

RAPA

Council passed the Resolution that “an anonymous summary of the circumstances, findings of unprofessional conduct and any penalty and/or order imposed will be published in the Members' Handbook, and on the website.”

The Resolution was modified on September 2007, deleting the requirement for an anonymous summary to be published in the Members Handbook.

A summary of the findings of unprofessional conduct or admissions made in a sanction agreement, the nature of the conduct and any orders or sanctions made as a result of the findings, are now published on the Institute's public website on a named basis.

REFERENCE: DT 01

DESCRIPTION: The CA operated his practice from his home using up to eight designated or experienced accountants as sub-contractors hired on an hourly or negotiated fee, to complete working paper files, draft financial statements and corporate and personal tax returns. His practice consisted of some 200 financial statements and 700 personal tax returns a year, with gross annual billings of approximately \$400,000. For five years, income tax returns were prepared, by a sub-contractor, for two clients that included self employed farming income and expenses. The CCRA completed a GST audit and income tax compliance review after receiving financial documents from the clients. The clients were advised of the preliminary results and told that representations could be made before the reassessments were finalized. All findings were submitted to the CA who agreed to represent the clients in the reassessments. The CA assured the clients numerous times that he would take care of this matter. He did not contact CCRA and the reassessment ultimately resulted in a Requirement to Pay issued on the client's bank account. The CA did not return the clients' files when requested to do so as he could not locate them. He did not complete and file the current year's GST return which resulted in a garnishee. When the Institute's investigator attended at the CA's office the investigator located the clients' records requested earlier to complete the GST return.

FINDINGS: The CA was found guilty of unprofessional conduct in having, with respect to an engagement to prepare personal income tax for a client and his wife between 1996 and 1999:

- failed to handle with due care the clients' records that had been entrusted to him;
- made misleading statements to the clients regarding
 - a) the propriety of reassessments of the personal income tax returns and GST return,
 - b) the actions he was taking with respect to the reassessments;
- failed to conduct the engagements with due care by not adequately supervising contracted staff; and
- failed to maintain his competency with respect to the taxation of farming operations.

REASONS: The CA admitted that he had lost the clients' records and did not advise them that the records were lost. He admitted that he had made comments to the clients that the CCRA reassessments were wrong. He admitted he lied to the clients about contacting CCRA, and that he did not respond to the requests from both CCRA and the clients and then lied about his inaction. There were no supervisory procedures in place concerning the sub-contractors, that were acceptable by the general standards of the accounting profession.

The CA admitted he had taken only one formal PD course in the last three years.

ORDERS: The registration of the CA was suspended until he could satisfy the CIC Chair that:

- he has complied with the annual PD requirements of the Institute, including completion of the annual income tax update course and a course in farm taxation;
- he has implemented an office system to ensure:
 - telephone messages are recorded and responded to promptly;
 - correspondence is answered promptly;
 - tax deadlines are met
 - client records are inventoried on receipt and safely stored
 - client files are organized and stored appropriately
- his tax practice is reviewed by a person authorized by the Chair of the Practice Review Committee and found in compliance.

The CA's registration will be cancelled if he fails to comply with all the above orders by December 31, 2003.

Notwithstanding the suspension, specified associates and any replacements approved by the CIC Secretary are allowed to associate with the CA in his or their public accounting practices.

The CA was ordered to pay all costs of the investigation and hearing. [The hearing was completed in two days and costs totaled \$10,999]

REASONS: Protection of the public was the primary consideration of the Tribunal. The CA's professional deficiencies were considerable. He did not maintain his professional competence. He did not have in place a system and procedure to ensure deadlines were met, that records were safeguarded and that government regulations were complied with. He lost a file and then lied to cover up. The suspension allows time for the CA to bring his practice into line with the standards of the profession. The Tribunal order allows the CA to continue to use the sub-contractors until the earlier of the date of compliance or December 31, 2003.

PUBLICATION: To all provincial institutes, the Institute of Chartered Accountants of Bermuda, and to all provincial institutes to which the CA applies for membership at any time in the future, to all members of the public enquiring about the discipline history. Notice was provided to all chartered accountants by inclusion in the general mailing and insertion in the *Membership Activity Report*, and notice was provided to all clients and/or former clients by letter approved and mailed by the Institute.

REASONS: Only mandatory publication requirements were ordered. The Tribunal did not intend to add any further difficulties to the CA's opportunity to re-establish himself.

REFERENCE: DT 02

FACTS: The CA advertised to the general public that he was an expert in expatriate taxation issues. The CA made an error in 1996 and 1997 Canadian income tax returns in that a foreign tax credit was claimed which the CA should have known would not be creditable for Canadian tax purposes. The client was not informed that the returns could be challenged by the Revenue Canada, as was the case. There was a possible alternative available to the client to relieve the double taxation burden, however the CA did not bring the matter to the attention of the client until after the opportunity had expired. The CA did not file a response or a Notice of Objection to the Notice of Reassessment.

ADMISSION: The CA admitted that he was guilty of three counts of unprofessional conduct in having, with respect to the services provided between 1997 and 2002 with respect to the personal income tax returns for a client for 1996 and 1997:

- claimed foreign tax credits on the client's 1996 and 1997 personal income tax returns in respect of United States' FICA and Medicare premiums
 - a) which he knew or should have known were not creditable for Canadian income tax purposes,
 - b) without advising the client of the aggressive nature of the filing position and that it could be challenged by Revenue Canada;
 - c) without ensuring that the client's returns prepared by his staff were reviewed before they were filed;
- failed to advise the client, in a timely manner, of a possible alternative to relieve the burden of double taxation associated with the FICA and Medicare premiums; and
- failed to protect the client's interests by failing to
 - a) provide a written response in a timely manner to the proposal by Revenue Canada to disallow said foreign tax credits, and
 - b) file a Notice of Objection to the Notice of Reassessment although he claimed to the client that the disputed foreign tax credit would ultimately be allowed.

SANCTIONS: CA was reprimanded by the CIC Chair, ordered to have at least two annual reviews of his public accounting firm's practice to prove that a system has been implemented to ensure:

- all income tax returns are reviewed
- inquiries from the CCRA are responded to on a timely basis, and
- Notices of Objection are filed on a timely basis; and

To pay the costs of the investigation [totaling \$1,000]

PUBLICATION. The admissions of unprofessional conduct, the orders made and the terms of the sanction agreement be published on a named basis to all provincial institutes, the Institute of Chartered Accountants of Bermuda, to any other professional organization he belongs to, and to anyone who enquires of his discipline history.

REFERENCE: DT 03

DESCRIPTION: The CA was a member with ICAA and ICABC. He was in public practice in BC. In February 2001, he advised the ICABC that he had diverted cash receipts in 1998 and 1999 from his public accounting firm without the knowledge or consent of his partners. After investigation, ICABC accepted the resignation of the CA in the face of a discipline hearing. He was ordered to pay reimbursements costs of \$3,000, and allowed to associate with his former accounting practice subject to specific conditions. One of the conditions required that he report the diverted cash to CCRA. In July, 2002, the CA requested a T1 adjustment form showing the additional income as bonuses for the years 1998 and 1999.

FINDINGS: The CA was found guilty of unprofessional conduct in having diverted cash receipts without the knowledge and consent of his partners, in failing to report the income from the diverted cash receipts in his 1998 and 1999 personal income tax returns, and misrepresenting the nature of the income by advising the CCRA that the monies were bonuses.

REASONS: The CA, who did not attend the hearing, admitted guilt to the charges in correspondence with the ICAA Director of Professional Standards.

ORDERS: Voluntary resignation of registration be accepted conditional on receipt of 100% of the costs of the investigation and hearing.
[The hearing was completed in one day and costs totaled \$5,974.]

REASONS: The actions of the CA were of a serious and unprofessional nature. The CA indicated he wished to resign from the ICAA as an acceptable resolution.

PUBLICATION: To all provincial institutes, the Institute of Chartered Accountants of Bermuda, and to those to which the CA applies for membership at any time in the future, to chartered accountants by inclusion in the general mailing, an insertion in the "Membership Activity Report", to the CA's employer, to any member of the public enquiring about the discipline history of the CA, publication on the ICAA website on a named basis and publication in the business sections of the *Edmonton Journal* and the *Calgary Herald*.

REASONS: The Discipline Tribunal felt that it was important for members of the ICAA be aware of the results of the tribunal and that matters of unprofessional conduct were taken seriously. As well it was felt that the publication of the resignation would protect members of the general public by providing them information on the discipline actions of the ICAA.

August 2003

REFERENCE: DT 04

FACTS: The CA, an employee of a regional firm, had done work for a company and its shareholders. The work performed included compilation of financial statements and preparation of corporate tax returns for the company and the personal tax returns of one shareholder. The CA left the firm prior to completing the company financial statements engagement. Another firm employee completed the files and discovered the rental and other charges paid by the company to the shareholder were not reported on the shareholder's past three tax returns. This was corrected and the firm paid all interest assessed. Before leaving the firm the CA was pressured to reduce work in progress on his accounts. He prepared an invoice to the company, but activated a "blocking" system so the clients did not receive any invoices. On his departure the "blocking" was removed and the client became aware of the outstanding invoice. The client was concerned that it had not received the completed financial statements but had been billed. The CA had also given tax advice to the shareholder, however none of the advice was documented.

ADMISSION: The CA admitted guilt of unprofessional conduct in having, with respect an engagement for a company and an individual for the years ending December 31, 1999, December 31, 2000 and December 31, 2001,

- failed to perform professional services with integrity and due care in that he failed to ensure the individual's personal income tax returns reflected income from the company,
- failed to complete the financial statements for the company in a timely manner;
- issued an invoice to the client then failed to send the invoice and activated a system to ensure the client did not receive notices of the outstanding account.

SANCTION: The CA agreed to be restricted from practicing as a sole practitioner and

- his practice be under supervision for a minimum of two years. The supervisor will oversee practice management, ensuring engagements are completed on a timely basis, and tax advice
- his tax practice be subject to practice review every six months for three years,
- he will pay the costs of the investigation, sanction agreement to the Institute including any costs of compliance with any order,

PUBLICATION. The admissions of unprofessional conduct, the sanctions and the nature of the conduct were published on a named basis to all provincial institutes, the Institute of Chartered Accountants of Bermuda, the Certified General Accountants Association of Alberta, to anyone who enquires of his discipline history and on the Institute website.

REFERENCE: DT 05

DESCRIPTION: The CA was the Executor of his mother's estate. The CA, his brother, niece, and nephew were the beneficiaries of the Estate. A complaint was received when the CA became unresponsive in requests for information and the filing for probate. The Investigator appointed by the CIC Vice Chair and the CIC secretary made numerous unsuccessful attempts to obtain information needed for the investigation of the CA. The CA refused to accept ICAA letters and documents and substitutional service became necessary. The CA was uncooperative with requests from the other beneficiaries and did not make application for probate of the will until three years after the date of death.

FINDINGS: The CA was found guilty of unprofessional conduct with respect to his executorship of his mother's estate in having failed to maintain the good reputation of the profession in that he failed to perform his services as executor with integrity and due care on a timely manner, and he failed to cooperate with the Institute of Chartered Accountants of Alberta by delaying the investigation, misleading the investigator as to the reason for the delay, and failing to provide the requested information to the investigator and the Institute.

