



# THE INSTITUTE OF CHARTERED ACCOUNTANTS OF ONTARIO

**IN THE MATTER OF:** ALLEGATIONS OF PROFESSIONAL  
MISCONDUCT AGAINST SIDNEY  
FINKELMAN, CA, A MEMBER OF THE  
INSTITUTE, BEFORE THE DISCIPLINE  
COMMITTEE

## SETTLEMENT AGREEMENT

*made pursuant to Section 34 (1)(c) of the Chartered  
Accountants Act, 2010, and to ICAO Regulation 7-1, s.22.4*

### Introduction

1. The Professional Conduct Committee approved draft allegations against Sidney Finkelman, CA ("Finkelman") **Doc 1**.
2. The draft allegations pertain to professional work performed by Finkelman with respect to:
  - a) the review of the financial statements of "BTC" for the year ended May 31, 2009; and
  - b) the audit of the financial statements of "AP" for the year ended December 31, 2009.
3. The documents referred to in this agreement are found in the Document Brief. The applicable *CICA Handbook* sections are found in the Brief of Authorities.

4. The Professional Conduct Committee ("PCC") and Finkelman agree with the facts and conclusions set out in this settlement agreement for the purpose of this proceeding only, and further agree that this agreement of facts and conclusions is without prejudice to Finkelman in any other proceedings of any kind, including, but without limiting the generality of the foregoing, any civil or other proceedings which may be brought by any other person, corporation, regulatory body or agency.

### **Background**

5. Finkelman obtained his CA designation in 1959 and practiced in North Bay and Kirkland Lake. In 1970, he moved to Ottawa and began to work with Albert Rivers, CA, and the two soon merged their practice with Agulnik Greenberg Chartered Accountants. When Greenberg passed away and Rivers retired, Finkelman and Morris Agulnik, CA established Finkelman & Agulnik Chartered Accountants. They have practiced together in Ottawa under this name since 1975.
6. The practice services approximately 100 clients, including 250 T1s, 50 compilations, 7 reviews and 4 audit engagements. Of these, Finkelman is responsible for three review and two audit engagements. In 2010, gross billings for the practice were \$345,000. Working with Finkelman and Agulnik are a receptionist, two technicians, and Agulnik's son who is a CGA. Finkelman and Agulnik have no association with any other CAs.
7. Due to space constraints, Finkelman maintains a separate office space but uses storage facilities and employee support at the main office location.
8. Finkelman came to the attention of the PCC as a result of a referral from the Practice Inspection Committee following an initial inspection and a re-inspection of the practice. **Doc 2**

**Allegation 1- The Review of the Financial Statements of BTC for the Year Ended May 31, 2009**

9. The financial statements and working papers for BTC for the year ended May 31, 2009 are reproduced at **Doc 3**.
10. Finkelman failed to retain a signed Review Engagement Report in the firm's name and did not document that a signed copy of the financial statements was delivered to the client.
11. BTC is a private company located in Nepean, Ontario. The company has annual sales of \$2.3 million of new and refurbished computer equipment, and computer consulting services. In 2009 the company reported net earnings of \$40,000.
12. Materiality for this engagement was set by Finkelman at \$12,000.

***Allegation 1(a) – Investment***

13. The balance sheet item "Investment 18,500" **Doc 3, p. 19** reflects BTC's investment in three Ottawa-based technology companies in 2006-2007. There is no evidence in the working paper files indicating the fair market value of these investments, whether or not an impairment in their value has incurred and whether or not there is a current market for these shares.
14. *CICA Handbook* Section 3050.33 **Tab 1** requires disclosure of the market value of these securities, an impairment review and disclosure as to the short or long-term maturity of these investments.

***Allegation 1(b) – Related Party Transactions***

15. Note 4, Due From Related Corporations **Doc 3, p. 23** states that the amount of \$45,764 due from related corporations is unsecured and has no set terms

of repayment. There are no details in the working papers concerning these loan advances or of a relationship with a related party, and the neither related party nor the nature of the relationship are identified in the financial statements as required.

16. *CICA Handbook* Section 3840.43 **Tab 2** requires an enterprise to disclose information about its transactions with related parties including a description of the relationship and a description of the transaction.

***Allegation 1(c) – Significant Accounting Policies***

17. There is no disclosure of the company's accounting policy for the recognition of revenue **Doc 3, p. 22**. *CICA Handbook* Section 3400.06-.09 **Tab 3** requires disclosure of revenue from sales and service transactions such as those provided by BTC. The method of determining revenue should have been disclosed in accordance with the requirements of the *Handbook*, but was not.

