

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

DISCIPLINE COMMITTEE

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

TO: Mr. Kent Michael Roy

AND TO: The Professional Conduct Committee, ICAO

REASONS
(Decision and Order made March 10, 2011)

1. This panel of the Discipline Committee of the Institute of Chartered Accountants of Ontario met on March 10, 2011, to hear a charge of professional misconduct brought by the Professional Conduct Committee against Kent Michael Roy, a member of the Institute.

2. Ms. Alexandra Hersak appeared on behalf of the Professional Conduct Committee. Mr. Roy was not represented by counsel and did not attend. Mr. Robert Peck attended the hearing as counsel to the Discipline Committee. The panel determined that Mr. Roy had received proper notice of the hearing and decided to proceed in his absence pursuant to the provisions of By-law 560.

3. The decision of the panel was made known at the conclusion of the hearing on March 10, 2011, and the written Decision and Order was sent to the parties on March 24, 2011. These reasons, given pursuant to Bylaw 574, contain the charge, the decision, the order, and the reasons of the panel for its decision and order.

Charge

4. The following charge was laid against Mr. Roy by the Professional Conduct Committee on September 11, 2010:

THAT, the said Kent M. Roy, on or about the 31st day of May 2010, was convicted of the offences of fraud as set out in Schedule "A" attached to this charge and did thereby fail to act in a manner which will maintain the good reputation of the profession and its ability to serve the public interest contrary to Rule 201.1 of the Rules of Professional Conduct.

Plea

5. A plea of not guilty was entered on Mr. Roy's behalf.

The proceedings re the charge

6. Ms. Hersak made a brief opening. She advised the panel that the evidence of the Professional Conduct Committee would consist of a certified copy of a Certificate of Conviction

(Exhibit 10) and a Document Brief (Exhibit 11). Ms. Hersak then reviewed the relevant documents. Mr. Roy had pleaded guilty and been convicted of fraud by the Ontario Court of Justice on May 31, 2010. The Certificate of Conviction was the certificate of the charge of fraud set out as Schedule "A" to the charge of professional misconduct. The Document Brief included a certified transcript of the sentencing proceedings before Justice LeDressay on August 12, 2010 which included a summation of the relevant facts, which Mr. Roy confirmed was accurate, and impact statements from some of his victims.

The relevant facts

7. Mr. Roy, while employed as the controller of an international public company, perpetrated 25 fraudulent transactions of varying amounts totaling \$988,271, over a period of several years. Mr. Roy incorporated a numbered Ontario company for the purpose of submitting fictitious invoices and otherwise receiving payments in amounts up to \$50,000 as a result of fraudulent statements or instructions. Mr. Roy used various ledger codes to cause the illicit payments to be posted to the taxes payable account on the company's balance sheet.

Decision

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

THAT, having determined to proceed with the hearing in the absence of Mr. Roy, pursuant to Bylaw 560, being satisfied that he had proper notice of the hearing, and having entered on his behalf a plea of not guilty to the charge, and having seen and considered the evidence, the Discipline Committee finds Kent Michael Roy guilty of the charge.

Reasons for the Decision

8. Rule 201.2 provides that there is a "rebuttable presumption" the member, student or firm charged failed to maintain the good reputation of the profession and its ability to serve the public interest" in the following circumstances:

- the charge is made under Rule 201.1;
- the charge is based on an offence referred to in Rule 102.1 and such offence includes: fraud, theft, forgery or tax evasion; and
- a certificate of conviction or certified copy of the original information or indictment is filed with the discipline or appeal committee.

9. The panel found the criteria for the application of the rebuttable presumption had been established and had not been rebutted as Mr. Roy had called no evidence. Further, it is clear from the facts set out in the transcript of the proceedings before Justice LeDressay and the impact statements that Mr. Roy had failed to maintain the good reputation of the profession and its ability to serve the public interest. Accordingly, based on the evidence which was clear, cogent and convincing, the panel found Mr. Roy guilty of the charge.

Sanction

10. Ms. Hersak filed Sanction Evidence (Exhibit 12). At a discipline hearing in 1993, Mr. Roy was expelled from membership for misappropriation of funds. In 1995, the Applications Committee accepted that Mr. Roy was rehabilitated and readmitted him to membership. Ms. Hersak stated that this prior disciplinary offence must be taken into consideration by the panel.

11. Ms. Hersak referred to victim impact statements (Exhibit 11) and noted that Mr. Roy had

manipulated employees using his position of authority and trust. Mr. Roy's employer was an international public company which undertook a thorough investigation to ensure that the full extent of the fraud had been uncovered. The fraud itself and subsequent investigation had a significant negative impact on the company's employees, who were formerly Mr. Roy's associates and members of the staff who reported to him.

12. Ms. Hersak pointed out that Mr. Roy had previously misappropriated funds, been expelled and readmitted to membership. After being given a second chance he then perpetrated a massive fraud on his employer. Ms. Hersak submitted that, in light of the seriousness of this second breach of trust and misconduct characterized by moral turpitude, the most important principle in imposing a sanction on Mr. Roy is general deterrence.

13. Ms. Hersak referenced factors noted by Justice LeDressay in assessing circumstances that the court considers when imposing a sentence. These factors include: the nature and extent of the loss of money to the company; the degree of sophistication of the dishonesty and the degree of planning skill and deception; whether the sole motivation is greed; the lengthy period of the fraudulent transactions; whether the perpetrator was caught or voluntarily terminated the misconduct; the risk that others would fall under suspicion and the degree of trust reposed in the perpetrator.