REASONS: In conduct before the Tribunal, the CA was often unresponsive, uncooperative and evasive. His answers generally avoided the substance of the questions and lacked credibility. He referred to complex tax issues as a reason for delay but failed to identify any complex issues. He prepared sworn documents showing several different versions of estate counting and these differences were never satisfactorily explained. He gave evidence he had a verbal agreement with his mother, then produced two different written versions of the agreement. The CA co-mingled personal and estate funds. He did not provide banking records when requested to do so. The investigator attempted 21 times to contact the CA. These calls were made at different times of the day and evening. At the hearing the CA had still not complied with all undertakings and requests for information.

ORDERS: The CA was restricted from acting as an executor or trustee in the future, fined \$1,000 and ordered to pay 100% of the costs of the investigation and hearing not to exceed \$25,000.00.

[The hearing was completed in three day and costs totalled \$24,013.]

REASONS: The discipline tribunal was of the opinion that the actions of the CA were of a serious and unprofessional nature. Based upon his performance as executor and trustee in handling the estate the CA should not be an executor or trustee to protect the public. The fine was imposed to reflect the seriousness of unprofessional conduct.

**SUMMARY OF FINDINGS OF
UNPROFESSIONAL CONDUCT Section F
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The Tribunal ordered 100% of the costs in recognition that the costs were incurred by the unprofessional conduct of Mr. CA in the handling of the estate and his uncooperative behavior with the investigation and during the hearing.

PUBLICATION: To all provincial institutes, and to those to which the CA applies for membership at any time in the future, to chartered accountants by inclusion in the general mailing, an insertion in the "Membership Activity Report", to any member of the public enquiring about the discipline history of the CA. Notice of the tribunals findings, nature of conduct and orders made be published on the ICAA website on a named basis.

REASONS: The Discipline Tribunal felt that it was important for members of the ICAA to be aware of the decision and order of the Tribunal to show that matters of an unprofessional conduct were taken seriously.

APPEALS: The CA appealed the findings and orders of the Discipline Tribunal to an Appeal Tribunal. The Appeal Tribunal denied the preliminary application by the CA to dispense with the need for a transcript of the proceedings before the Discipline Tribunal. The CA was required to order and pay for the transcript by a certain date. This was not done and additional problems were incurred by the ICAA in attempting to serve materials on the CA. The CIC applied to strike the appeal, and the Appeal Tribunal granted the application based on the failure of the CA to order and pay for the required transcript.

REFERENCE: DT 06

FACTS: The CA was hired by an Association since 1996, to perform a review engagement. When the Association hired a new bookkeeper in 1999, the CA's firm spent more time on the engagement assisting the Association in reconciling the monthly bank statements. When the 2002 financial statements were presented to the association, the Executive Director conducted an investigation. As a result the Associations' bookkeeper was charged and convicted of embezzling funds - \$98,612. over a period of two and a half years.

ADMISSION: The CA admitted guilt of two counts of unprofessional conduct in having, with respect to the review of the financial statements of a company and issuance of a review engagement report thereon in that: he failed to comply in all material respects with the generally accepted review standards of the profession in that he failed

- (a) to properly plan and execute the work,
- (b) to properly supervise employees who assisted with the work,
- (c) to perform appropriate enquiries and analytical procedures to support the content of the review engagement report; and

he associated himself with financial statements that were false and misleading in that accounts receivable and deferred membership fees were overstated and the excess of expenditures over revenue was understated.

SANCTIONS: The CA agreed that his practice be under supervision. The supervisor will, prior to issuance, review all working paper files and financial statements of all engagements including the planning and supervision of employees. The CA will comply with the recommendations of the supervisor, and complete the following courses:

- Review and Compilation Engagements: A Review of the Options & Requirements,
- Staying Out of Trouble, and
- The Essentials of Review Engagements.

The CA agreed to pay to the costs of the investigation and hearing

PUBLICATION: Notice of the admissions and sanctions be provided to all provincial institutes, and to those provincial institutes applied to in the future, the Institute of Chartered Accountants of Bermuda and to anyone who directs an enquiry to the Institute about the discipline history of the CA. Notice of the restriction shall be published once in the Membership Activity Report, and notice of the admissions, the nature of the conduct and orders made in connection therewith be provided to all CAs in the monthly general mailing and on the Institute website.

REFERENCE: DT 07

DESCRIPTION: In February 1999 the ICAA conducted an initial practice review on the CA's office. The Practice Review Committee found that the firm was not in compliance with professional standards and directed that a first follow up practice review was to be scheduled. The first follow up practice review was conducted, and once again the Committee found that the firm was not in compliance with professional standards and ordered a second follow up practice review. The second follow up practice review was conducted, and the Committee found the firm in compliance with professional standards. The CA received written notification of the results of the second follow up review, and was advised that the next review would be in its normal four-year cycle from the initial practice review. A year later the CA received written notification that a practice review would be scheduled and given a time frame. Numerous unsuccessful attempts were made to schedule the practice review dates.

FINDINGS: The Discipline Tribunal found the CA guilty of unprofessional conduct in having failed to cooperate during 2003 in a practice review as required under Part 4 of the *Regulated Accounting Profession Act*.

REASONS: Considerable evidence was given by witnesses called by CIC counsel detailing the efforts of Institute staff to schedule the 2003 practice review. The CA admitted that he failed to fully cooperate in a review of his practice. The conduct of the CA concerning this matter was unprofessional. His attitude showed no respect for several of the Institute staff or the institute itself as a regulated governing body. At the hearing he showed no remorse for his actions.

ORDERS: The CA was prohibited from engaging in a public accounting practice unless he is under the supervision of a Chartered Accountant approved by the CIC Chair, such supervision is to include at least:

- Review of working paper files prior to release of a financial statement and corporate income tax returns,
- The compliance of the CA with the recommendations of the supervisor.

This supervision is to continue until the CA successfully completes the Practice Review cycle of 2003. The CA was also ordered to pay a fine of \$2,000 and \$4,500 towards the costs of the investigation and hearing.

[The hearing was completed in 1 day and costs totalled 8,986.]

REASONS: The actions of the CA were of a serious and unprofessional nature. The Institute has a responsibility to regulate its members and has to be able to rely on the cooperation of the members involved. It must be made clear that failure to co-operate with the practice review requirements is unacceptable to the membership of our Institute.

**SUMMARY OF FINDINGS OF
UNPROFESSIONAL CONDUCT Section F
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The CA showed no respect for the staff or the Institute of Chartered Accountants of Alberta. Consequently a fine of \$2,000 was assessed. The Tribunal balanced the need to assess costs to the member whose actions and behaviour led to the incurrence of costs and the financial difficulties cited by the member.

PUBLICATION: To all provincial institutes, and to those to which the CA applies for membership at any time in the future, to chartered accountants by inclusion in the general mailing, an insertion in the "Membership Activity Report", to any member of the public enquiring about the discipline history of the CA, and notice of the findings, nature of conduct and orders made were published on the ICAA website on a no name basis.

REASONS: The Discipline Tribunal ordered the mandatory publication requirements. The Tribunal ordered publication on the ICAA Website on a no name basis for the purpose of ensuring the findings and orders were made available to all members of the ICAA.

REFERENCE: DT 08

FACTS: The CA entered into an agreement with a corporation for the purpose of finding investors in China to provide investment funds to the Corporation. The investment was to be done through a government program and was to facilitate immigration to Canada by Chinese residents. The CA received significant funds often in cash, which he then arranged to have removed from China to Hong Kong and then to Canada or other locations. The funds were removed from China without the knowledge of the authorities and the CA did not maintain or secure records indicating from whom the funds were received or their eventual disposition.

ADMISSION: The CA admitted guilt of unprofessional conduct in having, with respect to his involvement in an investor program having failed to maintain the good reputation of the profession and its ability to serve the public interest, in that the Investor Program sold approximately 38 preferred shares on behalf of a Corporation to immigrant investors although he:

1. failed to ensure that the Investor Program maintained and/or safeguarded records of the transactions entered into on behalf of the immigrant investors, and
2. failed to ensure the transfer of cash from the People's Republic of China was done in a manner that safeguarded the funds and complied with all applicable law.

SANCTION: The registration of the CA was cancelled and he was ordered to pay the costs of the investigation and a fine of \$882.17

[Costs of the investigation totalled \$1,887.83]

PUBLICATION: The admissions and the terms of the sanction agreement were published to all provincial institutes, and to those provincial institutes applied to in the future, the Institute of Chartered Accountants of Bermuda, and to anyone who directs an enquiry to the Institute about the discipline history of the CA. Notice of the cancellation was published once in the Membership Activity Report. Notice of the cancellation, the nature of the conduct and the terms of the sanction agreement were provided to all Chartered Accountants in the monthly mailing and on the Institute web site on a named basis, and the fact of the cancellation as a result of discipline proceedings was published in the business section of the *Edmonton Journal*.

Issued June 2004

REFERENCE: DT 09

FACTS: The CA was the engagement partner for an audit of a listed entity. The national firm issued an unqualified auditor's report on the financial statement which showed net earnings of \$3 million and retained earnings at year end of \$4 million. CCRA conducted a payroll audit and found that an error in the recording of payroll expenses caused earnings before income taxes to be overstated by approximately \$1.75 million. The national firm confirmed the CCRA audit findings and withdrew its auditors' report on the financial statements. Restated financial statements were issued showing a net loss of \$14 million and a deficit at year end of \$16 million - the result of numerous adjustments.

ADMISSION: The CA admitted guilt of unprofessional conduct in having, with respect to the audit of the financial statements of a public company for the 1997 1998 fiscal year and issuance of an unqualified auditors' report thereon when :

1. he failed to comply in all material respects with the generally accepted auditing standards of the profession including those set out in the CICA Handbook as amended from time to time in that he failed:
 - (a) to appropriately take into account the high risk of the client in the design and implementation of audit tests, and
 - (b) failed to obtain sufficient appropriate audit evidence to support the content of the report;
2. the financial statements failed to comply with generally accepted accounting principles including the Recommendations set out in the CICA Handbook as amended from time to time in that the financial statements:
 - (a) did not properly reflect the assets acquired and debt incurred pursuant to three agreements for the purchase of assets; and
 - (b) improperly recorded as sales, contracts with three clients which included a guaranteed repurchase price to the purchaser contrary to the recommendations of EIC-84;
3. he associated himself with financial statements that he knew or ought to have known were false and misleading in that the financial statements
 - (a) understated payroll expenses by approximately \$1.4 million; and
 - (b) understated interest expense by \$360 thousand related to a receivable in a foreign currency; and
 - (c) failed to comply with generally accepted accounting principles as specified in paragraph 2; and
4. he failed to perform his professional services with integrity and due care in that he continued to act for the client despite the concerns expressed by staff on the engagement team and the assessment of high risk.

SANCTIONS: The CA agreed that his registration as a chartered accountant would be suspended for six months, and following the suspension that his audit practice in Alberta would be under supervision of a Chartered Accountant. The supervisor will, prior to issuance, review all working paper files and financial statements of all audit engagements and the CA will comply with the recommendations of the supervisor. The CA must complete a professional ethics course and pay the costs of the investigation.

PUBLICATION: The admissions of unprofessional conduct, the sanctions made and the terms of the sanction agreement were published to all provincial institutes, the Institute of Chartered Accountants of Bermuda, the South African Institute of Chartered Accountants, to any provincial institute to which the CA applies in the future. The terms of the sanction agreement and the nature of the conduct were published on the Institute's public web site and to all Chartered Accountants in a general mailing by the Institute. The notice of the suspension resulting from discipline proceedings was published in the Membership Activity Report and in the business section of the *Edmonton Journal*.

