

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

DISCIPLINE COMMITTEE

IN THE MATTER OF: Charges against **KERRY WILLIAM BUTLER, CA** a member of the Institute, under **Rule 201.1** of the Rules of Professional Conduct, as amended.

TO: Mr. Kerry W. Butler, CA

AND TO: The Professional Conduct Committee, ICAO

REASONS
(Decision and Order made May 18, 2010)

1. This panel of the Discipline Committee of the Institute of Chartered Accountants of Ontario met on May 18, 2010, to hear charges of professional misconduct brought by the Professional Conduct Committee against Kerry William Butler, CA, a member of the Institute.
2. Brian Bellmore represented the Professional Conduct Committee. Mr. Butler did not attend and was not represented by counsel.
3. The panel determined that Mr. Butler had received notice of the hearing and that it would be appropriate to proceed in his absence, pursuant to Bylaw 560.
4. The decision and the terms of the order were made known at the hearing on May 18, 2010. The written Decision and Order was sent to the parties on May 20, 2010. These reasons, given pursuant to Bylaw 574, include the charges, the decision, the order, and the reasons of the panel for its decision and order.

CHARGES

5. The following charges were laid against Mr. Butler by the Professional Conduct Committee on December 3, 2009:

1. THAT, the said Kerry W. Butler, in or about the period September 1, 2007 through December 31, 2007, while a partner with the firm CB Chartered Accountants, 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, contrary to Rule 201.1 of the Rules of Professional Conduct, in that:
 - a) he accepted from a client of the firm, R. Construction, approximately \$3,000 less than the amount invoiced by CB Chartered Accountants on agreement with the client that the reduction would extinguish a debt in the amount of approximately \$3,000 that he personally owed to R. Construction.

2. THAT, the said Kerry W. Butler, in or about the period April 1, 2007 through May 30, 2008, while a partner with the firm CB Chartered Accountants, 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, contrary to Rule 201.1 of the Rules of Professional Conduct, in that:
 - a) he deposited into his personal chequing account for his own use nine cheques, in the approximate total amount of \$15,010, all payable to CB Chartered Accountants.

PLEA

6. Mr. Butler not being present, the Chair entered a plea of not guilty to each of the charges on his behalf.

EVIDENCE

7. The Professional Conduct Committee called two witnesses: David Zinger, CA, the managing partner of CB Chartered Accountants (CB); and Scott Porter, CA, the investigator retained on behalf of the Professional Conduct Committee in this matter.
8. Mr. Butler became a partner in CB in January 2000, when he merged his sole practice with that of CB, and effectively took charge of the newly opened Orangeville office of CB. CB's main office is in Elora.
9. Mr. Butler, early in the partnership relationship, had some difficulties with refraining from using the partnership account as though he was still a sole proprietor. These difficulties were resolved after discussions with the other partners.
10. In 2006, Mr. Butler's capital account in the partnership began to show a significant deficiency, and the partnership took steps to ensure he retained sufficient capital in the partnership, including only permitting him to draw 75% of his earnings of the year previous.
11. In the summer of 2008, a staff member of CB noted irregularities in the accounts for R. Construction, a review client of CB. When the matter was brought to the attention of the client, the client indicated Mr. Butler had set off approximately \$3,000 of the fees owing to CB to clear a personal debt he owed to R. Construction.
12. On October 14, 2008, the partners of CB met with Mr. Butler. He admitted he had set up a contra agreement with R. Construction. Later in the meeting he also admitted he had set up a contra agreement with LP, another client of CB, for approximately \$2,000. He indicated there were no other contra arrangements or improper accountings.
13. On October 15, 2008, the partners of CB expelled Mr. Butler from the partnership, and filed a complaint with the Institute. They sent letters to all clients of the Orangeville office, explaining that Mr. Butler was no longer with CB. As a result of the letters, and further investigation by the partners, they discovered that Mr. Butler had received nine cheques in payment of fees from five other clients, and had diverted those funds, without authorization of CB, to his own use.

14. CB was able to recover the contra amounts, as well as all but one of the amounts of the cheques, from Mr. Butler's capital account. As a result of the incident, CB has lost clients, and has suffered a significant loss of reputation in the area, as well as bearing other financial losses.