***Allegation 1(d) – Cash Flows***

18. The Statement of Cash Flows **Doc 3, p. 21** does not disclose the amounts of interest paid. *CICA Handbook* Section 1540.34 **Tab 4** requires interest received and paid and included in the determination of net income to be classified as a cash flow from operating activities and disclosed separately. Interest was not disclosed separately on the Statement of Cash Flows as required.

***Allegation 1(e) – Financial Instruments***

19. Although BTC had a number of financial instruments including amount due from related corporation, loan receivable and note payable, there is no disclosure concerning financial instruments in the financial statements.

20. *CICA Handbook* Section 3862.31 **Tab 5** requires extensive disclosure about financial instruments including an assessment by the accountant as to the credit, currency, interest rate, and equity risk. The entity is required to disclose to the users of the financial statements the nature and extent of the risk arising from financial instruments.

***Allegation 1(f) – Documentation***

21. Items required to support the Review Engagement Report are not adequately documented as required by *CICA Handbook* Section 8200, **Tab 6** including:

- a. information on the inter-relationship of key elements in the financial statements;
- b. enquiry, discussion and analytical procedures;
- c. explanation of key balance sheet ratios;
- d. explanation of gross profit margins; and
- e. GST & PST reasonableness test.

**Allegation 2 - The Audit of the Financial Statements of AP for the Year Ended December 31, 2009**

22. The financial statements for AP for the year ended December 31, 2009 are reproduced at **Doc 4**.

23. Finkelman signed the Auditor's Report in the firm name and delivered it and the financial statements to the client.

24. AP is an apartment complex in Ottawa, operating under a co-tenancy agreement between 20 corporate and individual investors. In 2009 the co-tenancy had total revenue of \$5.5 million and net earnings of \$1.2 million.

25. Materiality for this engagement was set by Finkelman at \$35,000.

***Allegation 2(a) – Quality Assurance Manual***

26. Throughout the engagement, Finkelman failed to practice with a quality assurance manual as required by *CICA Standards on Quality Control* 1.32.

**Tab 7**

***Allegation 2(b) – Financial Instruments***

27. The financial statements include a mortgage loan payable to the First National Mortgage Corporation for \$9.65 million.

28. *CICA Handbook* Section 3860.A4 **Tab 8** identifies “mortgage payable” as a financial instrument and requires the auditor to consider and disclose information concerning financial instruments in the financial statements. There is no financial instrument disclosure in the financial statements.

***Allegation 2(c) – Auditor’s Report***

29. The financial statements have been prepared with no depreciation provided for the capital assets of AP. **Doc 4, p. 53** Finkelman reported the following qualification in the audit opinion:

*Note 1 to the financial statement indicates that no depreciation has been provided on the capital assets of the co-tenancy.*

*In our opinion, except for the effect of the failure to record depreciation as described in the preceding paragraph, these financial statements present fairly, in all material respects, the financial position of the co-tenancy as at December 31, 2009 and the results of its operations and its cash flows for the year then ended in accordance with Canadian generally accepted accounting principles.*

30. *CICA Handbook* Section 5510.34 **Tab 9** requires that when an auditor expresses a reservation of an opinion in his audit report as a result of a client’s decision not to comply with generally accepted accounting principles,

the auditor should indicate clearly how and to what extent the financial statements are affected by the departure from this accounting principle.

31. The audit opinion should have included the effect on depreciation, net earnings, accumulated depreciation and retained earnings resulting from the departure from generally accepted accounting principles, but did not.

***Allegation 2(d) – Subsequent Events Review***

32. *CICA Handbook* Section 6550.06 **Tab 10** requires the auditor to perform a review, enquire and perform related procedures designed to determine whether events occurring the subsequent period may require adjustments to financial statements. Finkelman failed to document any subsequent events review and confirmed that no systematic subsequent events review was performed.

***Allegation 2(e) – Communication from Law Firm***

33. *CICA Handbook* Section 6560 **Tab 11** requires an enquiry letter, prepared by the client to be sent to each law firm representing the client. In a letter dated February 9, 2010 to its corporate solicitor, AP requested confirmation of any claims or possible claims against the co-tenants. **Doc 4, p. 97**

34. No reply to the enquiry letter is included in the working paper file and there is no evidence of any follow-up with the corporate solicitor to determine the existence of claims or possible claims.