REFERENCE: DT 10

FACTS: The Practice Review Committee complained that on three consecutive reviews, the CA failed to meet professional standards, sustain his professional competence, performed an engagement without qualification, failed to document work and failed to perform sufficient enquiries and analytical procedures to support the opinion given.

ADMISSION: The CA admitted that he was guilty of unprofessional conduct in that he:

1. failed to keep himself properly informed of and in compliance with developments in professional standards in accounting and auditing;
2. issued auditor's reports on the financial statements of two private companies in 2003, although he failed to document or retain documentation to show that he complied with generally accepted auditing standards;
3. issued a review engagement report without qualification on the financial statements of a private company in 2003 although the financial statements did not comply with generally accepted accounting principles in that the 33.34% investment of a related company was recorded using the cost method, and he failed to document or retain documentation to show he complied with generally accepted standards for review engagements to assess the plausibility of the financial statements or, in the alternative, failed to perform sufficient enquiries and analytical procedures to support the opinion given; and
4. issued a review engagement report on the financial statements of a company in 2003 although he failed to perform sufficient enquiries and analytical procedures to support the opinion given

SANCTIONS: The CA agreed to a written reprimand, that his practice be under the supervision of a Chartered Accountant who will, prior to issuance, review all working paper files and financial statements, and to pay the costs of the investigation, hearing and compliance with the orders.

PUBLICATION: The admissions and the terms of the sanction agreement were published to all provincial institutes, the Institute of Chartered Accountants of Bermuda and to those provincial institutes applied to in the future, to anyone who directs an enquiry to the Institute about his discipline history and on the Institute's public website. Notice of the admissions, nature of the conduct and sanctions ordered were published to all Chartered Accountants in a general mailing. Notice of the restriction was published once in the Membership Activity Report.

REFERENCE: DT 11

DESCRIPTION: A public accounting firm complained about the conduct of a CA who had left their employ. The CA had rented a vehicle and had incurred costs for three nights lodging under the name of the accounting firm after his employment had ended. When relocating to a different city, the CA included a television belonging to the firm with his personal belongings and retained possession of the television for a year before it was returned. The CA had agreed to a repayment plan for moving expenses owed to the public accounting firm, however the cheques written to the firm were not honoured by the Bank.

FINDINGS: The CA was found guilty of unprofessional conduct in having:

- Signed a vehicle rental agreement on behalf of the former employer without their knowledge and consent,
- Moved a television owned by the former employer without their knowledge or consent,
- Stayed at a bed & breakfast after he left the employee of the public accounting firm without advising the owner that he was no longer employed by the firm and/or making arrangements with the owner to personally pay for his lodging, and
- Associated himself with false and misleading documents by providing post-dated cheques to repay moving expenses while failing to ensure funds were deposited to the account on which the cheques were drawn, and signing the rental agreement on behalf of former employer.

REASONS: The complainant and the owner of the bed & breakfast gave evidence which conflicted with the explanations supplied by the CA in a memo to the Institute. The Tribunal accepted the sworn evidence given by the witnesses concerning the rental of the vehicle, the CA's possession of the television and the lodging bill. It was clear that, at the time, the CA made no arrangements to pay for the vehicle rental or the lodging bill. The complainant also provided evidence of the moving expenses advanced to the CA and the repayment conditions which applied. At the time of the hearing the CA had made restitution for the vehicle rental and the bed & breakfast. The CA did not attend the hearing.

ORDERS: The Discipline Tribunal ordered that the CA be reprimanded in writing by the Chair of the Discipline Tribunal. The Tribunal further ordered the CA to make full restitution for the moving expenses to the public accounting firm in the amount of \$6,150.89. The Discipline Tribunal also ordered the CA to pay 100% of the costs of investigation and hearing and a \$5,000.00 fine. Further non-compliance with the orders would result in cancellation of registration.

[The hearing was completed in 1 day and costs totalled 6,115.27]

**SUMMARY OF FINDINGS OF
UNPROFESSIONAL CONDUCT Section F
RAPA**

REASONS: The Discipline Tribunal was of the opinion that it is not acceptable for a Chartered Accountant to acknowledge and issue payment for a debt, have the payment dishonoured, and make no effort to resolve the situation. The Tribunal ordered a written reprimand in order to impress upon the CA the seriousness of the Tribunal findings of unprofessional conduct. The fine was imposed to reflect the seriousness of the conduct and the Tribunal ordered 100% of the costs recognizing that the costs resulted from by the unprofessional conduct of the CA and his uncooperative behaviour with the Institute as shown by his non attendance at the hearing.

PUBLICATION: The Tribunal ordered that notification of its findings and orders be provided to all provincial institutes, the Institute of Chartered Accountants of Bermuda, the Institute of Chartered Accountants of Scotland, and any other professional organization the CA belongs to and that the Institute is aware of; and to all provincial institutes to which the CA applies for membership at any time in the future; a summary of the Tribunal's findings and orders be provided to any member of the public who makes a written request about the discipline history of the CA; and a summary of the Tribunal's findings, the nature of the conduct, and any orders made as a result of the findings be published on the ICAA public website on a named basis. In addition, the Tribunal ordered publication of the findings, nature of conduct and sanctions ordered be provided to his current employer, and publication of the nature of the sanctions was ordered in the business section of the *Northern News* and the *Nunatseq News*, and that more information can be obtained from the Institute.

REASONS: The Discipline Tribunal felt it was important for members of the ICAA to be aware of the decision and order of the Tribunal, and that matters of an unprofessional conduct were taken seriously.

REFERENCE: DT12

DESCRIPTION: The CA was the engagement partner in a public accounting firm that had performed review engagements and provided business and accounting advice for a long term client, a private corporation and its shareholders.

The corporation entered into discussions with an interested party to sell the business. Talks continued for approximately 9 months before the corporation discontinued the unsuccessful negotiations. The CA provided advice to the corporation client throughout the negotiation period. When advised that the negotiations were unsuccessful, some of the partners of the public accounting firm expressed an interest in purchasing the shares of the corporation through a numbered company. The CA informed the clients that he was not able to advise them with respect to the sale and that he would have a broker contact them. The brokerage firm entered into negotiations to buy the shares of the corporation and an Offer to Purchase was accepted on December 12, 2001. The Purchase Agreement provided that \$50,000 be payable to the brokerage firm. The principals of the brokerage firm were partners in the public accounting firm or related to partners of the firm.

FINDINGS: The CA was found guilty of unprofessional conduct in failing to advise all interested parties in a transaction that the principals of a brokerage firm, which earned a commission on the sale of shares in the client's company, were partners in the public accounting firm or persons related to partners of the firm.

REASONS: The CA was the engagement partner for the corporation and its shareholders for many years and enjoyed a close professional relationship with these clients. It is clear that the clients trusted and relied upon his advice. The discipline tribunal found that the engagement of the brokerage firm was not necessary, and may not have been to the client's advantage. The CA caused or allowed his clients to enter into the contract with the brokerage firm to provide certain services for a fee, but he failed to disclose to the corporation and its shareholders the fact that the brokerage firm was owned by some of the partners of the public accounting firm. That contract allowed financial advantages to be gained by the CA and his partners. Such behavior is detrimental to the best interests of the public and harms the integrity of the accounting profession.

ORDERS: The Tribunal Ordered that the CA be reprimanded in writing by the Chair of the Discipline Tribunal. The CA was also to pay a fine in the amount of \$1,000.00 and 50% of the costs of the hearing and investigation.

[The hearing was completed in 2 day and costs totalled \$23,910.61]

**SUMMARY OF FINDINGS OF
UNPROFESSIONAL CONDUCT Section F
RAPA**

REASONS: The written reprimand and fine were given to emphasize the serious nature of the unprofessional conduct in failing to make full, frank, and timely disclosure to a client of the involvement of partners or persons closely associated with partners in a transaction with that client.

PUBLICATION: The Tribunal ordered that notification of its findings and orders be provided to all provincial institutes, the Institute of Chartered Accountants of Bermuda, and any other professional organization the CA belongs to and that the Institute is aware of; and to all provincial institutes to which the CA applies for membership at any time in the future; a summary of the Tribunal's findings and orders be provided to any member of the public who makes a written request about the discipline history of the CA; and a summary of the Tribunal's findings, the nature of the conduct, and any orders made as a result of the findings be published on the ICAA public website on a named basis.

REASONS: Mandatory disclosure under the Act and bylaws is adequate. In the Tribunal's judgment the public interest does not require any further publication.

REFERENCE: DT 13

FACTS: The investigated party held two designations, Chartered Accountant and Barrister & Solicitor. The Law Society found the CA guilty of five citations regarding the conversion of funds, knowingly assisting a client in making trades who was the subject of a Cease Trade Order, engaging in loan transactions without proper documentation and failing to comply with the requirements of the *Proceeds of Crime (Money Laundering) Act*. He was suspended by the Law Society for two years.

ADMISSION: The CA admitted that he was guilty of unprofessional conduct in that he:

1. wrongfully converted trust funds by writing trust cheques before sufficient funds were deposited in his trust account,
2. assisted a client to purchase 76000 shares in a company from an individual whom he knew or ought to have known was the subject of a Cease Trading Order issued by the Alberta Securities Commission,
3. engaged in loan transactions to clients, friends and family members and investing those funds in securities without
 - a. providing proper documentation of
 - i. the loan agreements or loan schedules
 - ii. trust agreements
 - b. preparing proper accounting for those transactions such that he was able to readily determine which shares belonged to whom; and,
4. invested \$34,000.00 of a client although
 - a. he was not authorized to invest the funds,
 - b. there was no trust document that indicated these funds belonged to the client,
 - c. he failed to prepare or provide an accounting of the investment to the client.

SANCTIONS: Acceptance of the resignation, in lieu of cancellation, from the Institute of Chartered Accountants of Alberta on a permanent basis.

PUBLICATION: The admissions and the terms of the sanction agreement were published to all provincial institutes, and to those provincial institutes applied to in the future, the Institute of Chartered Accountants of Bermuda, and to anyone who directs an enquiry to the Institute about the discipline history of the CA. Notice of the resignation was published once in the Membership Activity Report. Notice of the resignation, the nature of the conduct and the terms of the sanction agreement were provided to all Chartered Accountants in a monthly mailing and on the Institute web site on a named basis, and Notice to all accounting clients and former accounting clients by letter approved and mailed by the Institute.

REFERENCE: DT 14

DESCRIPTION: The CA also held a Masters degree in Divinity. He chaired an ad hoc committee formed to determine the viability of a Christian retail book store. The committee feasibility report was accepted and a joint venture was formed as an interim operating model to eventually become a cooperative. The CA used his ethics company to handle the monies of the joint venture. Agreements between the joint venture participants, the ethics company and life centre, were drawn up but were not signed. Fund raising by the members of the joint venture, donations and the sale of preferred shares resulted in deposits to the ethic bank account of \$79,725.85. Prior to the first deposit by the joint venture the ethics company bank account was overdrawn \$48,797.06. Joint venture members met regularly to discuss progress over a six month period. Financial information was repeatedly requested from the CA who presented a statement of cash flow in May, 2002, for the period January to May, 2002. The statement did not show any payments to the CA's consulting company, nor the payment of any expenses unrelated to the joint venture. In May, 2002 the joint venture ceased when the book store was incorporated as a cooperative. All joint venture funds were to be transferred to the cooperative. In June, 2002 at the general meeting of the cooperative, the CA presented a cash flow statement for the period January to June, 2002. This statement showed expenses for "contracted services" showing that \$12,840 had been paid to the CA's consulting company. The CA's report "Summary of Succession Plan Costs to June 10, 2002" shows an amount of \$2,140 accrued to the consulting company monthly since January, 2002. An invoice dated June, 2002 was prepared and paid from the joint venture/cooperative bank account without review or approval from the other joint venture/cooperative participants. The new Board of the cooperative directed that all contracts negotiated prior to June 10, 2002 had to be ratified by the new board. The CA was directed to submit a statement of his time and charges as presented in his report. He was told to deposit all funds held "in trust" on behalf of the joint venture/cooperative. The CA prepared and paid two further invoices directed to the cooperative for his services after June 10, 2002.

