CHARTERED PROFESSIONAL ACCOUNTANTS OF ONTARIO
(THE INSTITUTE OF CHARTERED ACCOUNTANTS OF ONTARIO)
*THE CHARTERED ACCOUNTANTS ACT, 2010*

**DISCIPLINE COMMITTEE**

**IN THE MATTER OF:** Allegations against **RONALD BAKER, CPA, CA** under **Rules 201.1 and 206.1** of the Rules of Professional Conduct, as amended.

**TO:** Mr. Ronald Baker, CPA, CA

**AND TO:** The Professional Conduct Committee

**REASONS**
**(Decision and Order made May 27, 2014)**

1. This tribunal of the Discipline Committee met on May 27, 2014 to hear allegations of professional misconduct brought by the Professional Conduct Committee against Ronald Baker, a Member.

2. Ms. Alix Hersak appeared on behalf of the Professional Conduct Committee (PCC), and was accompanied by the investigator, Mr. Paul Gibel, FCPA, FCA. Mr. Baker attended without counsel. At the outset of the hearing, Mr. Baker confirmed that he knew that he had the right to attend with counsel and waived that right. Mr. Glenn Stuart attended the hearing as counsel to the Discipline Committee.

3. The decision of the tribunal was made known at the conclusion of the hearing on May 27, 2014, and the written Decision and Order was sent to the parties on June 10, 2014. These reasons, given pursuant to Rule 20.04 of the Rules of Practice and Procedure, include the allegations, the decision, the order, and the reasons of the tribunal for its decision and order.

**Allegations**

4. The following allegations were made against Mr. Baker by the Professional Conduct Committee on January 14, 2014 (Exhibit 1):

1. THAT the said Ronald Baker, in or about the period February 23, 2011 through April 30, 2013, failed to conduct himself in a manner that will maintain the good reputation of the profession and its ability to serve the public interest in that, contrary to the Order of the Discipline Committee dated February 23, 2011, he knowingly issued the following Review Engagement Reports attached to the financial statements of "GCF" without prior review and approval of the working papers and financial statements by his Practice Supervisor, contrary to Rule 201.1 of the Rules of Professional Conduct:

   (a) Review Engagement Report dated March 28, 2012 for the review of the financial statements of GCF for the year ended October 31, 2011; and

   (b) Review Engagement Report dated March 26, 2013 for the review of the financial statements of GCF for the year ended October 31, 2012.

2. THAT the said Ronald Baker, in or about the period October 31, 2011 through April 30, 2012, while engaged to perform a review of the financial statements of "GCF" for the year ended October 31, 2011, failed to perform his professional services in accordance with generally accepted standards of practice of the profession, contrary to Rule 206.1 of the Rules of Professional Conduct, in that:

   (a) he failed to ensure adequate disclosure of related party transactions and the measurement basis used to record them;

   (b) he failed to perform adequate analytical procedures to assess the plausibility of the financial statements;

   (c) he failed to properly determine the amounts related to unmailed cheques at year end which were to be reclassified from outstanding cheques included in the bank reconciliation to accounts payable;

   (d) he failed to properly classify the balance sheet item "Payable to associated companies (Note 5) 1,438,155; and

   (e) he failed to document those matters required to support his Review Engagement Report.

3. THAT the said Ronald Baker, in or about the period October 31, 2012 through April 30, 2013, while engaged to perform a review of the financial statements of "GCF" for the year ended October 31, 2012, failed to perform his professional services in accordance with generally accepted standards of practice of the profession, contrary to Rule 206.1 of the Rules of Professional Conduct, in that:

   (a) he failed to ensure compliance with the requirements of Part II of the *CICA Handbook* with respect to first-time adoption of Accounting Standards for Private Enterprises;

   (b) he failed to disclose the election not to restate assets or liabilities related to transactions with related parties when the transaction occurred prior to the date of transition to ASPE in Note 3 Impact of change in the basis of accounting;

   (c) he failed to ensure adequate disclosure of significant accounting policies;

   (d) he failed to perform adequate analytical procedures to assess the plausibility of the financial statements;

   (e) he failed to ensure adequate disclosure of related party transactions and the measurement basis used to record them;

   (f) he failed to ensure adequate disclosure of the company's credit facilities;

   (g) he failed to ensure adequate disclosure of the carrying value of the impaired accounts receivable and the related provision for impairment;

(h) he failed to properly disclose the amounts payable for government remittances;

(i) he failed to properly determine the amounts related to unmailed cheques at year end which were to be reclassified from outstanding cheques included in the bank reconciliation to accounts payable;

(j) he failed to properly classify the balance sheet item "Payable to associated companies (Note 6) 1,236,738";

(k) he failed to ensure adequate disclosure of contingent liabilities outstanding at year end;

(l) he failed to ensure that the Review Engagement Report period was consistent with the report period stipulated in the terms of engagement; and

(m) he failed to document those matters required to support his Review Engagement Report.

**Plea**

5. A plea of not guilty to the allegations was entered by Mr. Baker. On consent of both parties, Mr. Baker subsequently changed his plea to guilty of Allegation No. 1 and not guilty to Allegation Nos. 2 and 3.

**The case for the PCC**

6. In her opening statement, Ms. Hersak advised the tribunal that the case for the PCC would be presented by way of the testimony of the investigator, Mr. Gibel. She filed a Document Brief (Exhibit 2) and an Authorities Brief (Exhibit 3).