***Allegation 2(f) – Significant Accounting Policies***

35. There is no disclosure of the company's accounting policy for the recognition of revenue **Doc 4, p. 58**. *CICA Handbook* Section 3400.06-.09 **Tab 3**

requires disclosure of revenue from sales and service transactions such as those conducted by BTC in selling new and refurbished computer equipment.

***Allegation 2(g) – Cash Flows***

36. The Statement of Cash Flows **Doc 4, p. 57** does not disclose the amounts of interest paid. *CICA Handbook* Section 1540.34 **Tab 4** requires interest received and paid and included in the determination of net income to be classified as a cash flow from operating activities and disclosed separately. Interest was not disclosed separately on the Statement of Cash Flows.

***Allegation 2(h) – Engagement Quality Control Review***

37. *CICA Standards on Quality Control* 1.35 **Tab 7** requires that guidelines be established for Engagement Quality Control Reviews. Finkelman failed to assess whether an Engagement Quality Control Review was required for this audit engagement.

**Acknowledgement**

38. It is agreed that Finkelman failed to perform his professional services in accordance with generally accepted standards of practice of the profession, including the recommendations set out in the *CICA Handbook*, in the manner described above with respect to the following engagements:

- a. the review of the financial statements of “BTC” for the year ended May 31, 2009; and
- b. the audit of the financial statements of “AP” for the year ended December 31, 2009.



**Considerations Supporting Settlement**

39. In addition to all of the circumstances described above, the Professional Conduct Committee took the following factors into consideration on entering into this Agreement:

- a. Finkelman acknowledges the deficiencies in his audit and review engagement standards of practice as set out above;
- b. Finkelman has been fully cooperative in the Professional Conduct Committee's investigation into his conduct;
- c. Finkelman has no prior history in the disciplinary process; and
- d. Finkelman has signed an irrevocable undertaking not to perform assurance engagements in future.

**Terms of Settlement**

40. Finkelman and the Professional Conduct Committee agree to the following Terms of Settlement:

- a) A payment by way of fine in the amount of \$3,000;
- b) Notice of the terms of this Settlement is to be published in accordance with the provisions of ICAO Regulation 7-3, s. 22, including notice to be given to the CICA, the Public Accountants' Council and in *CheckMark Magazine*; and
- c) Finkelman will be allowed 18 months from the time the Discipline Committee accepts this Settlement Agreement to pay the fine referred to herein.

41. Should the Discipline Committee accept this Settlement Agreement, Finkelman agrees to waive his right to a full hearing, judicial review or appeal of the matter subject to the Settlement Agreement. Upon the member fulfilling the requirements of this Settlement Agreement, the draft allegations approved by the Professional Conduct Committee and dated November, 2011, shall be forever stayed.

42. If for any reason this Settlement Agreement is not approved by the Discipline Committee, then:

- a) This Settlement Agreement and its terms, including all Settlement Negotiations between the Professional Conduct Committee and Finkelman leading up to its presentation to the Discipline Committee, shall be without prejudice to the Professional Conduct Committee and Finkelman; and
- b) The Professional Conduct Committee and Finkelman shall be entitled to all available proceedings, remedies and challenges, including proceeding to a hearing on the merits of the allegations, or negotiating a new

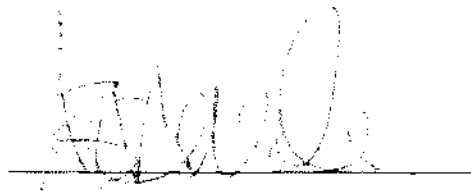
Settlement Agreement, unaffected by this Settlement Agreement or the Settlement Negotiations.

**Disclosure of Settlement Agreement**

43. This Settlement Agreement and its terms will be treated as confidential by the Professional Conduct Committee and Finkelman, until approved by the Discipline Committee, and forever if for any reason whatsoever this Settlement Agreement is not approved by the Discipline Committee, except with the written consent of the Professional Conduct Committee and Finkelman, or, as may be required by law.

44. Any obligations of confidentiality shall terminate upon approval of the Settlement Agreement by the Discipline Committee.

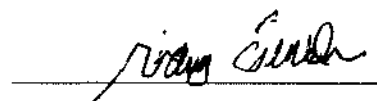
All of which is agreed to for the purpose of this proceeding alone this 30 day of April, 2012.



ALEXANDRA E. HERSAK  
COUNSEL

On behalf of:

THE PROFESSIONAL CONDUCT COMMITTEE



SIDNEY FINKELMAN, CA  
on his own behalf