



2022 CPA Alberta Conduct Case Summaries

September – October 2022

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IN THE MATTER OF a Sanction Agreement entered into by the Complaints Inquiry Committee and Veritas Ruiz Heer, CPA, CMA, the registrant against whom a complaint was made:

FACTS

Veritas Heer, CPA, CMA was an accountant for Association A. She provided review engagement services and accounting oversight of the Professional Development Fund of one of Association A's union locals.

An agreement between the School Board and the Local governed the Fund. It required that the Local have an annual audit done for the management and disbursements of the Fund. Despite the stipulation for an audit, Association A deemed a review to be sufficient, given the small size of the Fund.

Ms. Heer prepared a Review Engagement Report in respect of the Fund's 2019 year end. The Report used outdated wording and was not in compliance with current professional standards for review engagement reports. Ms. Heer was aware that any review engagement work that she performed for the Local was for internal purposes and could not be provided to the School Board. However, she sent the Report to the Fund administrator and stated that the protocol was for the Report to be shared with others, including the School Board. The Fund administrator provided the Report to the School Board. It rejected the Report since it had not been prepared by a registered professional accounting firm and was, therefore, not reliable for the School Board's purposes.

Ms. Heer asserted that she did not deliberately intend to mislead the union local, the Fund administrator, or the School Board about the preparation and content of the Report, and she did not receive any compensation or fees concerning the Report, as the preparation of the Report occurred in the performance of Ms. Heer's duties as a staff member of Association A.

FINDINGS

Veritas Heer, CPA, CMA admitted to unprofessional conduct, in that she:

1. Conducted aspects of a professional accounting practice by providing a Review Engagement report, dated November 28, 2019, regarding the Fund for the fiscal period ended June 30, 2019, that she knew would be distributed to users of the financial statements that were external to Association A, while not properly registered with CPA Alberta to provide assurance services; and
2. Failed to comply with the professional standards for Review Engagements with respect to the Review Engagement performed on the financial statements for the fiscal period ended June 30, 2019 for the Fund.

SANCTIONS

Veritas Heer, CPA, CMA and the Complaints Inquiry Committee agreed that the sanctions to be imposed in consequence thereof would be:

1. Written reprimand;
2. Payment of a fine of \$1,000 for each of the allegations, for a total fine of \$2,000, within 30 days of the statement of costs being served;
3. Payment of the costs of the investigation, hearing and compliance with the orders, in accordance with bylaw 1601, within 30 days of the statement of costs being served;
4. Mandatory publication pursuant to section 98 of the *CPA Act* and bylaws 1550-1557; and
5. If Veritas Heer, CPA, CMA fails to comply with these sanctions within the time specified, her registration will be cancelled.

IN THE MATTER OF a Sanction Agreement entered into by the Complaints Inquiry Committee and MNP LLP Chartered Professional Accountants, the registrant against whom a complaint was made:

FACTS

MNP Ltd. was a subsidiary firm of MNP LLP Chartered Professional Accountants. MNP Ltd. generally provided debt counselling and corporate and consumer insolvency services to the public, performed almost exclusively consumer and corporate insolvency work, and was often appointed as a trustee under the *Bankruptcy and Insolvency Act*.

Trust EF was an irrevocable trust established on December 29, 1997. The Trust property was initially comprised of 38 units in CCLP—whose General Partner was Alberta Co.—and a shareholder loan owed to the settlor of the Trust, JE. The intention of the Trust was to provide JE, as the income beneficiary, with an income stream throughout his lifetime, while installing JE's daughter, LE, as the capital beneficiary thereafter. JE was represented by lawyer PF; LE was represented by lawyer GS.

On March 26, 2010, MNP Ltd. became the independent, Court-appointed Trustee. At that time, MNP LLP did not have policies in place that precluded acceptance of that engagement. Verne Wood, CPA, CA—a partner and Senior Vice President with MNP LLP and a Licensed Insolvency Trustee with MNP Ltd.—consented to act as Trustee. From then until his retirement on May 31, 2018, Mr. Wood was responsible for the Trust.

Starting in August 2012, JK, an employee of MNP Ltd. and a non-registrant of CPA Alberta, became involved in the administration of the Trust. JK did not have specific training around the duties and responsibilities of a trustee under the *Trustee Act*. JK's work in respect of the Trust was overseen by Mr. Wood until his retirement. From then onward, JK was responsible for the Trust. The transition of oversight of the Trust from Mr. Wood to JK was not a formal one pursuant to any firm policies governing the transfer of the file.