FINDINGS: The CA was found guilty of unprofessional conduct in that he:

- Utilized the funds of the Joint Venture/Cooperative to reduce the line of credit of his company also reducing its interest expenses without advising and receiving the consent of the Joint Venture/Cooperative,
- Appropriated funds of the Joint Venture/Cooperative to pay his consulting company although:
 - The consulting company had no understanding with the Joint Venture/Cooperative as to the services to be performed and the costs to be incurred,

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- No billing had been rendered,
- Prior to June, 2002 no one associated with the Joint Venture/Cooperative other than the CA knew of, or approved any payments, and
- After June 10, 2002 he was aware the board questioned the payments he had received.
- Placed himself in a conflict of interest position by paying his consulting company when there was no agreement authorizing the retainer, no clear agreement as to what services were to be rendered and what the basis for payment was; and no independent approval of the amounts being paid to him;
- Appropriated funds of the Joint Venture/Cooperative to pay expenses of the his ethics company in the amount of \$6,186.41;
- Associated himself with false and misleading financial statements and detailed general ledger of the Joint Venture for the period January 1, 2002 to May 2, 2002 in that these financial records did not disclose payments made to his consulting company of \$13,168.00; and
- Failed to fully and properly account for the funds held by him as trustee.

REASONS: Prior to the Joint Venture deposits, the ethics company was in an overdraft of \$48,797.06. Without notice to members of the Joint Venture, the CA deposited the fundraising and donations received to the ethics company account reducing the overdraft and the interest charges on the overdraft. The evidence showed that there was no signed agreement regarding the professional services or the fees to be paid to the CA or his consulting company. Evidence was given that cheques were written and amounts withdrawn from the ethics company bank account that were not related to the operations of the Joint Venture. The statement of cash flows presented to the Joint Venture in May, 2002, did not include the payments made or accrued to the CA or his consulting firm. The bank balance reported on the bank statement did not agree to the statement of cash flows. Evidence was given, and accepted by the tribunal that a trust relationship was established between the members of the Joint Venture/Cooperative. The accounting records prepared by the CA were entitled "Trust Account" confirming that the CA was aware of his position as trustee.

ORDERS: The registration of the CA was cancelled.
[The hearing was completed in four days and costs totalled \$35,467.90]

REASONS: The CA's actions were a serious breach of trust conditions in the handling of funds placed in his possession. To maintain the public's confidence in the profession, the tribunal believed that the CA should not be able to continue to represent himself as a "Chartered Accountant".

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Notwithstanding that no formal written agreement was signed, the complainant was entitled to rely on the fiduciary duties of a qualified chartered accountant in a position of trust to carry out his responsibilities to invest trust funds given to him.

The misbehaviour in the mismanagement of trust funds by the CA was blatant and tarnished the image and good reputation of the profession. The Tribunal did not order a financial sanction or the assessment of costs due to compassionate reasons.

PUBLICATION: The Tribunal ordered that notification of its findings and orders be provided to all provincial institutes, the Institute of Chartered Accountants of Bermuda, any other professional organization the CA belongs to and that the Institute is aware of; to all provincial institutes to which the CA applies for membership at any time in the future, and to any member of the public who directs an enquiry to the Institute about the discipline history of the CA; and that the notice of cancellation, the nature of the conduct and orders made be provided to all chartered accountants by way of inclusion in the ICAA general mailing to members. In addition, notice of the cancellation be inserted in the "Membership Activity Report" and published in the business section of the *Edmonton Journal*, and that more information can be obtained from the Institute; and notice of the tribunals findings, nature of conduct and orders made be published on the ICAA website on a named basis.

REASONS: The primary objective of publication is protection of the public interest and the publication requirements in the case of a cancellation of registration are, for the most part, prescribed.

APPEALS: Findings and orders were appealed to an appeal tribunal. The appeal tribunal ordered compliance with resolution 25.1.5 and required a transcript of the proceedings before the Discipline Tribunal or portions of the transcript that the parties to the appeal agree upon to be filed. The appeal hearing was adjourned in order to give the appellant time to obtain the transcript. No transcript was ordered and on application by counsel for the Complaints Inquiry Committee of the Institute [CIC], the appeal was struck and the decision of the Discipline Tribunal was confirmed.

REASONS: The appeal tribunal felt that a transcript of the discipline tribunal proceedings was critical to the appeal hearing and ordered the appellant to provide a full transcript of the hearing, or to contact counsel for the CIC to discuss limiting or eliminating the transcript. The appeal was struck when the Appellant made no attempt to contact counsel for the CIC, even though such communication was necessary to further his appeal.

COURT: A Notice of Appeal was filed with the Court of Appeal of Alberta, however the appeal was abandoned on the death of the appellant.

REFERENCE: DT 15

FACTS: The CA's professional corporation was in a 50/50 partnership in a Public Accounting Firm. A CGA offered to purchase the CA's interest in the firm. No agreement was reached and the CA requested his partner buy him out. The partner declined for financial reasons. The firm continued to operate, however the CA started providing accounting services through his professional corporation and informed his partner that the partnership would be dissolved.

ADMISSION: The CA admitted that he was guilty of unprofessional conduct

- 1) in having failed to perform his fiduciary responsibility to the partnership, with integrity and due care by failing to maintain separate records for the partnership distinct from the records of his professional corporation and failing to maintain reliable financial records for the partnership;
- 2) associating himself with financial statements which he knew or should have known were false and misleading in that he associated himself with three versions of financial statements for the partnership for each of the three years ending December 31, 2001 and December 31, 2002 although none of the financial statements indicated that previous financial statements had been issued, that financial statements had been amended or the reasons for any amendment.

SANCTIONS: The CA agreed to be reprimanded by the CIC Chair and ordered to pay 70% of the costs of the investigation.

[Costs totaled \$ 1947.06]

PUBLICATION: The admissions and the terms of the sanction agreement were published

- to all provincial institutes,
- to the Institute of Chartered Accountants of Bermuda,
- to the Financial Planners Standards Council,
- to any other professional organization to which the CA belongs,
- to all provincial institutes applied to in the future,
- to anyone who directs an enquiry to the Institute about his discipline history and
- published on the Institute's public website.

REFERENCE: DT 16

FACTS: The CA was CFO for an enterprise developing a slate mining operation in BC, and was to be responsible for preparing cash flow forecasts and assisting in raising the required funding. He prepared, along with company executives, an "Investment Opportunity" document, including financial forecasts produced by the Company for the purpose of raising funding for the project. The documents referred to several items including forecasts that were attributed to the project Engineer who accused the CA of making inappropriate use of very preliminary information. When cash resources were exhausted the project ceased operation. The Investor group commenced litigation against company executives including the CA.

ADMISSION: The CA admitted that he was guilty of unprofessional conduct as CFO as he failed to ensure that the future-oriented financial information for three years ended December 31, 2001, December 31, 2002 and December 31, 2003 included a Notice to Reader page and a Significant Assumption page, and failed to disclose:

- a cautionary note that actual results achieved for the period covered could vary materially,
- whether the financial information was a forecast or a projection,
- the effective date of the underlying assumptions,
- whether the entity intended to update the future-oriented financial information subsequent to issuance, and
- the significant assumptions underlying the future-oriented financial information,

as required by Section 4250 of the CICA Handbook.

SANCTIONS: The CA was ordered to take the Handbook Refresher or Handbook Refresher for Members in Industry Course within one year of becoming a CFO, and to pay a fine of \$1000.00 and 100% of the costs of the investigation.

[Costs totaled \$ 2784.36]

PUBLICATION: The admissions and the terms of the sanction agreement were published

- to all provincial institutes,
- to the Institute of Chartered Accountants of Bermuda,
- to any other professional organization to which the CA belongs,
- to all provincial institutes applied to in the future,
- to anyone who directs an enquiry to the Institute about his discipline history, and
- on the Institute's public website.

REFERENCE: DT17

DESCRIPTION: Two individuals were each 50% shareholders in two corporations. A "shotgun" clause in the shareholder agreement was exercised. It was rejected by the shareholder, who then purchased his partner's shares on the same terms, with financial backing from the CA. The transaction became effective November 9, 2000. On that date, the CA's firm took over as accountant to the corporations over the objections of the former partner. The terms of purchase contemplated that adjustments would be determined and if not agreed to then to be arbitrated. At the end of 2000 the two corporations were amalgamated and the CA acquired 50% of the shares. In 2000, the former partner filed a complaint with the Institute in respect of the CA resulting in a letter of admonishment from the Chair of the Professional Conduct Committee.

The CA, on behalf of his firm signed Notices to Reader attached to the financial statements for the two corporations for the year ended September 30, 2000. The adjustments to the financial statements went to arbitration. The CA filed written submission arguments on behalf of his partner.

FINDINGS: The CA was found guilty of unprofessional conduct in having performed a compilation engagement to prepare the financial statements for the two corporations for the year ended September 30, 2000 although:

- a. he acted as a advocate for the purchasing shareholder on the negotiations and arbitration,
- b. his appointment was challenged by the vending shareholder,
- c. his Notice to Reader failed to disclose the nature and extent of his interest and involvement as he would not be seen as objective by a reasonable observer, and
- d. he had been previously admonished by the Chair of the Professional Conduct Committee for his involvement in the matter.

REASONS: The letter of admonishment directed to the CA expressed three concerns, incomplete disclosure of his involvement with the companies, accepting a notice to reader engagement in an adversarial buy-sell situation where he had financial interest and continuing the engagement when strong opposition was voiced. The Tribunal found that the CA failed to be forthright in his conduct. The Notices to Reader failed to disclose that the CA provided the purchase funds to complete the transaction, to disclose the extent of his shareholdings and loans in the amalgamated company, or to disclose that he was a Director in the companies on which he reported. The CA continued to act as an advocate for the purchasing shareholder after the date of admonishment by the Chair of the CIC.

**SUMMARY OF FINDINGS OF
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- ORDERS:** The Tribunal Ordered that the CA be reprimanded in writing by the Chair of the Discipline Tribunal, to pay a fine in the amount of \$5,000.00 and 100% of the costs of the hearing and investigation.
[The hearing was completed in 2 days and costs totalled \$35,962.82]
- REASONS:** The Tribunal directed a written reprimand and fine be applied to emphasize the serious nature of the unprofessional conduct. A review of all evidence was necessary to arrive at the findings and orders made, therefore 100% of the costs is appropriate in recognition that these costs were as a result of the unprofessional conduct of the CA.
- PUBLICATION:** The Tribunal ordered that notification of its findings and orders be provided to all provincial institutes, the Institute of Chartered Accountants of Bermuda, and any other professional organization the CA belongs to and that the Institute is aware of; and to all provincial institutes to which the CA applies for membership at any time in the future; a summary of the Tribunal's findings and orders be provided to any member of the public who makes a written request about the discipline history of the CA; and a summary of the Tribunal's findings, the nature of the conduct, and any orders made as a result of the findings be published on the ICAA public website on a named basis.
- REASONS:** The Discipline Tribunal felt it was important for the members of the ICAA to be aware of the decision and orders and that matters of unprofessional conduct were taken seriously.
- APPEALS:** The order for costs was appealed to an Appeal Tribunal. The Appeal Tribunal varied the order of costs awarded by discipline tribunal and ordered that the CA pay 40% of the costs of the investigation and hearing.
- REASONS:** From a review of the discipline hearing transcript, the Appeal Tribunal found that a substantial portion of the hearing dealt with a second charge on which the CA was found not guilty, and granted some relief from the costs assessed by the discipline tribunal.

