

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

DISCIPLINE COMMITTEE

IN THE MATTER OF: Charges against **MURRAY DONALD SHILSON, CA**, a member of the Institute, under **Rules 201.1 and 204** of the Rules of Professional Conduct, as amended.

TO: Mr. Murray D. Shilson, CA
41 Mill Street West
Leamington, ON N8H 1S7

AND TO: The Professional Conduct Committee, ICAO

REASONS
(Decision and Order made February 19, 2008)

1. This panel of the Discipline Committee of the Institute of Chartered Accountants of Ontario met on February 19, 2008, to hear charges of professional misconduct laid by the Professional Conduct Committee against Murray Donald Shilson, CA, a member of the Institute.
2. The Professional Conduct Committee was represented by Mr. Paul Farley, who was accompanied by the investigator appointed by the Professional Conduct Committee, Mr. Scott Porter, CA. Mr. Shilson appeared on his own behalf. He confirmed that he understood that he was entitled to be represented by counsel and that he was waiving that right.
3. The decision and order were made known at the hearing on February 19, 2008. The written Decision and Order was sent to the parties on February 25, 2008. These reasons, given pursuant to Bylaw 574, set out the charges, the decision, the order and the reasons of the panel for its decision and order.

The Charges and the Plea

4. The following charges were laid against Mr. Shilson on October 5, 2007:
 1. THAT the said Murray D. Shilson, in or about the period May 28, 1997 through January 31, 2006, while engaged as the accountant for "McE C.O.C. Ltd.", 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 borrowed from his client "McE C.O.C. Ltd.", funds in amounts up to \$498,000 and used those funds for his own personal use without advising his client of the risk involved and without taking adequate steps to protect "McE C.O.C. Ltd." from loss, contrary to Rule 201.1 of the Rules of Professional Conduct.

2. THAT the said Murray D. Shilson, in or about the period May 28, 1997 to January 31, 2006 failed to hold himself free of any influence, interest, or relationship which, in respect of the engagement, impairs the member's professional judgment or objectivity or which, in the view of a reasonable observer, would impair the member's professional judgment or objectivity, in that, while engaged to conduct annual reviews of the financial statements of "McE C.O.C. Ltd." as at December 31 of each year, he was a debtor to the company in amounts varying from \$185,000 to \$498,000, contrary to Rule 204 (as amended from time to time) of the Rules of Professional Conduct.

5. Mr. Shilson entered a plea of guilty to both charges. He confirmed that he understood that on the basis of his plea, and on that basis alone, he could be found guilty of professional misconduct.

The proceedings

6. Mr. Farley gave a brief overview of the case for the Professional Conduct Committee. He then called Mrs. Marlene McElwain as a witness and filed a Document Brief (Exhibit 5) which included relevant documents set out after 11 Tabs. In her testimony, Mrs. McElwain referred to the documents in the Document Brief. Mr. Shilson did not have any questions for Mrs. McElwain.

7. Mr. Farley then called his second and last witness, the investigator appointed by the Professional Conduct Committee, Mr. Scott Porter. Mr. Porter referred to a "high level discussion" he had with Mr. Shilson with respect to his net worth. Mr. Porter had summarized this net worth on a one-page document which was marked as Exhibit 6. Mr. Shilson did not have any questions for Mr. Porter.

8. Mr. Shilson gave an opening statement. He said that he did not dispute the indebtedness to Mrs. McElwain. The problem was that he could not afford to repay it. He also stated that he did not intend to testify and that he did not intend to call witnesses on his own behalf.

9. The members of the panel did have questions of Mr. Shilson. In particular, the Chair asked Mr. Shilson if he understood Rule 201.1 and Rule 204. Mr. Shilson said that he was aware of both rules, but that he needed the money to buy the Leamington office from his dissolving partnership so that he could carry on practice as a sole proprietor. In spite of the Rules of Professional Conduct which prohibit a CA in Mr. Shilson's position from borrowing funds from a client, he stated that he thought he should stay involved and perform the review engagements because of his familiarity and relationship with the client. He was also asked about the reference to a \$500,000 life insurance policy which he had apparently assigned to Mrs. McElwain as security in a memorandum which he wrote to Mrs. McElwain in February 2007. Mr. Shilson advised that this life insurance policy is no longer in force. The memorandum is found at Exhibit 5, Tab 10.

10. Mr. Farley made submissions with respect to the charges. Mr. Shilson responded to those submissions and to questions from the panel arising from his submissions.