14. Ms. Hersak noted a number of mitigating factors on Mr. Roy's behalf: he had pleaded guilty to the criminal charges, cooperated with the police, expressed remorse, has served a term in prison, and has cooperated with the Institute.

15. Ms. Hersak, on behalf of the Professional Conduct Committee, submitted that an appropriate sanction in this matter would be: a written reprimand; a fine in the amount of \$45,000; revocation of Mr. Roy's membership and the usual order with respect to publicity. The Professional Conduct Committee also sought as a partial indemnification for the costs of the investigation and hearing in the amount of \$3,500 which was less than half of the actual costs of more than \$7,600 set out in the Costs Outline (Exhibit 13).

16. Ms. Hersak distributed a Case Brief and referred to similar fraud cases namely: *Vos* (2002); *Lambe* (2009); *Spensieri* (2009); *McCutcheon* (2010); and *Doutre* (2011). Ms. Hersak noted that this case is unique as Mr. Roy had breached Rule 201.1 for the second time and as a result she submitted a higher fine was warranted. Since publicity is the single best general deterrent for like-minded members, publication in *The Globe and Mail* was requested.

Order

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

IT IS ORDERED in respect of the charge:

1. THAT Mr. Roy be reprimanded in writing by the chair of the hearing.
4. THAT Mr. Roy be and he is hereby fined the sum of \$50,000 to be remitted to the Institute within six (6) months from the date this Decision and Order becomes final under the bylaws.
5. THAT Mr. Roy's membership in the Institute be and is hereby revoked.

4. THAT notice of this Decision and Order, disclosing Mr. Roy's name, be given after this Decision and Order becomes final under the bylaws, in the form and manner determined by the Discipline Committee:
 - (a) to all members of the Institute; and
 - (b) to all provincial institutes/Ordre;
 and shall be made available to the public.
5. THAT notice of the revocation of membership, disclosing Mr. Roy's name, be given by publication on the Institute's website, and in *The Globe and Mail*, the *Hamilton Spectator* and in an Oakville newspaper. All costs associated with the publication shall be borne by Mr. Roy and shall be in addition to any other costs ordered by the committee.

IT IS FURTHER ORDERED:

6. THAT Mr. Roy be and he is hereby charged costs fixed at \$3,500 to be remitted to the Institute within six (6) months from the date this Decision and Order becomes final under the bylaws.

Reasons for the Order

18. The panel found the criteria set out by Justice LeDressay, in determining the sentence of Mr. Roy for fraud (Exhibit #11, Tab 3) to be most helpful in its determination of the gravity of Mr. Roy's actions. On this basis, the panel determined Mr. Roy's actions to be particularly repugnant and detestable.

19. Furthermore, as Mr. Roy had previously been expelled for a similar breach of trust, this second breach of trust made it clear that general deterrence is the principle of sanction which should have priority in this case. The panel concluded that the principle of general deterrence required not only that Mr. Roy's membership be revoked but that he be assessed a fine of \$50,000 which is within the range of fines imposed in similar cases.

20. It was noted particularly that Justice LeDressay was required in his sentencing to consider the mitigating fact that Mr. Roy had no previous conviction. There is no such mitigating factor in these proceedings. This is Mr. Roy's second conviction for a serious breach of trust.

21. The panel was also particularly moved by the victim impact statements. The harm done to these innocent people was detrimental to them in their personal and professional capacities; moreover the taint resulting to the CA profession within the large international company which had employed Mr. Roy has had a negative impact on all chartered accountants.

22. Mr. Roy was absent from the proceedings and accordingly the panel thoroughly considered any possible mitigating circumstances but found none to be compelling.

23. Mr. Roy did plead guilty to the criminal charges, cooperated with the police, expressed remorse to the courts, and has served a term in prison.

24. Mr. Roy also corresponded with and in that sense co-operated with the Professional Conduct Committee. However, Mr. Roy did not plead guilty nor did he demonstrate his remorse in

any tangible way to his peers. In fact, an “eleventh-hour” notification by him that he was not going to attend his hearing would strongly suggest a posture of non-cooperation and a lack of remorse or any willingness to take responsibility for his actions. Consequently, the panel concluded the impact of these mitigating circumstances to be minimal.

25. The panel noted also an undertaking by Mr. Roy to provide restitution to his former employer, but we believe that financial restitution falls short of making whole the other victims directly affected by these actions; nor would it significantly reverse the damage done to the good reputation of the profession.

26. The panel also noted that Mr. Roy has received some excellent support from family and others in his community. We did allow that Mr. Roy has earned this support through service, and took this into consideration in reaching our conclusion on sanction.

27. The panel ordered publication in three separate community newspapers to ensure that the interest of the public is protected, particularly in communities impacted by Mr. Roy’s actions.

28. The panel reviewed the Costs Outline submitted and concluded the charges were appropriate and that the request for 50% sharing with Mr. Roy was within the appropriate range of partial indemnification and consequently so ordered costs of \$3,500.

DATED AT TORONTO THIS 11th DAY OF MAY, 2011
BY ORDER OF THE DISCIPLINE COMMITTEE

R.J. ADAMKOWSKI, CA – DEPUTY CHAIR
DISCIPLINE COMMITTEE

MEMBERS OF THE PANEL:
R.H. CARRINGTON (PUBLIC REPRESENTATIVE)
R.A. FERNANDES, CA
M.S. LEIDERMAN, CA
S.R. LOWE, CA