7. Ms. Hersak stated that the three allegations arose from a prior disciplinary matter which resulted in Mr. Baker undergoing a 24-month period of supervised practice. The PCC alleged that, contrary to the terms of the order, Mr. Baker issued assurance financial statements without prior review and approval of his supervisor and Mr. Baker failed to maintain his professional standards with respect to the statements issued.

8. Ms. Hersak called Mr. Gibel, the investigator appointed by the PCC, and filed Mr. Gibel's CV (Exhibit 4) for the tribunal's review. After consideration of his credentials, and with Mr. Baker's consent, the tribunal accepted Mr. Gibel as an expert witness in the area of the standards of practice of the profession. In the course of his evidence, Mr. Gibel referred to the Document Brief and to the authorities from the *CICA Handbook* found in the Authorities Brief.

9. Mr. Gibel stated he had been retained to investigate a possible breach of one of the terms of the previous Discipline Committee's Order. The supervisor, a licensed public accountant, was to review and approve Mr. Baker's working papers and financial statements for assurance engagements prior to Mr. Baker's issuance of any reports. During the period of supervision, Mr. Baker had released financial statements without the review and approval of the supervisor.

10. Mr. Gibel had also been retained to review the files that had been released without supervision to determine the standards of Mr. Baker's practice. By way of background, Mr. Gibel testified that Mr. Baker obtained his CA designation in 1976, and, after being a partner in

smaller firms, has been a sole practitioner since the mid-1980s He has one assurance client, which is a review engagement. He contracts one non-designated employee and does not have an assurance document in place. Mr. Baker's office is in a building with other accountants, but there is no evidence that his files are reviewed by or there is inter-action with another Member in the building.

*Allegation No. 1*

11. Mr. Gibel stated that he was the investigator on the initial case in 2011 which had been a referral from Practice Inspection. He reviewed the files which resulted in a discipline hearing. One of the terms of the Order of that Discipline Committee hearing required that a licensed public accountant review and approve Mr. Baker's working papers and financial statements for assurance engagements prior to Mr. Baker's issuance of any report. Mr. Baker had entered into this supervisory agreement with the licensed public accountant, duly reviewed and approved by the Director of Standards Enforcement of the Institute (now CPA Ontario).

12. Mr. Gibel stated that Mr. Baker had provided the supervisor with two files for review, which had been the subject of the Order, but with different year-ends. The financial statements had been released prior to the supervisory period. The supervisor reviewed the files and provided comments to Mr. Baker in terms of improvement, in order that Mr. Baker could implement these suggested changes during the supervisory period. Mr. Gibel stated that Mr. Baker no longer has one of the clients, an audit engagement. The other client, GFC, is also the subject of the current Allegations.

13. Mr. Gibel stated that Mr. Baker had confirmed he had reviewed the comments received from the supervisor. Mr. Baker was to meet with the supervisor to review the planning on any assurance files, which the supervisor would then review and approve before the release of the financial statements. Mr. Baker had confirmed to Mr. Gibel that, although he was aware of this plan of action, he had not carried it out, contrary to the terms of the approved supervisory plan and had issued the assurance reports without the supervisor's review. The supervisor, as part of the terms of the supervisory plan, had reported to the Director of Standards Enforcement, noting that Mr. Baker had issued assurance reports without his involvement in the planning and review.

14. Mr. Gibel confirmed that the financial statements issued for 2011 and 2012 were for the same company identified in the Allegations considered at the 2011 discipline hearing but the name has changed from GF to GCF.

15. Mr. Gibel stated that Mr. Baker had indicated there were personal reasons why he took this course of action, and he had provided a document at the meeting before the PCC outlining financial difficulties, family and personal health problems over the last few years. Mr. Baker had indicated he had dealt with his own serious health issues in 2012. At that meeting, Mr. Baker had also provided a November 2013 letter from Practice Inspection, which outlined identified deficiencies and specified the need for his firm to file a mandatory action plan to address these deficiencies. Mr. Baker had voluntarily submitted a plan of action and would be subject to inspection during the next cycle in the 2016/2017 inspection year.

16. Mr. Gibel explained that the Practice Inspection program provides guidance to members to improve their files and addresses the application of policies contained in the firm's quality control document. An investigation by the PCC involves a detailed analysis of the files, which provides a much more in-depth review.

*Allegation No. 2(a)*
17. Mr. Gibel stated that in Note 9 of the 2012 financial statements of GCF (Related party transactions) related party transactions are described for the comparative year of 2011; however, this disclosure does not appear in the 2011 financial statements. This is reflected in the 2012 working papers but relates to the 2011 deficiency. Mr. Gibel stated that related party transactions were disclosed but not the measurement basis for such disclosure. Mr. Gibel had discussed this with Mr. Baker during his investigation, and Mr. Baker indicated he thought it was an oversight.

*Allegation No. 2(b)*
18. Mr. Gibel testified that analytical procedures are required to assess the plausibility of financial statements. Some work had been done by Mr. Baker on the accounts receivable, including checking the client's computer system to look at payments received and reviewing invoices, but there was no indication in the working papers that analytical procedures had been carried out.

*Allegation No. 2(c)*
19. Mr. Gibel reviewed Mr. Baker's working papers regarding the year-end bank reconciliation. The client's bank reconciliation showed "uncleared transactions", which listed outstanding cheques totaling $345,652. The total amount of these outstanding cheques was adjusted to reclassify them as accounts payable, thus showing a larger bank balance. When asked by Mr. Gibel why these were reclassified, Mr. Baker indicated that if they were not reclassified the company would end up showing a negative cash balance on the balance sheet.