Decision

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

THAT, having seen, heard and considered the evidence, and having heard the plea of guilty to charges Nos. 1 and 2, the Discipline Committee finds Mr. Murray Donald Shilson guilty of charges Nos. 1 and 2.

The Relevant Facts

12. The relevant facts, as the panel finds them to be, are set out in paragraphs 15 to 28 below. The evidence of Mrs. McElwain, except on one point, was accepted by Mr. Shilson. The essential and relevant evidence, including the contemporary documentation, was clear beyond dispute.

13. The corporation referred to in the charges as "McE C.O.C. Ltd." annually engaged Mr. Shilson to review its financial statements for each of the year ends December 31, 1997 to December 31, 2005 inclusive. The review engagement reports which were attached to the financial statements for the years ending December 31, 1997 to December 31, 2005 are included in Exhibit 5 at Tab 1.

14. Initially the corporation operated a car dealership in Leamington, Ontario. Mr. Shilson completed the financial statements for the year, completed the corporate tax returns, the T4 and T5 summaries and did the tax returns for the owners of the company, Mr. and Mrs. McElwain. He had been their trusted chartered accountant and financial advisor since 1979.

15. In 1995, the company was operating a car dealership in London, Ontario. Mr. McElwain died in March 1995. The dealership was sold a few weeks later and Mrs. McElwain became the sole owner of the company. She maintained the company with the intention of having it make investments which would produce an income from which she would be paid a salary. The assets of the company at the relevant times included GIC's with Scotia Bank, an investment with Berkshire and investments secured by mortgages.

16. In May 1997, Mr. Shilson phoned Mrs. McElwain and arranged to meet with her in London, Ontario. At the meeting he advised her that his partnership was dissolving and that he needed some money to buy the Leamington office. He asked her if she would loan him the money and keep the fact of the loan confidential. Mr. Shilson did not advise Mrs. McElwain to seek independent legal advice and he did not advise her of any risk which would be associated with the loan.

17. Mrs. McElwain testified that she was uncertain about what to do. Mr. Shilson had been a trusted advisor to her husband and to her. She also thought at the time about whether to continue to engage Mr. Shilson as her accountant if she made the loan. However, she was under a lot of stress which, she stated in retrospect, may be why she agreed to make the loan and continue to engage Mr. Shilson as her accountant.

18. Mr. Shilson signed a promissory note dated May 28, 1997, for \$185,000 which provided for interest at 8.5 %. He was to pay \$2,279.22 on account of principal and interest on a monthly basis commencing June 28, 1997.

19. In October 1998, Mr. Shilson made another arrangement with Mrs. McElwain. He increased the loan to \$200,000. He signed a promissory note dated October 9, 1998, in the amount of \$200,000, to bear interest at 7.5% with monthly payments on account of both principal and interest, of \$2,362.10.

20. Mr. Shilson did make some monthly payments, however he frequently found himself in need of more money and arranged further loans with Mrs. McElwain. He borrowed additional money from Mrs. McElwain (McE C.O.C. Ltd.) in January 1999, October 1999, March 2000, September 2000, May 2001, September 2002, March 2003, August 2003 and September 2004. Copies of the 11 cheques and a note of the one transfer made directly by the bank are set out in Exhibit 5 at Tab 7. None of these loans was secured. Mr. Shilson did not advise Mrs. McElwain at any time to seek independent legal advice or caution her that there was a risk in advancing the money to him.

21. While Mrs. McElwain advanced money to Mr. Shilson 12 times, 11 times by way of cheque and once by way of a bank transfer, Mr. Shilson signed only two promissory notes.

22. In August 2003, Mr. Shilson provided Mrs. McElwain with a statement showing that he owed McE C.O.C. Ltd. \$475,440.50. This statement, found at Exhibit 5, Tab 8, was signed by Mr. Shilson and his wife. On July 7, 2006, Mr. Shilson provided Mrs. McElwain with a schedule of the payments made and money owed and in doing so he acknowledged that he was indebted on account of outstanding principal in the amount of \$498,542.13 and accrued interest of \$122,466.17. This schedule is found in Exhibit 5 at Tab 6.

23. Although Mrs. McElwain wanted to have the money repaid, Mr. Shilson was unable to repay her. Ultimately, she consulted a lawyer and commenced an action against Mr. Shilson. She obtained default judgment on May 4, 2007, for \$651,013.02 and an additional \$650.55 for costs. A copy of the default judgment is found at Exhibit 5 after Tab 11.