The 21-year Deemed Disposition Rule under the *Income Tax Act* applied to the Trust's assets. The deemed disposition was set to occur on December 29, 2018. MNP Ltd. started to address the Deemed Disposition Rule in February 2016.

On November 28, 2017, the Trustee received a Notice of Meeting for Passing Extraordinary Resolution from Alberta Co. The purpose of that meeting was to authorize Alberta Co. to enter into a Proposed Sale of certain CCLP assets. Alberta Co. received offers for the Proposed Sale. MNP Ltd. delivered those to, and discussed them with, PF. MNP Ltd. did not notify or share details about the Proposed Sale with LE.

MNP Ltd. was aware that there was to be an Annual General Meeting of Alberta Co. on June 7, 2018, at which the Proposed Sale was to be discussed and potentially approved. At that time, MNP Ltd. did not have a contingency plan in place in the event that the Proposed Sale did not materialize. At the AGM, JK attended and, on behalf of MNP Ltd., voted in favour of authorizing Alberta Co. to pursue the Proposed Sale. LE also attended the AGM. JK did not inquire of LE what her position as the capital beneficiary of the Trust was on the Proposed Sale prior to voting.

As of October 23, 2018, MNP Ltd. understood that the Proposed Sale would still occur. On that date, JK received an email from MNP LLP's Strategic Tax Group, in which it was concluded that the Deemed Disposition Rule applied to the Trust and that no exemption to the Rule was available to the Trust.

On November 28, 2018, JK received an email from PF, indicating: the draft purchase agreement in respect of the Proposed Sale was amended; the new terms of the Proposed Sale; and that the backdrop plan was that the proposed purchaser had a partner who was expected to ratify the transaction on December 21, 2018, but not approve it until March 16, 2019.

It was not until December 14, 2018—two weeks before the deemed disposition of the Trust was to take effect—that JK and the Strategic Tax Group discussed options to address the Deemed Disposition Rule. The same day, JE made a demand for underpaid Trust income. As a result, MNP Ltd. considered a transfer of Trust property to JE to satisfy the demand. On December 19, 2018, JK indicated the Trustee’s intention to assign the Trust property to JE. LE objected to the proposed assignment and to JE’s demand. LE proposed two options, including a sale of the Trust property to her; JE objected.

On December 24, 2018, it became clear that the Proposed Sale would not materialize because the purchaser neither paid a required deposit nor waived its financing condition.

MNP Ltd. then made an application to Court for advice and direction about its management of the Trust. The Court determined, among other things, that MNP Ltd.: had not given adequate advance thought and had not planned for the eventuality that the Proposed Sale would not close; did not carefully consider options to either defer taxes, or to arrange for payment if the taxes were triggered; had not done the due diligence that one would expect to evaluate options in a complicated legal and tax field, and decide on the course of action to take, fully assessing the possibilities; and, had a duty to deal with both beneficiaries with an even hand.

The deemed disposition of the Trust property occurred on December 28, 2018. The resulting taxable income was \$303,379, the tax liability was \$145,621.69, and interest for arrears amounted to \$2,778.69. Ultimately, the Proposed Sale was completed on February 1, 2020.

FINDINGS

MNP LLP Chartered Professional Accountants admitted to unprofessional conduct, in that it:

1. Failed to establish, maintain, and uphold appropriate policies and procedures designed to ensure that services for which it was responsible were performed in accordance with generally accepted standards of practice of the profession, in that MNP Ltd., a subsidiary of MNP LLP Chartered Professional Accountants
 - a. In its role as the Court-appointed Trustee of Trust EF, failed to plan for the deemed disposition of the Trust assets pursuant to s. 104(4) of the *Income Tax Act*, which required the disposition of the trust assets at year 21 of the Trust’s existence, by not
 - i. considering sufficiently the options available to the Trust;
 - ii. holding back Trust assets for the potential income tax liability; and
 - iii. consulting with both the income and capital beneficiary in this regard;
2. Failed to establish, maintain, and uphold appropriate policies and procedures designed to ensure that, in the conduct of MNP LLP Chartered Professional Accountants’ practice, any employees comply with the requirement to sustain their professional competence and keep informed of and comply with developments in professional standards in all functions in which they practice or are relied on because of their calling, with respect to the role of MNP Ltd. as the Court-appointed Trustee of Trust EF—specifically with respect to the services provided by JK in respect of that Trusteeship.