20. Mr. Gibel stated that typically only unmailed cheques that a company withheld would be reclassified. When asked if all the cheques had been mailed, Mr. Baker indicated the company does have a history of holding cheques, but he was unable to verify how much of the balance was cheques held versus those in the mail. Mr. Gibel opined that Mr. Baker should have tried to determine the amount of cheques withheld in order to determine the reclassification adjustment required.

*Allegation No. 2(d)*
21. Mr. Gibel stated that loans to two associated companies were shown on the balance sheet under liabilities as payable to associated companies. These are unsecured, non-interest bearing loans with no set repayment terms, as shown in the notes to the financial statements. In accordance with the *CICA Handbook*, such loans should be classified as current liabilities. When asked why the loans had not been so classified, Mr. Baker indicated the associated company did not intend to demand repayment of the loan. Mr. Baker had stated there is a provision that if a waiver is obtained from the creditor company that this is the case, the loan can be classified as long-term. Mr. Gibel stated that there was no evidence that such waiver had been obtained.

*Allegation No. 2(e)*
22. Mr. Gibel provided details of Mr. Baker's failure to document those matters required to support his review engagement report by providing a number of examples. In the income statement review procedures of GCF, the comparison of income statement components with those of the prior year and with the budget is marked as being outstanding. When asked why, Mr. Baker had referred Mr. Gibel to the ratios on the financial information worksheet. Mr. Gibel stated that, although the ratios were calculated, there was no documentation of any discussion or interpretation of significant changes or comparison of what the expectations should have been.

23. The accounts payable aging summary for GCF indicates that Mr. Baker had reviewed invoices related to the balance shown for a supplier. Mr. Baker told Mr. Gibel he had reconciled the balance, but the work done is not documented anywhere in the working papers. On the worksheet GST/HST reconciliation, Mr. Baker did do a summary of the tax credits and GST collected, but there is no indication of a review of expense accounts that would be subject to GST/HST and a comparison or analysis of those calculated credits to amounts. Mr. Baker told Mr. Gibel he was not sure why he had not completed the working papers but did feel the GST summary was sufficient. No calculations had been done on income tax or expenditures.

24. With respect to the plausibility of related party balances, Mr. Baker compared the balances to the related company files but did not assess whether these balances could be collected. There was no support for the related party transaction amounts documented in the file. There were no working papers with respect to future income taxes and no indication whether there may be temporary differences in capital cost allowances versus amortization.

*Allegation No. 3(a)*
25. Mr. Gibel stated that the required disclosure for changes to the opening balance of retained earnings upon adoption of accounting standards for private enterprises ("ASPE") is that the amount of each change to retained earnings at the date of transition, as well as reconciliation of net income reported in the company's most recent previously issued financial statements, is to be disclosed. Mr. Gibel testified that there were no reconciliations of the earnings from the previous period or of any changes in income throughout this period. Mr. Baker had indicated there were no changes, so he thought he did not have to make disclosure, but Mr. Gibel stated that there should be a statement to this effect so a reader of the financial statements would be aware of this fact.

*Allegation No. 3(b)*
26. Mr. Gibel stated that when a company elects to use one or more exemptions, the exemptions used must be disclosed. Mr. Baker had stated that although he had taken some courses on accounting standards for private enterprises, he did not remember that this was one of the requirements.

*Allegation No. 3(c)*
27. Mr. Gibel testified that Mr. Baker confirmed on the working paper checklist that the financial statements disclosed the accounting treatment of financial instruments but there was no such disclosure in the financial statements. Mr. Gibel stated that Mr. Baker was not aware of the requirement to disclose the accounting treatment of financial instruments and that the affirmation on the checklist was an oversight. Mr. Gibel testified that there is also a requirement to provide disclosure of the method of determining the carrying value of inventory, and this disclosure was not made.

*Allegation No. 3(d)*
28. Mr. Gibel had discussed the need for analytical procedures with respect to the 2012 GCF financial statements with Mr. Baker, noting that the deficiencies were similar to the 2011 financial statements. Mr. Gibel stated that there had been some improvement over the previous year in assessing the plausibility of accounts receivable and payable, but there were significant unexplained variances.

*Allegation No. 3(e)*
29. Mr. Gibel referred to the accounts payable aging summary for GCF. A leasing transaction with a related company is shown as a reconciled balance in the A/P summary but is not segregated from accounts payable, separately disclosed and described in the notes to the

financial statements. Mr. Baker had indicated this was an oversight.

*Allegation No. 3(f)*
30. Mr. Gibel stated that the terms of a company's credit facilities are to be disclosed in the financial statements. Note 4 of the 2011 financial statements (Bank indebtedness) states that the company has a $600,000 line of credit under GGI (a related company) and a $100,000 letter of guarantee. It also states that GCF has provided a general security agreement over all assets as security for bank indebtedness. The 2012 financial statements and the related notes do not have any disclosure for credit facilities. Mr. Baker told Mr. Gibel he had no explanation for the omission.

*Allegation No. 3(g)*
31. Mr. Gibel stated that ensuring adequate disclosure of the carrying value of impaired accounts receivable, and the related provision for impairment, is a new requirement under ASPE. Mr. Gibel said there is an ASPE general checklist asking if the entity has disclosed the carrying amount of impaired financial assets. This required disclosure was not made in the 2012 financial statements.

*Allegation No. 3(h)*
32. Mr. Gibel testified that disclosure of amounts payable for government remittances other than income taxes is another new requirement under ASPE. Mr. Baker included union payables, which are not government remittances, in payroll deductions on Note 5 of the financial statements. In addition, HST payable has also been included incorrectly in the accounts payable. Mr. Gibel stated that Mr. Baker said it was a calculation error.

