a Case Brief containing four ICAO Discipline Committee cases involving false or misleading activities: *Becker*, *Gera*, *Lee* and *Orland*. Ms. Hersak reviewed the cases and submitted that the jointly recommended sanction fell within the appropriate range of sanctions imposed for similar misconduct.

25. Ms. Hersak filed a Costs Outline (Exhibit 3) which showed that the costs of the investigation and hearing were approximately \$23,000. The PCC was seeking costs on a partial indemnity basis in the amount of \$10,000, about 50% of the actual costs incurred. Ms. Hersak said the PCC would not object to allowing a reasonable period of time to pay the fine and costs.

26. Mr. O'Marra submitted that Ms. Adair is ashamed and embarrassed that she failed to uphold the ethics of the profession. He said that Ms. Adair was employed by GR at a time when she was vulnerable and in chronic pain. He described GR as a ruthless individual, in a toxic workplace environment. He noted that Ms. Adair pleaded guilty and has expressed remorse and contrition for her conduct which also led to the breakdown of her marriage and her involvement in a federal government lawsuit concerning the GR family. Ms. Adair's cooperation in the largest fraud investigation in Peel Region led to many criminal charges being laid. While he took no issue with the penalty proposed, Mr. O'Marra asked the panel to consider allowing Ms. Adair an 18-month period to pay the fine and costs. In response to a question from a panel member, Ms. Adair stated that she is currently employed as a controller but that at this time her employer is not aware of the charges.

Order

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

IT IS ORDERED in respect of the charges:

1. THAT Ms. Adair be reprimanded in writing by the Chair of the hearing.
2. THAT Ms. Adair be and she is hereby fined the sum of \$5,000 to be remitted to the Institute within eighteen (18) months from the date this Decision and Order was made.
3. THAT Ms. Adair be suspended from the rights and privileges of membership in the Institute for a period of twelve (12) months from the date this Decision and Order was made.
4. THAT notice of this Decision and Order, disclosing Ms. Adair's name, be given 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 Ms. Adair surrender her certificate of membership in the Institute to the Discipline Committee Secretary within ten (10) days from the date this Decision and Order is received, to be held during the period of suspension and thereafter returned to Ms. Adair.

IT IS FURTHER ORDERED:

6. THAT Ms. Adair be and she is hereby charged costs fixed at \$10,000 to be remitted to the Institute within eighteen (18) months from the date this Decision and Order was made.

AND IT IS FURTHER ORDERED:

7. THAT in the event Ms. Adair fails to comply with any of the requirements of this Order, she shall be suspended from the rights and privileges of membership in the Institute until such time as she does comply, provided that she complies within thirty (30) days from the date of her suspension, and in the event she does not comply within the thirty (30) day period, her membership in the Institute shall be revoked, and notice of her membership revocation, disclosing her name, shall be given in the manner specified above, and in a newspaper distributed in the geographic area of Ms. Adair's practice and/or residence. All costs associated with the publication shall be borne by Ms. Adair and shall be in addition to any other costs ordered by the committee.

Reasons for Sanction

28. The panel understands that where there is a joint submission on sanction, the joint submission should be given particular weight if it falls within the appropriate range of sanction. Accordingly the panel considered similar cases and the sanction imposed in those cases.

29. It was not completely apparent to the panel that the joint sanction was appropriate for the seriousness of the professional misconduct in this case. The panel did consider telling the parties of their concerns and giving them the opportunity to respond to the concerns; in particular whether the amount of the fine and the length of the suspension were significant enough to satisfy the principle of general deterrence and serve the public interest.

30. The panel ultimately concluded that the total impact of the order did fall within the range of appropriate sanction, but by the narrowest of margins.

31. Ms Adair had no previous discipline history. She was very remorseful and stated she was ashamed and embarrassed by her misconduct.

32. The panel accepted that Ms. Adair did not realize any monetary gain from her actions.

33. The panel took into consideration that the lack of integrity shown by Ms. Adair cannot be taken lightly. Her actions have damaged her reputation and that of the profession.

34. A written reprimand from the Chair reinforces that the member's conduct was unacceptable and is not to be tolerated.

35. The panel accepted that the suggested fine of \$5,000 was appropriate and within the range of fines imposed in the four cases with similar findings presented to the panel. Ms. Adair's counsel requested that Ms. Adair be given 18 months to pay because of her financial position. The amount of the fine serves as a specific deterrent to reinforce to Ms. Adair that her behaviour is not acceptable and not to be taken lightly. The quantum of the fine which, given Ms. Adair's circumstances, is significant also serves as a general deterrent to others that such conduct is unacceptable. The panel accepted Mr. O'Marra's submission that Ms. Adair should be given time to pay.

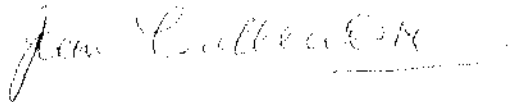
36. The suspension serves as a specific and general deterrent to demonstrate that the Institute takes matters of professional misconduct very seriously. The panel was satisfied that the 12-month suspension fell within the range of appropriate lengths of suspension and clearly demonstrates that there are serious consequences for dishonest conduct.

37. The panel concluded that there were no rare and unusual circumstances to justify withholding publication of Ms. Adair's name, and no submissions were made to seek such withholding. Accordingly, in keeping with the transparency of the Institute's disclosure of disciplinary matters, and to serve as a general deterrent, publicity of this matter was ordered.

38. Failure to comply with the terms of the Order will result in the revocation of Ms. Adair's membership in the Institute. The sanction imposed is the appropriate sanction. Ms. Adair should only remain a member of the Institute if she complies with the requirements of the Order.

39. The panel concluded that Ms. Adair should bear some of the costs of this matter. In the joint submission, the PCC sought costs in the amount of \$10,000, which the panel concluded was reasonable given her cooperation.

DATED AT TORONTO THIS 15TH DAY OF NOVEMBER 2011
BY ORDER OF THE DISCIPLINE COMMITTEE

A handwritten signature in cursive script, appearing to read "J.A. Cullemore".

J.A. CULLEMORE, FCA – CHAIR
DISCIPLINE COMMITTEE

MEMBERS OF THE PANEL:

C. DANCHUK, CA

S.R. LOWE, CA

P. MCBURNEY (PUBLIC REPRESENTATIVE)