24. The summary of Mr. Shilson's net worth (Exhibit 6) showed that his liabilities exceed his assets by more than \$400,000.

25. While the last document in the Document Brief is a Writ of Seizure and Sale directed to the Sheriff of the Municipality of Chatham Kent, there was no evidence as to what steps, if any, had been taken to enforce the judgment. On the evidence the panel heard, as Mr. Shilson acknowledged, he is not in a position to pay Mrs. McElwain.

26. Mr. Shilson, who did not testify, disagreed with Mrs. McElwain on only one point. In his submissions, he stated that Mrs. McElwain said that she would not disclose the matter to her lawyer and he advised her that whether she did or not was entirely up to her. Mrs. McElwain testified that Mr. Shilson had asked her to keep the matter confidential and not discuss it with her lawyer. While the panel believes Mrs. McElwain, even if Mr. Shilson did advise her that it was up to her whether or not she disclosed the matter to her lawyer, he did not do what he ought to have done which is to advise Mrs. McElwain to obtain independent legal advice.

27. The panel concluded on the basis of the facts set out above that both charges had been proven. In borrowing money from his client, without insisting she receive independent legal advice and providing security for the loan, he failed to conduct himself in a manner which will maintain the good reputation of the profession and its ability to serve the public interest. This serious breach of the rule became unconscionable when he continued to borrow money knowing that he was unable to repay the loan. The fact that he continued to accept the review

engagement for the company, to which he owed a very substantial amount of money which he could not repay, was a clear and obvious breach of Rule 204. Accordingly, he was found guilty of both charges.

SANCTION

28. Neither Mr. Farley nor Mr. Shilson called evidence with respect to sanction. Both made submissions.

29. Mr. Farley set out the order sought by the Professional Conduct Committee which included: a reprimand; a fine in the amount of \$25,000; costs in the amount of \$10,000; expulsion from the Institute; and revocation of Mr. Shilson's public accounting licence. Mr. Farley also asked that the order include a provision that notice of the Decision and Order disclosing Mr. Shilson's name be given to the Public Accountants Council for the Province of Ontario, the Canadian Institute of Chartered Accountants and the other provincial institutes; and that a notice disclosing Mr. Shilson's name be published in *CheckMark*, on the Institute's website and in a newspaper published or distributed in Leamington, Ontario where Mr. Shilson practised and resides.

30. Mr. Farley submitted that as Mr. Shilson had breached both the trust which his client reposed in him and the independence and objectivity requirements of the profession, he had failed to adhere to the two fundamental pillars of the chartered accountancy profession.

31. Mr. Farley submitted that the principle of sanction which should be given priority in this case was general deterrence, and that as a matter of general deterrence it was necessary to impose a substantial fine on Mr. Shilson and expel him from membership in the Institute.

32. Mr. Farley submitted that notice, disclosing Mr. Shilson's name, was necessary if the Order was to have the general deterrent effect which was desirable. Other members who might perhaps conduct themselves as Mr. Shilson need to know that if they do so they will be fined, expelled from membership and their licence to practise public accounting will be revoked.

33. Mr. Farley pointed out what he submitted were the aggravating circumstances of this case, namely: the breach of trust which a long time and vulnerable client reposed in her chartered accountant; the significant amount of money borrowed; the fact that he borrowed the money on 12 different occasions over a period of 7 years; and the fact that there had been no restitution.

34. Mr. Farley pointed out the mitigating circumstances, namely: that Mr. Shilson did not attempt to deny the facts; that he entered a plea of guilty; and that there was no previous misconduct on his part.

35. Mr. Farley filed a cost outline which showed the costs of the investigation and prosecution exceeded \$21,000.

36. Mr. Farley filed copies of three previous decisions of the Discipline Committee, *Hadjor*, *Furnivall*, and *McKeand*. He made reference to the decisions which he submitted were precedents for the order requested.

37. Mr. Shilson submitted that his 40 years in the profession without misconduct should count for something. He submitted that if he was required to pay a major fine and expelled from membership in the Institute that he did not know how he would be able to repay the debt. He added that of late he had been able to get a few things cleared up.