*Allegation No. 3(i)*
33. As was the case in the 2011 financial statements, the total amount of the October 31, 2012 outstanding cheques had been reclassified to accounts payable. Some of the outstanding cheques had been mailed prior to the year-end, while others had been withheld from mailing. Since no determination of the dollar amount of the cheques held was made by Mr. Baker, it was not possible to determine the correct amount of outstanding cheques that should have been reclassified to accounts payable. The reason given by Mr. Baker for reclassifying all outstanding cheques to accounts payable was that there would have been a negative cash balance.

*Allegation No. 3(j)*
34. Mr. Gibel stated that Mr. Baker had failed to properly classify the balance sheet item payable to associated companies, in accordance with Section 3856 of ASPE. Since the terms are non-interest bearing and unsecured and there are no set terms for repayment, this should have been classified as a current liability, not a long-term liability.

*Allegation No. 3(k)*
35. Mr. Gibel testified that there was some disclosure of contingent liabilities at the year-end. There was a contingent liability note which stated that there was a guarantee and postponement of claim for $300,000 for GGI (a related company). The ASPE guideline requires disclosure of the current carrying amount of the liability, as well as what the total liability is. Mr. Baker did not know what the liability was at year-end, but he did know the total credit facility of the company was $600,000, so only half had been guaranteed. Also absent from the note is a reference to the security given for the credit facility, being a general assignment over all of the all assets of the company.

*Allegation No. 3(l)*
36. Mr. Gibel indicated that under ASPE there are two options in terms of presenting the

financial statements. The current year can be presented and the previous years are marked as unaudited or unreviewed, or the previous years can be re-reviewed and a multi-year report can be issued. The engagement letter is actually for the second option. Mr. Baker prepared the review engagement report without presenting the previous years' amounts. Mr. Baker explained that after the engagement letter had been prepared, the company decided not to go with the second option.

*Allegation No. 3(m)*
37. Mr. Gibel testified that Mr. Baker had failed to document matters required to support his review engagement report, noting that there had been no change to the review engagement section of ASPE. Mr. Gibel provided details of examples of Mr. Baker's failure to document matters in the working paper file. In the accounts payable aging summary for GCF, one of the company's suppliers shows a different balance from that on the supplier's statement. When asked about a reconciliation, Mr. Baker said the difference could be outstanding cheques. Mr. Baker said either he or his assistant would have looked at the statements or invoices, but there is nothing in the working papers showing a reconciliation.

38. There was an amount shown as union payable on the balance sheet previous year comparison. Mr. Baker said he would have looked at the next month's disbursement and remittance form, but there was no evidence of that in the working paper file. There was no documentation in the working paper files to support the amounts shown for future income tax payable or the related party rent amount. Mr. Gibel indicated that these issues again showed a lack of documentation in the working paper files.

39. Mr. Gibel, in his capacity as an expert with respect to standards of practice, expressed the opinion that the standards presented in the financial statements for 2011 and 2012 did not meet the standards of practice required by the profession, as set out in the *CICA Handbook*.

**Case for Mr. Baker**
40. In his cross-examination by Mr. Baker, Mr. Gibel confirmed that he had been appointed by the PCC to do the current investigation, although he had been involved in the first hearing. Mr. Gibel confirmed that he was the investigator in both matters.

41. Mr. Gibel was asked by Mr. Baker about his attempt to reconcile the amounts in the income statement, which included a number of invoice amounts from a supplier dated subsequent to the October 31, 2011 cut-off. Mr. Gibel replied that he was not trying to do a reconciliation. Mr. Gibel pointed out that if Mr. Baker had done an actual reconciliation and documented it in the file, it would have been apparent what cut-off was used.

42. Mr. Baker referred to the accounts payable aging summary as of October 31, 2011, which had been prepared by himself and his assistant by viewing the invoices to come up with the figures. Mr. Baker said he did the work required. Mr. Gibel stated that he did not disagree that Mr. Baker had done the work, but it was a question of lack of documentation in the file.

43. Mr. Baker questioned Mr. Gibel about why he felt there was an error in the presentation of the related party expenses for rent, noting that there was no lease since the rent was being paid by an associated company. Mr. Gibel responded that he was not saying the number was right or wrong, but there was no evidence in the file to support that the number was right.

44. Regarding inventory, Mr. Baker said he had changed the notes in 2012 to make it clearer that inventories were valued at the lower cost of net realizable value. His notes indicated that inventory is not for sale, but only for use on jobs, although it is still valued at cost.

Mr. Baker said he thought there was no need to deal with net realizable value, and anything that was obsolete was ignored and inventory turns over. Mr. Gibel responded that under the old standards in 2011, that would have been sufficient but under the APSE standard in 2012, there is a specific requirement to deal with net realizable value.

45. Mr. Baker referred to interest in the GCF 2011 and 2012 expenses, noting that, although both these amounts are substantially below materiality, Mr. Gibel had said they should have been reported under the related party note. Mr. Gibel responded that they should have been identified as related party transactions, and, if Mr. Baker made the judgment that they were immaterial, he should have put a note in the file and not disclosed them.

46. Mr. Baker referred to the GCF financial statements for 2012, noting he has used this particular format for 20 or more years for this client, showing annual differences in wages, equipment rental, subcontracts, etc. Mr. Baker asked Mr. Gibel why he had said there were differences in expense and revenues to be explained and documented. In doing his review Mr. Baker looked at detail on the trial balance as well as the income statement and said there was nothing else to be reported, as they were comparable. Mr. Gibel replied that sales were materially different from year to year, the variances were not explained or documented, and the subcontracts were substantially different, over $300,000. Mr. Baker did not disagree about the subcontracts but stated that the difference in sales was not material. Mr. Gibel responded that there should be some documentation as to why or an explanation of why sales went up.