REFERENCE: DT18

DESCRIPTION: The CA was a contract practice reviewer with the Institute of Chartered Accountants of Alberta. The CA performed a practice review on a public accounting firm where he reviewed the financial statements and working papers for the audit of a company. The CA subsequently hired, on a contract basis, a CA who had previously been an employee of the public accounting firm where the CA performed the practice review. The CA's firm, through the contracted CA, was approached by an individual and a company, both clients of the public accounting firm where he had performed the practice review. The CA's firm submitted a proposal to do the company audit with the understanding that the CA would do the audits but the contracted CA would do much of the work.

FINDINGS: The CA was found guilty of unprofessional conduct by bringing the practice review program into disrepute by:

- a. submitting an audit proposal to perform the audit of a company although, while engaged as a practice reviewer, he reviewed the working papers for the audit of the company in which he saw relevant information for a proposal,
- b. entering into an arrangement with the contracted CA subsequent to a complaint, whereby he stood to benefit from the audit of a company by
 - i. providing his audit staff to the contracted CA, and
 - ii. reviewing the financial statements and working paper files of the company although this breached the spirit of his practice review contract which stated
"14. the practice reviewer will not accept a client of any practicing offices reviewed as a contract practice reviewer for a period of one year after the ICAA Practice Review Committee decision regarding adherence to professional standards".
- c. accepting an engagement to perform specified auditing procedures on the trust account of an individual although this acceptance breached clause 14 of his practice review contract

REASONS: The Discipline Tribunal considered two areas: the practice review contract with the Institute of Chartered Accountants of Alberta and the nature and timing of attest work performed by the CA on two separate matters. The audit for the company and the accounting services provided for the individual violated clause 14 of the practice review contract. Further the CA entered into an arrangement with the contracted CA whereby he stood to benefit from the audit of the company.

ORDERS: The CA was ordered to complete a course on ethics, was prohibited from performing practice reviews for the Institute for two years, and ordered to pay a fine in the amount of \$3,000.00 and 20% of the costs of the hearing and investigation up to \$3,000.00

**SUMMARY OF FINDINGS OF
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[The hearing, jointly with DT 19 was completed in 3 days and costs totalled \$22,015.18]

REASONS: The Tribunal directed a fine be applied to emphasize the serious nature of unprofessional conduct, however considered that the allocation of costs and a capping of the costs is fair and reasonable.

[Hearing costs included the concurrent hearing of charges against the contracted CA, who was found guilty of unprofessional conduct and assessed costs of \$12,000.]

PUBLICATION: The Tribunal ordered that notification of its findings and orders be provided to all provincial institutes, the Institute of Chartered Accountants of Bermuda, and any other professional organization the CA belongs to and that the Institute is aware of; and to all provincial institutes to which the CA applies for membership at any time in the future; a summary of the Tribunal's findings and orders be provided to any member of the public who makes a written request about the discipline history of the CA; and a summary of the Tribunal's findings, the nature of the conduct, and any orders made as a result of the findings be published on the ICAA public website on a named basis.

REASONS: Mandatory disclosure under the Act and bylaws is adequate.

APPEALS: A notice of appeal was filed and then discontinued by the CA.

REFERENCE: DT19

DESCRIPTION: The CA was employed with a public accounting firm and had signed an employment contract. During her employment the public accounting firm had a practice review. Her employment was subsequently terminated and while she was attempting to build her own practice, she was hired on contract by the CA who had completed the practice review. She asked her former employer to waive a condition of her employment contract and was denied. Two clients that the CA had done work for during the course of her employment approached her to perform their engagements. She referred them to the CA firm where she was under contract, with the understanding that her employer would do the audits, but that he would retain her on a contract basis to do much of the work. The CA contacted a number of clients of her former employer following her termination. She did not send notice and waiver letters. She advised that she completed accounting work for two other former clients besides the two that had approached her.

FINDINGS: The CA was found guilty of unprofessional conduct in having failed to fulfill her duties to her employer or previous employer with integrity by:

- failing to fulfill the terms of her employment contract, and
- working together with another CA to frustrate her employment contract.

REASONS: In her handling of her relationship with her previous employer the CA failed to act with integrity by failing to honour certain clauses of her employment contract by contacting former clients, not making the payments to the former employer as required by the contract, and failing to provide notice and request a waiver on a company audit. She referred clients to the CA firm where she was now under contract, but she continued to provide professional services to the clients in an overt attempt to disguise or minimize her role by involving the CA firm as the ostensible provider of attest services.

ORDERS: The CA was ordered to complete a course on ethics and pay a \$1,000 fine and 80% of the costs of the hearing and investigation up to \$12,000.00

[The hearing, jointly with DT18, was completed in 3 days and costs totalled \$22,015.18]

REASONS: The Tribunal directed a fine be applied to emphasize the serious nature of unprofessional conduct, however considered that the allocation of costs and a capping of the costs is fair and reasonable. [Hearing costs included the concurrent hearing of charges against the contracting CA, who was found guilty of unprofessional conduct and assessed costs of \$3,000.]

**SUMMARY OF FINDINGS OF
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PUBLICATION: The Tribunal ordered that notification of its findings and orders be provided to all provincial institutes, the Institute of Chartered Accountants of Bermuda, and any other professional organization the CA belongs to and that the Institute is aware of; and to all provincial institutes to which the CA applies for membership at any time in the future; a summary of the Tribunal's findings and orders be provided to any member of the public who makes a written request about the discipline history of the CA; and a summary of the Tribunal's findings, the nature of the conduct, and any orders made as a result of the findings be published on the ICAA public website on a named basis.

REASONS: Mandatory disclosure under the Act and bylaws is adequate.

REFERENCE: DT20

DESCRIPTION: The CA was a sole practitioner in a rural community. Although he had health issues, he agreed to provide professional services for an estate. The tax returns for the estate and the deceased were not filed during the required time, and a cheque given by the executor of the estate was not remitted. The CA failed to return the executor's phone calls, and failed to keep appointments with the executor. He advised the executor that the returns were filed, when they were not and made numerous promises for completion dates, all of which were ignored.

FINDINGS: The CA was found guilty of unprofessional conduct with respect to professional services provided between 2002 and 2004 for the estate in having:

1. failed to maintain at all times the good reputation of the profession by
 - a) failing to prepare tax returns on a timely basis for the deceased and the estate,
 - b) failing to remit a cheque payable to Canada Revenue Agency for payment of the taxes owing for the 2001 T1 Terminal return,
 - c) failing to return telephone calls on December 16, 2003,
 - d) failing to keep an appointment made on December 15, 2003 to deliver the tax returns of the estate,
2. associated himself with false and misleading statements by
 - a) advising on February 23, 2004 that the tax returns for the estate had been filed although the returns had not been completed,
 - b) failing to fulfill promises made:
 - On Dec 12, 2003 that he would complete tax returns over the weekend and that they could be picked up on Dec 15, 2003 at 10 am
 - On April 28, 2004 that he would complete tax returns that afternoon and deliver them
 - On May 6, 2004 that tax returns would be completed on or before May 7, 2004
 - On May 7, 2004 that tax returns to Canada Revenue Agency would be mailed on May 10, 2004
 - On July 12, 2004 that he would complete tax returns that day and deliver copies
 - On July 13, 2004 that he would complete tax returns that afternoon or the next day and deliver copies
 - On July 21, 2004 that he would deliver on July 22, 2004 a copy of the Rights and Things return to Canada Revenue Agency.

REASONS: The CA admitted guilt of the matters under investigation. He admitted that the service he provided to the estate was inadequate.

ORDERS: The CA was ordered to complete a Practice Management Course, to reimburse the estate the amount of the interest and penalties incurred as a result of late filing, to reimburse the Executor the costs incurred in relation to the late filing, and to pay the costs of the investigation and hearing and investigation.

The Tribunal ordered that if any of the orders given were not complied with during the time stipulated, the registration of the CA was cancelled.

[The hearing was completed in 1 day and costs totalled \$6,557.62]

REASONS: The order given of reimbursements of costs, penalties and interest incurred was unique to these particular circumstances and given to emphasize the protection of the public, by requiring a Chartered Accountant to meet an obligation that was related to his practice. It is given to remedy an act of professional misconduct and ordered to compensate the affected public for the inappropriate actions. The order for costs of the investigation and hearing is given in recognition that these costs were incurred due to the CA's unprofessional conduct.

PUBLICATION: The Tribunal ordered that notification of its findings and orders be provided to all provincial institutes, the Institute of Chartered Accountants of Bermuda, and any other professional organization the CA belongs to and that the Institute is aware of; and to all provincial institutes to which the CA applies for membership at any time in the future; a summary of the Tribunal's findings and orders be provided to any member of the public who makes a written request about the discipline history of the CA; and a summary of the Tribunal's findings, the nature of the conduct, and any orders made as a result of the findings be published on the ICAA public website on a named basis.

REASONS: It is important that members are aware that matters of an unprofessional conduct are taken seriously.

OTHER COMMENTS: The orders given were not complied with during the period stipulated and the registration of the CA was cancelled.

REFERENCE: DT21

DESCRIPTION: In 1997 the CA signed an Undertaking to the Institute of Chartered Accountants of Alberta that he would withdraw from public practice and submitted annual declarations to 2003 advising that he was not in public practice. The CA, under his own name, prepared financial statements for a individual client and his professional corporation for the years ended December 31, 1999, 2000 and 2001 as well as the related corporation income tax returns. The CA, under the name of a corporation, prepared the 1999 personal income tax return for the individual client which included a claim for an allowable business investment loss (ABIL) and a request that the claim be carried back and applied to 1998. The CA provided documentation in support of the claim which was allowed. In 2002, the Canada Revenue Agency disallowed the ABIL and loss carry back subsequent to an audit. The client was deceased and the CA assured the estate's executrix that he would take care of the reassessments, however nothing was done. The CA failed to respond to the successor accountant, and failed to respond to the Institute as required to the notice of complaints. The CA then prepared financial statements for other clients issuing a Notice to Reader, and signed a Form T engagement letter directed to the Law Society. The CA failed to cooperate with the Institute's preliminary investigator and did not attend the hearing. The CA indicated to his professional liability insurer that he had ceased public practice and allowed his policy to lapse.