SANCTIONS

MNP LLP Chartered Professional Accountants and the Complaints Inquiry Committee agreed that the sanctions to be imposed in consequence thereof would be:

1. Payment of a fine of \$15,000 for each of allegations #1 and 2 within 30 days of the statement of costs being served;
2. Payment of the costs of the investigation, hearing, and compliance with the orders, in accordance with bylaw 1601, within 30 days of the statement of costs being served;
3. Mandatory publication pursuant to section 98 of the *CPA Act* and bylaws 1550-1557; and
4. If MNP LLP Chartered Professional Accountants fails to comply with these sanctions within the time specified, its registration will be cancelled.

IN THE MATTER OF a Sanction Agreement entered into by the Complaints Inquiry Committee and Verne Wood, CPA, CA, the registrant against whom a complaint was made:

FACTS

Verne Wood, CPA, CA was a partner with MNP LLP and Senior Vice President and Licensed Insolvency Trustee with MNP Ltd. MNP Ltd. was a subsidiary firm of MNP LLP Chartered Professional Accountants. MNP Ltd. generally provided debt counselling and corporate and consumer insolvency services to the public, performed almost exclusively consumer and corporate insolvency work, and was often appointed as a trustee under the *Bankruptcy and Insolvency Act*.

Trust EF was an irrevocable trust established on December 29, 1997. The Trust property was initially comprised of 38 units in CCLP—whose General Partner was Alberta Co.—and a shareholder loan owed to the settlor of the Trust, JE. The intention of the Trust was to provide JE, as the income beneficiary, with an income stream throughout his lifetime, while installing JE’s daughter, LE, as the capital beneficiary thereafter. JE was represented by lawyer PF; LE was represented by lawyer GS.

The 21-year Deemed Disposition Rule under the *Income Tax Act* applied to the Trust’s assets. The deemed disposition was set to occur on December 29, 2018.

On March 26, 2010, MNP Ltd. became the independent, Court-appointed Trustee. MNP Ltd. took over the role of Trustee pursuant to a March 24, 2010 agreement made between the predecessor Trustee and Meyers Norris Penny Limited, a predecessor of MNP Ltd. Mr. Wood consented on behalf of Meyers Norris Penny Limited to act as Trustee and signed the agreement with the predecessor Trustee. From then until his retirement on May 31, 2018, Mr. Wood was responsible for the Trust.

Starting in August 2012, JK, an employee of MNP Ltd. and a non-registrant of CPA Alberta, became involved in the administration of the Trust. JK did not have specific training around the duties and responsibilities of a trustee under the *Trustee Act*. JK’s work in respect of the Trust was overseen by Mr. Wood until his retirement on May 31, 2018.

MNP Ltd. started to address the Deemed Disposition Rule in February 2016. On November 28, 2017, the Trustee received a Notice of Meeting for Passing Extraordinary Resolution from Alberta Co. The purpose of that meeting was to authorize Alberta Co. to enter into a Proposed Sale of certain CCLP assets. Alberta Co. received offers for the Proposed Sale. MNP Ltd. delivered those to, and discussed them with, PF. MNP Ltd. did not notify or share details about the Proposed Sale with LE.

MNP Ltd. was aware that there was to be an Annual General Meeting of Alberta Co. on June 7, 2018, at which the Proposed Sale was to be discussed and potentially approved. At that time, MNP Ltd. did not have a contingency plan in place in the event that the Proposed Sale did not materialize.

As of the date of Mr. Wood’s retirement, MNP Ltd., under Mr. Wood’s direction: (a) had not yet determined whether the Deemed Disposition Rule was applicable; (b) if it was applicable, the only plan MNP Ltd. had considered regarding how to avoid an income tax liability flowing from the Deemed Disposition Rule was the Proposed Sale; (c) MNP Ltd. had not notified LE of the Proposed Sale; and (d) no Trust assets had been held back for the potential income tax liability.