47. Mr. Baker asked Mr. Gibel to confirm that Mr. Baker's 2012 file was better than the one for 2011, despite the number of deficiencies. Mr. Gibel stated that most of the 2012 deficiencies related directly to the adoption of ASPE.

48. Mr. Baker was sworn in as a witness and filed the Practice Inspection Program Draft Reportable Deficiencies (Exhibit 5) and a letter, dated May 27, 2014, from Mr. Baker to the Discipline Committee (Exhibit 6).

49. Mr. Baker stated that he has been dealing with the family group of the subject companies since 1979 and has great trust in the honesty of the client. Mr. Baker is familiar with the client's recordkeeping and knows it is meticulous. Mr. Baker testified that he may not have documented all the detail he should have but feels comfortable with the results. Although he has taken some courses, with the ASPE changeover there are some aspects of which Mr. Baker was not aware. Mr. Baker stated that he feels the statements issued are valid.

50. Mr. Baker referred to Exhibit 5, pointing out that the Practice Inspection Committee had passed him and did not indicate there were any major problems with the file. Mr. Baker contended that, although Mr. Gibel had said his inspection was more detailed than that of a practice inspection, the inspector was very good, conscientious and did not indicate there was any major problem.

51. Mr. Baker referred to his letter to the Discipline Committee (Exhibit 6), which detailed family health and financial issues, including his own health problems. At the time when he should have consulted with the supervisor prior to releasing the financial statements, he said he was considering giving up his membership in CPA Ontario.

52. Mr. Baker testified that his health is improving, he is getting his life and his accounting practice back on track. Due to financial responsibilities, Mr. Baker stated that he plans to continue working for a number of years.

53. In her cross-examination, Ms. Hersak confirmed with Mr. Baker that all of the deficiencies listed in Exhibit 5 are itemized in Allegation No. 3. Mr. Baker also conceded that these deficiencies were all in Mr. Gibel's report, to which Mr. Gibel had testified.

54. Ms. Hersak asked Mr. Baker if the failure to adequately disclose the amount payable to associated companies was classified as a major deficiency by Practice Inspection, and he confirmed that it was.

55. Ms. Hersak asked Mr. Baker if he had been counselled prior to the practice inspection about correcting the deficiency with respect to disclosure of related party transactions, including the Discipline Committee findings from the previous hearing. Mr. Baker replied that it had been raised in the past by Mr. Gibel and that the Discipline Committee had concurred with Mr. Gibel's previous findings.

56. In response to an enquiry by the tribunal about the propriety of raising issues from the previous discipline hearing, Ms. Hersak submitted that Mr. Baker had been counselled on the same matters in the past and part of the current allegations is whether he has maintained professional standards. The deficiencies listed in Allegation Nos. 2 and 3 deal with Mr. Baker's failure to perform his professional services in accordance with generally accepted standards of practice. Mr. Stuart, counsel to the tribunal, advised that Mr. Baker had opened up the issue in his testimony by filing Exhibit 5 and was therefore subject to cross-examination by Ms. Hersak. The history of the matter and prior instances where he had been given guidance would be relevant since the incidents overlap. Mr. Stuart noted that Ms. Hersak had focused her questions on particular instances of past matters, which was the appropriate way to proceed.

57. Ms. Hersak asked Mr. Baker about the quality control standards of his firm and he responded that no previous comments had been received because there is one in place, adapted from a section on sole practitioners in the quality control manual. Ms. Hersak noted that there were deficiencies that should have been picked up by a quality control system.

58. In response to Ms. Hersak's enquiry about the lack of documentation of procedures such as future income tax assets and amounts due to and from related parties, as noted in Mr. Gibel's evidence, Mr. Baker agreed these were significant deficiencies.

59. Ms. Hersak referred to Exhibit 6, noting that some of Mr. Baker's personal problems referred to in his letter occurred in the distant past, not at the time he was issuing the review engagement reports for 2011 and 2012. Mr. Baker said this was partially accurate, without elaborating.

60. Ms. Hersak asked Mr. Baker if, despite signing a supervisory agreement, he did not take steps to have the supervisor review the 2011 or 2012 financial statements for GCF. Mr. Baker confirmed that this was correct. Mr. Baker also agreed that if he had the benefit of the supervisor's review it is possible the deficiencies set out in Allegation Nos. 2 and 3 might not have occurred.

**Submissions of the PCC**

61. Ms. Hersak submitted that the evidence heard through the investigator, and presented in the Document Brief and Brief of Authorities, was clear, cogent and convincing and supports the allegations in this case. Ms. Hersak stated that the evidence supports Mr. Baker's guilty plea to Allegation No. 1, and the opinion evidence of Mr. Gibel, in particular, supports Allegation Nos. 2 and 3 as well. She asserted that Mr. Baker failed to maintain the reputation of the profession by knowingly issuing assurance financial statements without the prior review and approval of his

practice supervisor, in contravention of the terms of the previous Order of the Discipline Committee.

62. Ms. Hersak stated that Mr. Baker has demonstrated a disregard for the maintenance of the standards of the profession and a disregard for the Order of the Discipline Committee made in February 2011. Mr. Hersak submitted that Mr. Baker should be found guilty of all the allegations based on the evidence.