FINDINGS: The CA was found guilty of unprofessional conduct in having:

1. engaged in a public accounting practice between 2000 and 2004 by
 - a. preparing a 1999 Personal Income Tax Return;
 - b. issuing a compilation engagement reports (Notice to Reader) on the financial statements for the years ended December 31, 1999, 2000 and 2001 and preparing corporate tax returns thereon;
 - c. issuing to the Law Society of Alberta a Form T report for the year ended December 31, 2001;
 - d. issuing a compilation engagement report (Notice to Reader) on the financial statements for the year ended December 31, 2002;and
 - e. issuing a compilation engagement report (Notice to Reader) on the financial statements for the period ended December 31, 2003.Although
 - i. he had provided the Institute an undertaking on July 8, 1997 that he would withdraw from public accounting practice by September 30, 1997 until such time as he had satisfied the Professional Conduct Committee that he was technically and emotionally capable of practice;

- ii. he failed to register his public accounting practice as a public accounting firm; and/or
 - iii. he failed to carry professional liability insurance;
 - iv. he associated himself with a corporation engaged in a public accounting practice.
2. associated himself with false and misleading statements advising the Institute of Chartered Accountants that he was not engaged in practicing public accounting
 - a. in a letter signed March 8, 2001;
 - b. in a letter signed June 12, 2002; and
 - c. in a letter signed May 16, 2003.
3. with respect to professional services provided between 1999 and 2004 the individual client, his professional corporation and to his estate:
 - a. failed to perform professional services with due care by
 - i. claiming a business investment loss in the 1999 T1 although the loss did not meet the requirements,
 - ii. failing to provide advice to the Executrix for the Estate regarding reassessments of the personal income tax returns,
 - iii. failing to respond to correspondence,
 - iv. failing to respond to telephone calls,
 - v. failing to complete the terminal return on a timely basis,
 - vi. failing to prepare financial statements and tax returns of the professional corporation for the years ended December 31, 2002 and December 31, 2003 on a timely basis: and
 - b. failed to sustain his professional competence by keeping informed of, and in compliance with tax requirements for Business Investment Losses
4. failed to cooperate with the preliminary investigator.

REASONS: The guilt of the CA was established because he was unresponsive in dealing with clients, the Institute, the preliminary investigator and the Tribunal. The CA breached his undertaking to withdraw from public practice and continued to act in this capacity while providing written declarations to the Institute that he was not involved in public practice. He prepared an income tax return which he knew, or should have known, did not meet the requirements of the Income Tax Act, breached Rule 409 of the Rules of Professional Conduct and was engaged in public practice with no professional liability insurance.

ORDERS: The registration of the CA was cancelled and he was ordered to pay 100% of the costs of the hearing and investigation and a \$40,000.00 fine.

[The hearing was completed in 2 days and costs totalled \$16,002.20]

- REASONS:** The Tribunal believed that the CA should not be able to continue to represent himself as a Chartered Accountant given his deliberate and unprofessional conduct to maintain the public's confidence in the profession. Failure to co-operate is unacceptable to the membership of the Institute. The fine was imposed to reflect the seriousness of the conduct and 100% of the costs was appropriate due to the fact that the costs were incurred due to his unprofessional conduct.
- PUBLICATION:** The Tribunal ordered that notification of its findings and orders be provided to all provincial institutes, the Institute of Chartered Accountants of Bermuda, any other professional organization the CA belongs to and that the Institute is aware of; to all provincial institutes to which the CA applies for membership at any time in the future, and to any member of the public who directs an enquiry to the Institute about the discipline history of the CA; and that the notice of cancellation, the nature of the conduct and orders made be provided to all chartered accountants by way of inclusion in the ICAA general mailing to members. In addition, notice of the cancellation be inserted in the "Membership Activity Report" and published in the business section of the *Calgary Herald* and that more information can be obtained from the Institute; and notice of the tribunals findings, nature of conduct and orders made be published on the ICAA website on a named basis.
- REASONS:** The publication requirements in the case of a cancellation of registration are, for the most part, prescribed. The primary object of publication is protection of the public interest.

REFERENCE: DT22

FACTS: The CA compiled financial statements, and prepared T2 Corporate Income Tax Returns, personal tax returns for the shareholders, and GST returns for long term clients. He was engaged in 1999 to bring the company records up to date to allow the client to split the company. Prior to completing the financial statements he discovered there was a substantial GST liability. The CA prepared financial statements and corporate taxes for the years 1996 to 1999, however he did not file the GST returns for the periods up to February 28, 1999 as the GST account was closed. When a GST installment payment was made by the client, CRA contacted the CA concerning the closed account and the CA advised the client not to make any GST payments and to leave things alone. CRA audited the company, and the CA prepared the GST returns for 1997 to date. The returns were submitted and the CRA demanded payment of the GST. The CA told his clients that CRA would not be able to come back on a Company if they had been struck from Corporate Registry for two years.

ADMISSION: The CA admitted that he was guilty of unprofessional conduct with respect to professional services provided in having failed at all times to maintain the reputation of the profession by:

- Failing to exercise due care and attention in the filing of GST and income tax returns.
- Failing to keep the client advised from time to time of tax owing.
- Inappropriately counseling the client not to make GST installments although the GST was in arrears.
- Inappropriately counseling the client to put stop payment on cheques issued to Revenue Canada, notwithstanding that CRA had demanded payment of the arrears.

SANCTIONS: The CA to pay the GST interest and penalties incurred for the period from June 23, 2000 to November 8, 2002, pay a fine of \$500.00; pay the costs of the investigation, and complete successfully a GST and Ethics courses;

[Costs of the investigation totalled \$2,859.35]

PUBLICATION: The admissions and the terms of the sanction agreement were published

- to all provincial institutes,
- to the Institute of Chartered Accountants of Bermuda,
- to any other professional organization to which the CA belongs,
- to all provincial institutes applied to in the future,
- to anyone who directs an enquiry to the Institute about his discipline history, and
- on the Institute's public website.

REFERENCE: DT23

FACTS: At the time the financial statements were issued, the CA, the engagement partner, was an income partner of a public accounting firm. Two issues form the basis of the complaint, the presentation of preferred shares, and the recording of unearned revenue. The successor accountant recorded prior period adjustments in the financial statements for the succeeding year. The complainant expected the CA to cover the excess costs that were incurred to correct the errors addressed by the new accountant.

ADMISSION: The CA admitted that he was guilty of unprofessional conduct in failing to maintain the good reputation of the profession at all times by issuing a review engagement report on financial statements for the year ended April 30, 2003 although the financial statements failed to comply with generally accepted accounting principles with respect to the treatment of preferred shares.

SANCTIONS: The CA is to complete the CICA Handbook Accounting Refresher course, advise the Complaints Inquiry Committee of the results of his practice review, pay a fine of \$1,000 and costs of the investigation.

[Costs of the investigation totalled \$1569.59]

PUBLICATION: The admissions and the terms of the sanction agreement were published

- to all provincial institutes,
- to the Institute of Chartered Accountants of Bermuda,
- to any other professional organization to which the CA belongs,
- to all provincial institutes applied to in the future,
- to anyone who directs an enquiry to the Institute about his discipline history, and
- on the Institute's public website.

REFERENCE: DT24

DESCRIPTION: The CA, was CEO and director of one company, President and director of another company, one of which was a Junior Capital Pool [JCP] public company and the other an operating company. The JCP intended to purchase the operating company as its qualifying transaction. The JCP lent approximately \$189,000 to the operating company, which loan was outstanding at December 31, 1997. Subsequently, legal counsel advised the JCP that this advance was not allowed under relevant securities rules. Shareholders of the operating company injected loans and it paid amounts to the JCP to extinguish the loan. The two companies had different auditors for the December 31, 1997 financial statements. In April, 1998 prior to the issuance of the financial statements of the operating company, the CA confirmed to the auditor that the amount was outstanding at December 31, 1997 but did not go on to state that it had subsequently been repaid. The CA acknowledged that at the time he signed the confirmation he knew that the loan had already been repaid.

The CA prepared the unaudited financial statements for the operating company for the three month period ending March 31, 1999. The financial statements appeared on the CA's practice letterhead. The CA did not disclose his direct and/or indirect interest in the company. The March 31, 1999 statements were produced before the finalization and audit of the December 31, 1998 statements. There was a \$155,281 difference between the opening deficit shown in the March 31, 1999 statements and the closing deficit in the final audited December 31, 1998 statements. Adjustments were made to various accounts thereby increasing the deficit in the final audited December 31, 1998 financial statements. The CA did not ensure that these necessary year-end adjustments were made when preparing the March 31, 1999 statements.

The CA prepared the unaudited financial statements for the public company for the three month period ending March 31, 1999. The March 31, 1999 statements were produced before the finalization and audit of the December 31, 1998 statements. There was a \$395,422 difference between the opening deficit shown in the March 31, 1999 statements and the closing deficit in the final audited December 31, 1998 statements. Adjustments were required to various accounts thereby increasing the deficit in the final audited December 31, 1998 financial statements. The CA did not ensure that the necessary year-end adjustments were made when preparing the March 31, 1999 statements. These unaudited financial statements were filed with the securities commission and were publicly available.

The March 31, 1999 financial statements include an asset amount of \$200,000 relating to a non-monetary sale of two locations of the operating company for \$5,000 and 45% interest in the new companies purchasing the locations. This amount should have been recorded as \$103,000, being the value of the assets sold less the cash payment.

FINDINGS: An Appeal Tribunal confirmed findings of the Discipline Tribunal that the CA was guilty of unprofessional conduct in having:

1. associated himself with a confirmation from a public company dated April 5, 1998 concerning a loan payable of \$189,467 at December 31, 1997 when he knew or ought to have known that the confirmation was false and misleading in that the loan was repaid prior to the issuance of the financial statements; and
2. associated himself with:
 - (a) financial statements of an operating company for the three months ended March 31, 1999, and
 - (b) financial statements of a public company for the three months ended March 31, 1999when he knew or ought to have known that the financial statements and/or the financial information were false or misleading.

REASONS: The CA acknowledged that he had signed the confirmation on behalf of the public company and that at that time he knew that the loan had been repaid. He claimed it was a matter of carelessness on his part. The CA testified that the financial statements were prepared by him and typed on his public practice letterhead in error, nevertheless, when statements are typed on the CA's public practice letterhead and have a notice to reader attached, the CA is required to adhere to the standards of the profession that would require him to disclose his interest in the company. Several major adjustments made in the December 31, 1998 statements were not reflected in the March 31, 1999 statements. Had these adjustments been made to the March 31, 1999 financial statements they would have been markedly different from those issued. The CA had the responsibility to ensure that the necessary year end adjustments were made when preparing the March 31, 1999 statements. The CA prepared financial statements of a company for the three month period ended March 31, 1999 in advance of the foundation of completed financial statements for the immediately preceding fiscal year, resulting in financial statements that were meaningless. For the CA to have been associated in any way with these statements is a serious breach of his obligations to conduct himself professionally.

ORDERS: The CA was: reprimanded in writing by the Chair of the Appeal Tribunal; prohibited from being associated in any manner whatsoever with financial statements, reports or other communications of financial information related to public companies for a period of two (2) years, including holding any position as an officer, director, or CFO of a public company; ordered to successfully complete the course "Financial Statements Presentation & Disclosure: A Practitioner Workshop". In addition the Tribunal ordered the CA to pay \$50,000 towards the costs of the investigation and hearing and a fine of \$3,500 and ordered annual practice reviews of his practice for the next two years.

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[The discipline hearing was completed in 12 days and costs totalled \$140,529.74]

REASONS: The Appeal Tribunal did not believe that the facts in this case supported a conclusion of a deliberate course of conduct rather than mere carelessness. The written reprimand was ordered to impress upon the CA the seriousness of the findings of unprofessional conduct. The continuing education course was ordered to remedy the education deficiencies concerning the CA's competence in respect of understanding financial statements of public companies and reverse takeovers. The restriction of practice was ordered to give the CA time to attain professional competence. The review of the CA's practice was ordered to protect the public and the amount of the fine and costs were varied at the appeal level to reflect that the appeal was partially successful.