15. After leaving CB, Mr. Butler relocated to Prince Edward Island. Mr. Porter attended there to interview him concerning this matter. During that interview, Mr. Butler admitted to the contra agreements, and to the diversion of funds. Mr. Butler indicated he was frustrated and unhappy with the decisions of the partnership, particularly with respect to making him responsible for outstanding accounts receivable and charging them against his partnership capital account. Rather than spending the time going to court, he availed himself of self-help.

DECISION

16. After considering the evidence and deliberating, the panel found that professional misconduct had been proven on each of the charges, and made the following decision:

THAT, having determined to proceed with the hearing in the absence of Mr. Butler, 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 each of the charges, having seen, heard and considered the evidence, the Discipline Committee finds Kerry W. Butler guilty of the charges.

REASONS

17. On the evidence, which is uncontradicted and corroborated by the documents filed, Mr. Butler took funds that were the property of the partnership. He did so without authorization. He did so either by diverting funds intended for the partnership to his own personal use, or by, in effect, having the partnership pay his personal debts through the contra agreements. Such an abuse of fiduciary trust is professional misconduct.

SANCTION

18. Mr. Bellmore, on behalf of the Professional Conduct Committee, sought a sanction of: a written reprimand; expulsion; full publicity; and a fine in the amount of \$10,000.

19. He characterized the offences as ones of moral turpitude, and noted they were truly criminal in nature, as they constituted theft by conversion and fraud. He urged the panel to find there were no mitigating factors, as Mr. Butler did not cease his activities until he was caught and confronted, that he did not admit to the full extent of his misappropriations, but only took responsibility for the ones that were discovered as they were brought to light, that he has shown no remorse, and that he has not treated his governing body with either courtesy or deference.

ORDER

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

IT IS ORDERED in respect of the charges:

1. THAT Mr. Butler be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Butler be and he is hereby fined the sum of \$10,000 to be remitted to the Institute within twelve (12) months from the date this Decision and Order becomes final under the bylaws.
3. THAT Mr. Butler be and he is hereby expelled from membership in the Institute.
4. THAT notice of this Decision and Order, disclosing Mr. Butler's name, be given after this Decision and Order becomes final under the bylaws:
 - (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 expulsion disclosing Mr. Butler's name, be given by publication on the Institute's website and in a newspaper distributed in the Orangeville area. All costs associated with the publication shall be borne by Mr. Butler.
6. THAT Mr. Butler 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 SANCTION

21. Mr. Butler stole from his partnership, from his partners. Whatever his motivation, he took money that did not belong to him and used it for his own personal gain. In doing so, he has caused damage to the reputation of the partnership, of his fellow CAs, and of the entire profession. The profession cannot bear the presence of one who takes his integrity so lightly.

22. Mr. Butler also stole from the clients of the partnership. Those clients believed they were paying for the services of the partnership, not for Mr. Butler's personal need. More than money, he has stolen the clients' trust, and the trust of others who have heard of his actions. That damage cannot be easily quantified, or easily healed.

23. Mr. Butler has demonstrated he is not fit to remain a member of the profession. He must be expelled, both as an indication of our abhorrence for his breach of the highest duty of trust, and to assure the public their trust in chartered accountants is well-placed. Giving notice of that expulsion is an integral component of restoring that trust, as well as reminding all members of the profession of the results of failing to uphold the highest levels of integrity.

24. A fine has also been ordered, for both specific and general deterrence, and its quantum must be sufficient to ensure its deterrent value. While the amounts stolen by Mr. Butler were not large, the damage caused by the thefts is incalculable. It is not the quantum of a misappropriation that determines its gravity, it is the fact of the misappropriation itself. Any breach of fiduciary trust is serious, and must be responded to in terms of gravest disapprobation. The quantum of the fine must reflect this.

DATED AT TORONTO THIS 10TH DAY OF AUGUST, 2010
BY ORDER OF THE DISCIPLINE COMMITTEE

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

MEMBERS OF THE PANEL:

C. DANCHUK, CA
S.M. DOUGLAS, FCA
B.M. SOLWAY (PUBLIC REPRESENTATIVE)
H.G. TARADAY, CA