**Submissions of Mr. Baker**

63. Mr. Baker stated that he did plead guilty to the first allegation. Mr. Baker submitted that there were some deficiencies in the 2011 and 2012 GCF file but, in his view, he does not believe the financial statements were inherently wrong. Some disclosure could have been added, but the bank had no problem with the statements. Mr. Baker stated that he did not feel the issues were strong enough to warrant a finding of professional misconduct based on insufficient work.

**Decision**

64. After deliberating, the tribunal found on the evidence, which was clear, cogent and convincing, that the allegations had been proven. The tribunal made the following decision:

> THAT having heard the plea of guilty to Allegation No. 1 and having seen, heard and considered the evidence, the Discipline Committee finds Ronald Baker guilty of Allegation Nos. 1, 2 and 3.

**Reasons for Decision**

65. The tribunal carefully reviewed the evidence and considered the submissions presented on behalf of both the Professional Conduct Committee and Mr. Baker. The tribunal concluded that the three allegations had been proven on the balance of probabilities.

66. Regarding Allegation No. 1, the tribunal accepted the evidence of a communication from Mr. Baker's practice supervisor (Exhibit 2 – *Document Brief*) that, prior to an enquiry from the Director of Standards Enforcement in August, 2013, he had not had contact with Mr. Baker since January, 2012, and that Mr. Baker told him that he had issued assurance reports for which the supervisor had not been involved. Mr. Gibel testified that the supervisor had been retained by Mr. Baker to review his assurance engagements prior to release, and this was evidenced by an engagement letter signed by Mr. Baker, and acknowledged by the Director of Standards Enforcement (Exhibit 2). This evidence was not disputed by Mr. Baker. Also, during the hearing, Mr. Baker changed his plea from not guilty to guilty of this allegation.

67. With respect to Allegation Nos. 2 and 3, the tribunal accepted the testimony of Mr. Gibel. He referred to the financial statements of GCF for both years, pointed out the disclosure deficiencies in the financial statements as set out in the sub-allegations, and referred to the required disclosure set out in the relevant sections of the *CICA Handbook* (Exhibit 3 – *Authorities Brief*). The tribunal agreed with Mr. Gibel's conclusions.

68. The tribunal found that there was an absence of relevant documentation to support the assurance report. The tribunal did not accept Mr. Baker's submission that the deficiencies were not strong enough to warrant a charge of insufficient work.

**Sanction**

69. Ms. Hersak recalled Mr. Gibel to give further testimony in relation to sanction. Ms. Hersak asked Mr. Gibel if documentation issued in the current allegations were similar to the

2011 charges laid against Mr. Baker. Mr. Gibel confirmed there was an overall similarity in the deficiencies, although he could not recall all the particulars.

70. Ms. Hersak, on behalf of the PCC, submitted that an appropriate sanction in this matter would be the following: a written reprimand; a fine in the amount of $7,500; a restriction on Mr. Baker's practice that he not be allowed to perform audits or reviews, and full publicity including newspaper publication. The PCC also sought an order for $11,000 in costs, being approximately 50% of the total costs incurred.

71. Ms. Hersak referred to the Reasons of the Discipline Committee (contained in Exhibit 1) in the prior matter, where Mr. Baker's standards of practice were considered by the committee, including a charge involving his client GCF. Ms. Hersak noted parallels to the current allegations of inadequate disclosure and lack of documentation in the files. The sanction imposed by the former discipline tribunal was a fine, reprimand, professional development courses, a 24-month period of supervised practice, reinvestigation, publicity and costs. At that time, Mr. Baker had indicated he was experiencing financial difficulties with respect to the costs proposed and did not agree with the two-year supervision.

72. Ms. Hersak submitted that if Mr. Baker had heeded the comments in the Practice Inspection report prior to the first set of charges, these current allegations could have been avoided. Mr. Baker chose not to submit GCF's financial statements to the supervisor for review prior to release. Ms. Hersak stated that Mr. Baker had the benefit of the previous Discipline Committee hearing and the committee's Reasons for ordering supervision of Mr. Baker's practice. Ms. Hersak stated that he did not participate in the rehabilitation by failing to follow the terms of the supervision agreement.

73. Ms. Hersak noted that the previous tribunal ordered that Mr. Baker practice under supervision for a 24-month period, for the protection of the public. Given the limited number of assurance engagements Mr. Baker was performing, it had been concluded that 24 months would ensure Mr. Baker's compliance, but he did not receive the desired benefit in terms of improving his standard of practice. A number of deficiencies have been repeated and are the subject of the current allegations.

74. Ms. Hersak submitted that, at this stage, the PCC believes allowing Mr. Baker to continue to perform audit or review engagements is not viable based on his history of failing to incorporate the suggestions of the practice inspectors and the investigator and his failure to have the supervisor review the statements prior to release. Ms. Hersak stated that a practice restriction, with newspaper publicity, would serve to protect the public. Ms. Hersak stated that the PCC believes Mr. Baker can be rehabilitated with the appropriate sanctions.

75. Ms. Hersak submitted that the aggravating factors were that Mr. Baker knowingly and willfully breached an Order of the Discipline Committee by not complying with the terms of the signed supervisory agreement. Mr. Baker has been unwilling or unable to improve his standards of practice over several years, despite being advised of the necessity by his professional colleagues. Mr. Baker issued two sets of statements a year apart, giving him an opportunity to reconsider his decision in 2011 to issue the statements without review by the supervisor. There is a risk to the public if these statements are relied on. Mr. Baker issued the financial statements with full knowledge that he would be reinvestigated after a 24-month period to see if his standards of practice had improved. Ms. Hersak stated it is a serious aggravating factor that Mr. Baker ignored the term of the Discipline Committee's Order.