PUBLICATION: The Tribunal ordered that notification of its findings and orders be provided to all provincial institutes, the Institute of Chartered Accountants of Bermuda, and any other professional organization the CA belongs to and that the Institute is aware of; and to all provincial institutes to which the CA applies for membership at any time in the future. Notice of the practice restriction, the nature of the conduct and orders made was ordered to be provided to all Chartered Accountants by inclusion in the next general mailing from the Institute, and on the ICAA website on a named basis. Notice of the practice restriction shall be included in the "Membership Activity Report" Notice of the practice restriction, the nature of the conduct and orders made shall be provided to any member of the public enquiring about the discipline history of the CA. The Appeal Tribunal further ordered that notice of the findings, the nature of the conduct and the orders made as a result of the findings be provided to all who received notice of the findings and orders of the Discipline Tribunal.

REASONS: The publication requirements in the case of a practice restriction are, for the most part, prescribed. In the interest of fairness, the Appeal Tribunal ordered publication that all who received previous notice of the findings and orders of the Discipline Tribunal.

REFERENCE: DT25

FACTS: Notice of ICABC accepting the CA's resignation in the face of discipline was investigated as the CA was also a member of the ICAA. The CA was a volunteer Chair and treasurer of a church group and was responsible for the accounting records of the Church. After the CA's departure he did not turn over the accounting records. When cancelled cheques were received from the bank, irregularities were discovered. The CA also volunteered as a treasurer for a charity fundraiser. He did not present the financial information when requested to do so, and after his departure the accounting records had to be redone. Five cheques were written to "cash" and the co-signer of the cheques attested that the signatures on the cheques were not his.

ADMISSION: The CA admitted that he was guilty of unprofessional conduct in failing to perform professional and fiduciary duties with integrity and due care:

1. while acting as Chair of a church during 2003
 - a) breaching a trust and improperly accounting for \$12,000 belonging to the Church,
 - b) recording on the cheques and cheque information concerning the cheques, payees and descriptions which he knew was false and misleading,
 - c) failing to properly account to the Church for the cheques;
2. while acting as treasurer of a fundraiser during 2003 by
 - a) breaching a trust and improperly accounting and improperly accounting for approximately \$4600 belonging to the fundraiser, and
 - b) failing to properly account to the fundraiser for the cheques.

SANCTIONS: The CA's registration was cancelled, and he was ordered to pay a fine of \$2,000.

[Costs of the investigation totalled \$3632.05]

PUBLICATION: The admissions and the terms of the sanction agreement were published to all provincial institutes, and to those provincial institutes applied to in the future, the Institute of Chartered Accountants of Bermuda, and to anyone who directs an enquiry to the Institute about the discipline history of the CA. Notice of the cancellation was published once in the Membership Activity Report. Notice of the cancellation, the nature of the conduct and the terms of the sanction agreement were published to the CA's employer, on the Institute web site on a named basis, and the Notice of the cancellation was published in the business section of the *Kamloops News*.

REFERENCE: DT26

FACTS: A Public Accounting Firm had their computer network maintenance contracted to a company owned by two individuals. Both shareholders were clients of the accounting firm. The minority shareholder approached the accounting firm advising of the deteriorating business relationship with his partner and asked if the public accounting firm was interested in a joint venture arrangement to provide the accounting firm with network maintenance services.

ADMISSION: The Public Accounting Firm admitted that it was guilty of failing to maintain the good reputation of the profession by failing to advise a client of the firm, on a timely basis, that an employee of the client had approached the public accounting firm for employment.

SANCTIONS: The Public Accounting Firm must develop a written policy on how members of the firm recognize and comply with conflict of interest situations and a written policy on client termination, pay a fine of \$6,000 and the costs of the investigation.

[Costs of the investigation totalled \$5157.07]

PUBLICATION: The admissions and the terms of the sanction agreement were published to all provincial institutes, the Institute of Chartered Accountants of Bermuda, to all provincial institutes applied to in the future, and to anyone who directs an enquiry to the Institute about the firm's discipline history. A summary of admissions, nature of the conduct and the terms of the sanction agreement be published on the Institute's public website.

REFERENCE: DT27

DESCRIPTION: An Alberta partner of an International Accounting Firm was engaged to analyze and report on operating information about a specific industry. The report was produced and posted on the client's public website. After the publication of the report and the client's press release, there was a negative reaction by a third party directed to the head office of the International Accounting Firm. Head office suggested revisions to the report but ultimately the report was withdrawn before an agreement with the client on revisions to the report was reached. During this time, the third party was kept informed by the head office concerning the proposed revisions and the request to remove the report from the client's website and a copy of a letter sent to the client was released to the media. The Alberta partner was excluded on many head office communications and unable to advise the client.

FINDINGS: The International Accounting Firm was found guilty of unprofessional conduct in having failed to maintain the good reputation of the profession with respect to an engagement in 2003 for a client to report on the engagement by:

- 1) failing to ensure policies were in place and adhered to that would have prevented members of the firm from discussing the report with persons outside the firm without the consent of the client; and
- 2) having acted in conflict by compromising the interest of a client in favour of the perceived interests of other clients, self-interest, or both.

REASONS: The Tribunal found that the International Accounting Firm had policies in place dealing with confidentiality, however evidence showed there was no adherence or observation of these policies by individuals in head office. There was no credible evidence that these same individuals received the permission of the client to disclose to third parties the contents of the letter written to the client by the International Accounting Firm. Head office did not keep the Alberta partner fully informed of the developing influence of a third party or of the discussions and deliberations of the head office. As a result, the Alberta partner was not in a position to keep the client informed of the nature and timing of developments which were of importance to the client's use of the report. Notwithstanding the duty of loyalty owed to the client, the Tribunal found an individual at the head office undermined the client's interests. There was evidence that the Alberta partner was instructed to make revisions to the report at least partially based on the concerns of the third party. At the point when the client had agreed to almost all the proposed revisions, the International Accounting Firm withdrew the report and as a result, the client suffered harm. The letter sent by the International Accounting Firm in

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response to a letter from the client questioning the firm's actions deflected and made misleading statements.

The Tribunal found there was a calculated decision on the part of the International Accounting Firm not to communicate honestly. The Tribunal concluded that the withdrawal of the report was motivated solely by the self-interest of the International Accounting Firm.

ORDERS: The International Accounting Firm was reprimanded in writing by the Chair of the Discipline Tribunal, ordered to send a letter of apology to the client, fined in the amount of \$40,000 and ordered to pay costs of the investigation and hearing.

[The discipline hearing was completed in 6 days and costs totalled \$79,594.79]

REASONS: The seriousness of the breaches of the Rules of Professional Conduct warranted a written reprimand and the maximum fine for each finding of unprofessional conduct. The Tribunal did not feel that the general membership of the ICAA should bear the costs resulting from the International Accounting Firm's actions.

PUBLICATION: The Tribunal ordered that notification of its findings and orders be provided to all provincial institutes, the Institute of Chartered Accountants of Bermuda, and any other professional organization the International Accounting Firm belongs to and that the Institute is aware of; and to all provincial institutes to which the International Accounting Firm applies for membership at any time in the future; a summary of the Tribunal's findings and orders be provided to any member of the public who makes a written request about the discipline history of the International Accounting Firm; and a summary of the Tribunal's findings, the nature of the conduct, and any orders made as a result of the findings be published on the ICAA public website on a named basis. In addition, notification of the Tribunal's findings and orders be published on a named basis in the business sections of the *Globe & Mail*, the *National Post*, the *Edmonton Journal*, and the *Calgary Herald*.

REASONS: The orders on publication include mandatory requirements consistent with the findings of the Tribunal. Additionally, publication on both a national and local basis is warranted based on the seriousness of the findings of unprofessional conduct.

FURTHER COMMENTS: The Tribunal found that aspects of the testimony of the head office individual were not credible and ordered that a complaint be filed with the Institute of Chartered Accountants of Ontario with respect to his conduct, particularly as it related to the breach of client confidentiality.

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REFERENCE: DT28

DESCRIPTION: During a one year period the CA provided controller services to a small privately held business corporation. His role was to oversee the entire financial function of the corporation which included approving and paying all bills of the company. The CA was responsible for paying his own monthly contractual payment, which was done by electronic transfer. After the CA's departure from the corporation, the corporation's accountants determined that excess monies were transferred electronically from the corporation to the CA. The CA suffered serious health issues for several years before obtaining employment. The CA is making restitution payments to his past employer.

FINDINGS: The CA was found guilty of unprofessional conduct with respect to professional services rendered to his past employer between 2000 and 2001 in having failed at all times to maintain the good reputation of the profession by breaching his fiduciary duty by making unauthorized cash advances to himself or his numbered company via electronic fund transfer

REASONS: The CA provided a statement of facts to the Tribunal with an admission of guilt. The Tribunal accepted the admission of guilt as the statement of facts was consistent with the allegations.

ORDERS: The registration of the CA was cancelled and he was ordered to pay \$5,000 towards the cost of the investigation and hearing.

[The discipline hearing was completed in 1 day and costs totalled \$10,042.30]

REASONS: The evidence showed the CA started the unauthorized cash advances six months prior to the personal health issues and he did not allege that the health issues were the major influence on his decision to make the unauthorized cash withdrawals. The Tribunal considered the significant mitigating factors, however concluded that the unauthorized cash advances did not meet the requirements of the profession to be trustworthy and to act at all times with integrity. The Tribunal considered the financial capacity of the CA when arriving at the amount payable as a portion of the costs.

PUBLICATION: The Tribunal ordered that notification of its findings and orders be provided to all provincial institutes, the Institute of Chartered Accountants of Bermuda, any other professional organization the CA belongs to and that the Institute is aware of; to all provincial institutes to which the CA applies for membership at any time in the future, and to any member of the public who directs an enquiry to the Institute about the discipline history of the CA; and that the notice of cancellation, the nature of the conduct and orders made be provided to all chartered accountants by way of inclusion in the ICAA general mailing to members. In addition, notice of the cancellation was ordered to be inserted in the "Membership Activity Report" and notice of the tribunals findings, nature of conduct and orders made be published on the ICAA website on a named basis.

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REASONS: The minimum publication requirements are prescribed in the case of cancellation of registration. The Tribunal found no reason to order additional publication beyond the prescribed requirements.

**FURTHER
COMMENTS:** The Tribunal concluded that there are reasonable grounds to believe that the CA committed a criminal offence. The Tribunal ordered a copy of their written decision be sent to the Minister of Justice and Attorney General as required by s.95 of the *Regulated Accounting Profession Act*.

REFERENCE: DT29

DESCRIPTION: The CA was employed by a securities firm. The Alberta Securities Commission found that he assisted in a private placement of shares for a company that was the subject of a cease trade order. An Investor provided funds on the assurance that her funds would not be used to pay creditors. The Commission found that the CA used the funds in a way that was incompatible with the deal the investor had made. The Commission found that the CA made a statement to the investor that the CA knew omitted a fact that was necessary to make his statement not misleading. In addition the CA had a personal financial interest in the advances that were repaid. When the securities firm found out about the matter they insisted the deal be unwound and the investor's money returned. The CA provided a copy of a cheque payable to the investor which would have refunded her investment, however the investor was never provided with the cheque and there were insufficient funds to repay the investor.

FINDINGS: The CA was found guilty of unprofessional conduct in having between 2000 and 2003 been found guilty by the Alberta Securities Commission of:

- a) contravening a cease trade order and Alberta securities laws contrary to the public interest,
- b) making misrepresentations to an investor contravening paragraph 92(c) of the Securities Act contrary to the public interest,
- c) acting in multiple and conflicting roles in connection with the private placement and use of subscription funds contrary to the public interest, and
- d) engaging in conduct in connection with a refund cheque which was contrary to the public interest.