Order

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

IT IS ORDERED in respect of the charges:

1. THAT Mr. Shilson be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Shilson be and he is hereby fined the sum of \$25,000 to be remitted to the Institute within three (3) months from the date this Decision and Order becomes final under the bylaws.
3. THAT Mr. Shilson be and he is hereby charged costs fixed at \$10,000 to be remitted to the Institute within three (3) months from the date this Decision and Order becomes final under the bylaws.
4. THAT Mr. Shilson be and he is hereby expelled from membership in the Institute.
5. THAT the public accounting licence of Mr. Shilson be and it is hereby revoked.
6. THAT notice of this Decision and Order, disclosing Mr. Shilson'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.
7. THAT notice of the expulsion and revocation of Mr. Shilson's public accounting licence disclosing his name, be given by publication on the Institute's website and in a newspaper distributed in the geographic area of Mr. Shilson's practice and/or residence. All costs associated with the publication shall be borne by Mr. Shilson and shall be in addition to any other costs ordered by the committee.
8. THAT Mr. Shilson surrender his certificate of membership in the Institute and public accounting licence to the discipline committee secretary within ten (10) days from the date this Decision and Order becomes final under the bylaws.

Reprimand

39. The panel concluded that a reprimand was required as a specific deterrent and to stress to Mr. Shilson that his conduct was not just wholly unacceptable but offensive, even vile.

Expulsion

40. The panel concluded that expulsion was mandatory for a member who conducted himself in such an unconscionable manner. Mr. Shilson blatantly contravened Rule 201.1 and Rule 204 (as amended from time to time) of the Rules of Professional Conduct. It is relevant that by his misconduct, Mr. Shilson took advantage of a long time client, a vulnerable widow, who looked to him for advice with respect to her financial affairs.

41. Mr. Shilson borrowed money from his client without insisting she receive independent legal advice and adequate security. Moreover, while he may have thought that he would be able to repay the initial loan, he ought to have known (if he did not actually know) not later than the summer of 2003 he would not be able to repay the loan. Further, even after that date he borrowed another \$117,000.

42. The loss which Mrs. McElwain suffered appears to be a permanent loss. There is no evidence that Mr. Shilson will be able to pay the judgment which exceeds \$650,000. On the evidence the panel heard Mrs. McElwain has not simply been inconvenienced for a number of months or years, but rather she has been permanently deprived of her money.

43. Clients look to their chartered accountants for prudent advice about their financial affairs. There is no place in this profession for someone who conducted himself as Mr. Shilson did. Accordingly, he should be expelled from membership in the Institute of Chartered Accountants of Ontario and his public accounting licence should be revoked.

Fine

44. The principles of general and specific deterrence require that a member who conducts himself or herself as Mr. Shilson did, in addition to being expelled should pay a substantial fine. The misconduct which resulted in depriving his client of the substantial amount of money set out above was compounded by his breach of the independence requirements of the profession. In the circumstances, given the precedents, the panel concluded that the appropriate fine would be \$25,000, payable within three months from the date this Decision and Order becomes final under the bylaws.

Public accounting licence

45. Bylaw 583 provides that when a member is expelled, or his rights and privileges of membership are suspended, his licence to practise public accounting should also be suspended from the time the order is pronounced until the order becomes final or is set aside by the Appeal Committee. There is a proviso in the bylaw which allows the Discipline Committee making the order of expulsion to relieve the member of the suspension if it is not required for the protection of the public or in the public interest.

46. Given the circumstances of this case, members of the public should not think that Mr. Shilson will conduct himself as a chartered accountant should. Accordingly, the suspension is in the public interest and there is no reason why the Bylaw should not take effect.

Costs

47. The Discipline Committee thinks that it is appropriate that members found guilty of professional misconduct should bear all or a portion of the costs of the investigation and

prosecution. This principle of indemnification is the reason that the panel ordered Mr. Shilson to pay costs of \$10,000.

Notice

48. The principles of general and specific deterrence require that notice, disclosing Mr. Shilson's name, should be given to the profession and the public. As the panel has stated above, no member of the public should think Mr. Shilson will conduct himself as a chartered accountant should and, accordingly, the public should be informed that Mr. Shilson has been expelled from membership.

DATED AT TORONTO THIS 26th DAY OF JUNE, 2008
BY ORDER OF THE DISCIPLINE COMMITTEE

M.B. MARTENFELD, FCA – CHAIR
DISCIPLINE COMMITTEE

MEMBERS OF THE PANEL:

R.J. ADAMKOWSKI, CA
B.M. SOLWAY (PUBLIC REPRESENTATIVE)
D.G. WILSON, CA