76. Ms. Hersak submitted that the mitigating factors were that Mr. Baker was cooperative with Mr. Gibel during the investigation leading to these allegations, and he did admit to issuing the statements. Mr. Baker pleaded guilty to one of the three allegations. Ms. Hersak stated that Mr. Baker has expressed his intention to make changes to his life and to make improvements in his practice. Since there is only one assurance engagement, the public impact is limited, but, as Mr. Baker holds a public accounting licence, he could take on another engagement. Mr. Baker has experienced personal problems, and these factors were considered by the PCC in recommending sanctions.

77. Ms. Hersak stated that a reprimand emphasizes the unacceptable conduct of Mr. Baker. The proposed fine would act as a specific and general deterrent, taking into account the seriousness of the allegations and Mr. Baker's failure to address issues which had been the subject of the previous discipline hearing.

78. Ms. Hersak submitted that a practice restriction would allow Mr. Baker to continue in the profession but without performing assurance work. The newspaper publicity would protect the public, and act as a specific deterrent to Mr. Baker and a general deterrent to the membership at large.

79. Ms. Hersak filed a Costs Outline (Exhibit 7) showing the costs to be approximately $23,000, of which the PCC was seeking $11,000, less than half of the actual costs. All costs expended should not be borne solely by CPA Ontario Members and Mr. Baker should be assessed a reasonable share. The PCC would have no objection to a reasonable period of time to pay the fine and costs.

80. Ms. Hersak distributed a Case Brief containing similar cases involving failure to comply with an Order of the Discipline Committee. Ms. Hersak referred to the case brief containing *Gupta, Hyun, Carson* and *Lunn,* pointing out relevant items in each case, but noting that some of the precedents have additional, more serious, elements. The common theme involved failure to maintain the good reputation of the profession, failure to perform professional services in accordance with the standards of the profession and failure to comply with the terms of an Order of the Discipline Committee.

81. Mr. Baker submitted that, although the PCC is requesting that he be restricted from performing further assurance engagements, he felt he is capable of doing the assurance engagement with proper supervision. Mr. Baker requested that the Discipline Committee order whatever terms of supervision are necessary and stated that he understood his membership would be revoked if he did not comply. Mr. Baker stated that he does not want to give up his assurance engagement and would follow any supervision ordered by the committee, feeling confident that, with assistance, he would be able to do the report.

82. Mr. Baker stated that he felt the costs were high since two files were reviewed this time by the investigator, compared to three files for the previous discipline hearing, and requested a reasonable period of time to pay.

83. Mr. Baker said he did have the supervisor review the 2010 year-end reports for GCF and was given suggestions that he fully intended to implement. However, during that time period, Mr. Baker experienced health-related problems, and he did not follow through.

## Order

84. After deliberating, the tribunal made the following order:

IT IS ORDERED in respect of the allegations:

1. THAT Mr. Baker be reprimanded in writing by the Chair of the hearing.

2. THAT Mr. Baker be and he is hereby fined the sum of $5,000, $2,500 to be remitted to the Chartered Professional Accountants of Ontario (registered business name of The Institute of Chartered Accountants of Ontario) ("CPA Ontario") within twelve (12) months and $2,500 to be remitted to CPA Ontario within twenty-four (24) months from the date this Decision and Order is made.

3. THAT Mr. Baker be and he is hereby required to complete a thirty-six (36) month period of supervised practice at his own cost, upon the following terms and conditions:

   a) Mr. Baker shall, within thirty (30) days from the date this Decision and Order is made, file with the secretary of the Discipline Committee a supervised practice plan, which has been reviewed and approved by the Director of Standards Enforcement of CPA Ontario, and which sets out the name of the supervisor who must be a member of CPA Ontario who is licensed to practice public accounting in Ontario, and which contains the agreement in writing of the supervisor in a form acceptable to the Director of Standards Enforcement, to so act.

   b) The responsibilities of the supervisor shall include, at a minimum, the review and approval of Mr. Baker's working papers and financial statements or other assurance reports for assurance engagements prior to Mr. Baker's issuance of any such reports. Upon accepting or continuing an assurance engagement, Mr. Baker shall immediately advise the supervisor in writing of all such engagements, and the anticipated reasonable time frame when he expects his working papers, the financial statements and report(s) to be ready for the supervisor's review. He shall also provide the supervisor with a written communication when an existing assurance engagement has been terminated.

   c) In the event the Professional Conduct Committee finds Mr. Baker's choice of supervisor unacceptable, or there is any other issue relating to the supervised practice plan about which Mr. Baker and the Professional Conduct Committee cannot agree, either may give notice of the disagreement to the Chair of the Discipline Committee who may move to have that aspect of the order reconsidered in accordance with Rule 21 of the Rules of Practice and Procedure.

   d) The thirty-six (36) month period of supervised practice shall commence on the day that Mr. Baker files the approved supervised practice plan in accordance with paragraph 3 (a) above, or on the day the supervised practice plan is settled, pursuant to paragraph 3 (c) above, whichever of the days is later.

   e) The supervisor shall file a report in writing with the Director of Standards Enforcement of CPA Ontario on or before June 30 and December 31 of each year of the term of supervision, confirming that he or she has supervised Mr. Baker for the stipulated period of time and provide the name(s) of the assurance engagement(s) reviewed and approved for release by him or her. In the event that there were no assurance engagements reviewed, a statement to that effect, and the reason(s) therefore, shall be included in the supervisor's report.