It was not until December 14, 2018—two weeks before the deemed disposition of the Trust was to take effect—that JK and the Strategic Tax Group discussed options to address the Deemed Disposition Rule.

On December 24, 2018, it became clear that the Proposed Sale would not materialize because the purchaser neither paid a required deposit nor waived its financing condition.

MNP Ltd. then made an application to Court for advice and direction about its management of the Trust. The Court determined, among other things, that MNP Ltd.: had not given adequate advance thought and had not planned for the eventuality that the Proposed Sale would not close; did not carefully consider options to either defer taxes, or to arrange for payment if the taxes were triggered; had not done the due diligence that one would expect to evaluate options in a complicated legal and tax field, and decide on the course of action to take, fully assessing the possibilities; and, had a duty to deal with both beneficiaries with an even hand.

The deemed disposition of the Trust property occurred on December 28, 2018. The resulting taxable income was \$303,379, the tax liability was \$145,621.69, and interest for arrears amounted to \$2,778.69. Ultimately, the Proposed Sale was completed on February 1, 2020.

FINDINGS

Verne Wood, CPA, CA admitted to unprofessional conduct, in that he:

1. Failed to sustain his professional competence and keep informed of and comply with developments in professional standards in all functions in which he practiced or was relied on because of his calling, in that he:
 - a. In carrying out MNP Ltd.'s role as Trustee of Trust EF, failed to plan for the deemed disposition of the trust assets pursuant to s. 104(4) of the *Income Tax Act*, which required the disposition of the trust assets at year 21 of the Trust's existence, by not:
 - i. considering sufficiently the options available to the Trust;
 - ii. holding back Trust assets for the potential income tax liability; and
 - iii. consulting with both the income and capital beneficiary in this regard.

SANCTIONS

Verne Wood, CPA, CA and the Complaints Inquiry Committee agreed that the sanctions to be imposed in consequence thereof would be:

1. Written reprimand;
2. Voluntary resignation of registration pursuant to section 75 of the *CPA Act* and that, as a result, in accordance with section 75, the proceedings are discontinued;
3. Payment of the costs of the investigation, hearing, and compliance with the orders, in accordance with bylaw 1601, within 30 days of the statement of costs being served;
4. Mandatory publication pursuant to section 98 of the *CPA Act* and bylaws 1550-1557; and
5. If Verne Wood, CPA, CA fails to comply with these sanctions within the time specified, his registration will be cancelled.

IN THE MATTER OF a Sanction Agreement entered into by the Complaints Inquiry Committee and Ashley Burnside, CPA, CMA, the registrant against whom a complaint was made:

FACTS

Ashley Burnside, CPA, CMA was approached by a co-worker, TC, who was involved with RW in a family law dispute. TC asked Ms. Burnside to prepare a report on RW's income over a five-year period for the purposes of calculating child support payments. Ms. Burnside prepared three reports consisting of her calculations of RW's income for the relevant years.

Ms. Burnside did not follow any published standards or guidelines in preparing her reports. Instead, contrary to practice standards, Ms. Burnside prepared reports using the method that she was told was used in the preparation of an earlier report of RW's income that was prepared on behalf of TC. As a result, there was a significant disparity in the reports that Ms. Burnside prepared on behalf of TC and the report that was prepared on behalf of RW. As a result of the disparity, TC and RW had to engage a third person to calculate RW's income.

Ms. Burnside had never registered as a professional accounting firm, despite the requirement to do so in order to engage in a public accounting practice (including providing financial litigation support services).

FINDINGS

Ms. Burnside admitted to unprofessional conduct, in that she conducted aspects of a public accounting practice while not properly registered with CPA Alberta to perform accounting services or litigation support services, in that she provided income calculations regarding the income of RW for the calendar years 2016, 2017, 2018, 2019 and 2020 for the purposes of family law litigation.

SANCTIONS

Ashley Burnside, CPA, CA and the Complaints Inquiry Committee agreed that the sanctions to be imposed in consequence thereof would be:

1. Written reprimand;
2. Payment of a fine of \$500 within 30 days of the statement of costs being served;
3. Payment of costs of \$1,000 within 30 days of the statement of costs being served;
4. Mandatory publication pursuant to section 98 of the *CPA Act* and bylaws 1550-1557; and
5. If Ashley Burnside, CPA, CMA fails to comply with these sanctions within the time specified, her registration will be cancelled.