4. THAT notice of this Decision and Order, disclosing Mr. Baker's name, be given in the form and manner determined by the Discipline Committee:
   (a) to all members of CPA Ontario;
   (b) to the Public Accountants Council for the Province of Ontario; and
   (c) to all provincial bodies;
   and shall be made available to the public.

5. THAT in the event Mr. Baker fails to comply with the requirements of this Order, he shall be suspended from membership in CPA Ontario and his public accounting licence shall thereupon be suspended until such time as he does comply, provided that he complies within thirty (30) days from the date of his suspension. In the event he does not comply within the thirty (30) day period, his membership in CPA Ontario and public accounting licence shall thereupon be revoked, and notice of the revocation of his membership and public accounting licence, disclosing his name, shall be given in the manner specified above, and in a newspaper distributed in the geographic area of Mr. Baker's practice. All costs associated with this further publication shall be borne by Mr. Baker and shall be in addition to any other costs ordered by the committee.

IT IS FURTHER ORDERED:

6. THAT Mr. Baker be and he is hereby charged costs fixed at $9,000, $4,500 to be remitted to CPA Ontario within twelve (12) months and $4,500 to be remitted to CPA Ontario within twenty-four (24) months from the date this Decision and Order is made.

**Reasons for Sanctions**

85. In ordering the sanctions, the tribunal took into consideration several aggravating and mitigating factors.

86. The most serious aggravating factor was that Mr. Baker, for two year ends of the same client, knowingly disobeyed the order of a previous tribunal of the Discipline Committee in that he did not submit his working paper file, client financial statements and assurance report to his practice supervisor for review and approval prior to the release of the financial statements. This tribunal had serious doubts that Mr. Baker was governable since he conscientiously disobeyed the Order of the Discipline Committee twice. Before that, he had ignored advice from the Practice Inspection Committee three times. The tribunal considered his serious medical situation as a mitigating factor, as well as his statement that he feels that with proper supervision his work on his only assurance engagement will meet the required professional standards. He also acknowledged that, had he consulted his practice supervisor, the disclosure and documentation errors would not have occurred. The tribunal also took into consideration that the PCC did not request sanctions more serious than a restriction on practice, such as a suspension or revocation.

87. A mitigating factor was that Mr. Baker cooperated fully with the investigator and CPA Ontario, and provided all information as requested.

88. The tribunal agreed that the sanctions of reprimand, fine and supervision of practice are within the range of sanctions that have been previously imposed in similar cases, and are appropriate in this case.

89. A written reprimand from the chair serves as a specific deterrent to Mr. Baker. The professional standards of Chartered Professional Accountants are high, and the reprimand will remind Mr. Baker that he must maintain those high standards with every engagement undertaken, otherwise serious consequences will result.

90. The tribunal determined that a fine was appropriate since Mr. Baker's actions were contrary to the professional standards of the profession. The fine serves as a specific and general deterrent; specific in that Mr. Baker will suffer monetary consequences of his unprofessional conduct and will deter him from future misconduct. As a general deterrent, it will show the public and other members of the profession that CPA Ontario is serious in maintaining the high standards the public expects of CPAs. Mr. Baker stated that he is under some financial pressure, and the order provides time to meet this financial penalty. The PCC did not object to giving Mr. Baker time to pay.

91. The tribunal determined that a three-year period of practice supervision of his assurance work was appropriate. The three-year period provides a measure of protection for the public in ensuring that his assurance-based financial statements meet the standards of the profession. The supervision period provides Mr. Baker with three years of supervision to enable him to learn the concepts and practical application of the ASPE rules set out in the *CICA Handbook.* The stringent conditions and reporting requirements of the supervision will ensure that compliance with this Order is fulfilled, and if it is not, then CPA Ontario will become aware of the non-compliance on a timely basis.

92. The tribunal discussed whether there should be a reinvestigation at the end of the supervisory period. The factors considered were that Mr. Baker would be supervised for a period of three years, one year longer than his previous supervision period, and his assurance engagements would be reviewed and approved by the supervisor prior to release of the financial statements. Mr. Baker would be subject to practice inspection during this period as well.

93. The tribunal determined that serious consequences for non-compliance of the supervision conditions are appropriate to ensure Mr. Baker's compliance with the Order.

94. Publicity serves as a general and specific deterrent. It provides transparency of the discipline process of CPA Ontario to the public and to Members. It also provides Mr. Baker with a reminder of the consequences of his unprofessional conduct

95. The principle of general deterrence is also relevant in this case. The reprimand, fine and supervision of practice, together with the provision for notice both to the profession and to the public are intended to serve that purpose.

**Costs**

96. A costs outline was filed showing costs incurred by the PCC of approximately $23,000. The tribunal determined that costs of $9,000 should be ordered against Mr. Baker. This represents less than half of the actual costs of the hearing and represents a partial indemnity for the costs incurred.

97. In arriving at the amount of costs assessed, the tribunal noted that Mr. Baker's misconduct necessitated the hearing and he should bear an appropriate amount of the costs. Given his financial situation, the tribunal ordered less than requested by the PCC and that Mr. Baker be given time to pay the costs.

DATED AT TORONTO THIS 18TH DAY OF SEPTEMBER, 2014
BY ORDER OF THE DISCIPLINE COMMITTEE

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

MEMBERS OF THE TRIBUNAL:
M.I. FELDSTEIN, CPA, CA
S.J. HOLTOM, CPA, CA
S.B. WALKER (PUBLIC REPRESENTATIVE)