REASONS: The CA was found guilty of an offence by the Alberta Securities Commission and therefore under section 201.2 of the Rules of Professional Conduct is guilty of unprofessional conduct. In addition the Tribunal was concerned that the banking documents to which the CA's signature is attached is false and misleading as it shows the CA as the CFO of the publicly traded company and whether or not that was added after his signature does not relieve the CA of the responsibility for the document he signed.

ORDERS: The CA's registration was suspended for a period of one year and he was fined \$5,000 and ordered to pay the costs of the investigation and hearing to include the costs of publication.

[The discipline hearing was completed in 3 days and costs totalled \$16,205.06]

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REASONS: The guilty finding by the Alberta Securities Commission is a serious matter. It is important that the public continue to have confidence in the integrity of the financial markets and have confidence in the role the profession has when involved in the process.

PUBLICATION: The Tribunal ordered that notification of its findings and orders be provided to all provincial institutes, the Institute of Chartered Accountants of Bermuda, any other professional organization the CA belongs to and that the Institute is aware of; to all provincial institutes to which the CA applies for membership at any time in the future, and to any member of the public who directs an enquiry to the Institute about the discipline history of the CA; and that the notice of suspension of registration, the nature of the conduct and orders made be provided to all chartered accountants by way of inclusion in the ICAA general mailing to members and published on the ICAA public website. In addition, notice of the suspension of registration was ordered to be inserted in the "Membership Activity Report", and notice of the suspension as a result of discipline proceedings was ordered published in the business section of the *Edmonton Journal* and the *Calgary Herald*.

REASONS: The Tribunal felt it was important for members of the ICAA and the general public to be aware of the decision and order of the Tribunal, and that matters of an unprofessional conduct are taken seriously.

REFERENCE: DT30

FACTS: A Public Accounting Firm did not provide working papers or information to a successor accountant on a timely basis. As a result of the delay, the client was not able to make some important financial decisions. There was a fee dispute which delayed the transfer of the required file material for four months.

ADMISSION: The Public Accounting Firm admitted that it was guilty of unprofessional conduct with respect to its involvement with a client in 2004 in having failed to follow appropriate policies to ensure that in the conduct of the practice the members of the firm complied with the Rules of Professional Conduct so as to maintain the good reputation of the profession and its ability to serve the public interest by failing to provide, during a protracted fee dispute with the client, in a timely and unconditional manner, the information requested by a successor accountant in writing by a letter dated March 15, 2004.

SANCTIONS: The Public Accounting Firm was given a written reprimand; ordered to pay the costs of the investigation and publication, and a fine of \$1000.

[Costs of the investigation totalled \$5,897.30]

PUBLICATION: The admissions and the terms of the sanction agreement were published

- to all provincial institutes,
- to the Institute of Chartered Accountants of Bermuda,
- to any other professional organization to which the CA belongs,
- to all provincial institutes applied to in the future,
- to anyone who directs an enquiry to the Institute about his discipline history, and
- on the Institute's public website.

REFERENCE: DT31

DESCRIPTION: The CA was a partner in a rural office of a Regional Public Accounting Firm. He wrote a letter to his clients informing them of his retirement plans and included in the letter was the following paragraph:

"Don't be fooled by small practitioners who promise lower fees, but at the end of the day, can only deliver a fraction of the quality or depth of services. When you really need them, they won't be able to help you. This is not a criticism it is a simple fact. They just don't have the resources to be all things to all people. Instead the Western Canadian Public Accounting Firm is truly in a unique position to assist western Canadian business enterprises, better than any of the competition."

FINDINGS: An Appeal Tribunal found the CA guilty of unprofessional conduct in having failed to maintain at all times the good reputation of the profession by issuing a letter that made disparaging remarks about other chartered accountants.

REASONS: The CA admitted guilt to the charge through a joint submission by counsel.

ORDERS: The CA was given a written reprimand.

[The appeal hearing was completed in 1 day and costs totalled \$9,454.07]

REASONS: The recommended penalty in the joint submission made by counsel was accepted by the Appeal Tribunal.

PUBLICATION: The Tribunal ordered that notification of its findings and orders be provided to all provincial institutes, the Institute of Chartered Accountants of Bermuda, and any other professional organization the CA belongs to and that the Institute is aware of; and to all provincial institutes to which the CA applies for membership at any time in the future; a summary of the Tribunal's findings and orders be provided to any member of the public who makes a written request about the discipline history of the CA; and a summary of the Tribunal's findings, the nature of the conduct, and any orders made as a result of the findings be published on the ICAA public website on a named basis. In addition, notice of the finding be published in the business section of the *Calgary Herald*.

REASONS: The Tribunal felt that it was important for members of the ICAA and the general public to be aware of the decision and order of the Tribunal and matters of an unprofessional conduct are taken seriously.

REFERENCE: DT32

DESCRIPTION: The CA accepted an engagement to prepare a terminal tax return, however did not complete the engagement due to personal problems. He promised the client numerous times that the return would be completed but did not do so for two years. When the client requested return of the documents in order to have another accountant complete the engagement, the CA refused to provide the materials even though he was advised by his lawyer to do so.

FINDINGS: The CA was found guilty of unprofessional conduct with respect to his engagement for an Estate between 2003 and 2005 in having failed to maintain at all times the good reputation of the profession by

1. failing to complete 2003 tax returns for the Estate in a reasonable time,
2. making ongoing promises to complete his engagement to the Executors of the Estate which he did not meet, and
3. failing to return information required by his client when requested to do so.

REASONS: The CA did not deny the facts as presented by the complainant, nor did he present satisfactory reasons for his conduct. He did not deny that he repeatedly missed deadlines for the completion of the engagement or that he was advised by his own counsel to return the documents.

ORDERS: The CA was ordered to deliver to the complainant, all information in his possession pertaining to the Estate, including books, records, documents, tax returns and related information; fined \$5,000 and ordered to pay the costs of the investigation, hearing, and enforcement of the orders.

[The hearing was completed in 1 day and costs totalled \$14,696.27]

REASONS: The order that the CA deliver up materials to the client emphasize that a Chartered Accountant meets obligations related to his practice. Costs were appropriate in recognition that the costs were incurred by the unprofessional conduct of the CA. The fine was imposed to reflect the seriousness of the conduct.

PUBLICATION: The Tribunal ordered that notification of its findings and orders be provided to all provincial institutes, the Institute of Chartered Accountants of Bermuda, and any other professional organization the CA belongs to and that the Institute is aware of; and to all provincial institutes to which the CA applies for membership at any time in the future; a summary of the Tribunal's findings and orders be provided to any member of the public who makes a written request about the discipline history of the CA; and a summary of the Tribunal's findings, the nature of the conduct, and any orders made as a result of the findings be published on the ICAA public website on a named basis.

REASONS: The Tribunal ordered mandatory publication under the Act and the Bylaws. The Tribunal felt it was important for members of the ICAA and the general public to be aware of the decision and order of the Tribunal, and that matters of an unprofessional conduct are taken seriously.

REFERENCE: DT33

DESCRIPTION: The CA's membership was cancelled one year prior to this hearing. His practice was scheduled for a practice review in 2003, and he was given an extension to 2004 for medical reasons. Additional requests for extensions to the practice review were agreed to by the Institute, however when numerous attempts to obtain the required information from the CA were unsuccessful, a complaint was made. The CA then failed to cooperate and respond to the Institute's investigator.

FINDINGS: The CA was found guilty of unprofessional conduct in having failed:

1. to cooperate during 2005 in a practice review under Part 4 of the Regulated Accounting Profession Act, and
2. to cooperate in an investigation under Part 5 of the Regulated Accounting Profession Act.

REASONS: The CA, during the course of the hearing admitted frequently that he did not cooperate with the practice review procedure. The Tribunal found that the CA showed a total lack of concern for the ICAA practice review process in that he unduly delayed completion of the ICAA forms and failed to respond to numerous commitments to provide files for review. He failed to cooperate or respond to the investigator appointed by the CIC Chair to investigate the complaint.

ORDERS: The registration of the CA was further cancelled and he was ordered to pay costs of the investigation and hearing.

[The hearing was completed in 2 days and costs totalled \$9,792.93]

REASONS: The Tribunal was of the opinion that the actions of the CA were of a serious and unprofessional nature and demonstrated a total lack of respect for the profession, its rules, policies and regulations, and its mission statement to protect the public.

PUBLICATION: The Tribunal ordered that notification of its findings and orders be provided to all provincial institutes, the Institute of Chartered Accountants of Bermuda, any other professional organization the CA belongs to and that the Institute is aware of; to all provincial institutes to which the CA applies for membership at any time in the future, and to any member of the public who directs an enquiry to the Institute about the discipline history of the CA; and that the notice of cancellation, the nature of the conduct and orders made be provided to all chartered accountants by way of inclusion in the ICAA general mailing to members and on the ICAA public website. In addition, notice of the cancellation be inserted in the "Membership Activity Report" and published in the business section of the *Edmonton Journal* and the *Vegreville Observer* and that more information can be obtained from the Institute;

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REASONS: The Tribunal felt it was important for members of the ICAA and the general public to be aware of the decision and order of the Tribunal, and that matters of an unprofessional conduct are taken seriously. Mandatory publication under the Act and the Bylaws was ordered.

REFERENCE: DT34

FACTS: The client of a CA was a family farming business owned by the CA's brother and his partner. Over a number of years, work was performed for the farming business which remained unpaid. The CA paid the outstanding accounting fees of the farming business using a bank loan obtained through his professional corporation. When a government subsidy cheque directed to the farming business was received, the CA utilized a portion of the funds to repay the principal and interest on the loan and the balance was deposited to the farm business account.

ADMISSION: The CA admitted that he was guilty of unprofessional conduct in having failed to maintain the good reputation of the profession by depositing in his account, to repay a bona fide debt, a government cheque payable to the farming business and thereafter depositing the remaining portion of the monies received into the bank account of the farming business.

SANCTIONS: The CA will complete an ethics course, pay a fine of \$3500 and costs of the investigation, hearing and compliance with the orders.

[Costs of the investigation totalled \$415.87]

PUBLICATION: The admissions and the terms of the sanction agreement were published

- to all provincial institutes,
- to the Institute of Chartered Accountants of Bermuda,
- to any other professional organization to which the CA belongs,
- to all provincial institutes applied to in the future,
- to anyone who directs an enquiry to the Institute about his discipline history, and
- on the Institute's public website.

REFERENCE: DT35

FACTS: The CA provided services to the client for a number of years. The client requested copies of documents which the CA agreed to fax. The client continued to call the CA when the information was not received. The CA responded with an e-mail to the client containing totally inappropriate language.

ADMISSION: The CA admitted that he was guilty of unprofessional conduct in having failed to maintain the good reputation of the profession with respect to his e-mail communication to his client containing vulgar, disgusting, demeaning and totally inappropriate language.

SANCTIONS: The CA to send a written apology to his client, complete an anger management course, pay a fine of \$5000 and costs of the investigation, hearing and compliance with the orders.

[Costs of the investigation totalled \$307.37]

PUBLICATION: The admissions and the terms of the sanction agreement were published

- to all provincial institutes,
- to the Institute of Chartered Accountants of Bermuda,
- to any other professional organization to which the CA belongs,
- to all provincial institutes applied to in the future,
- to anyone who directs an enquiry to the Institute about his discipline history, and
- on the Institute's public website.

RAPA

Council passed the Resolution that “an anonymous summary of the circumstances, findings of unprofessional conduct and any penalty and/or order imposed will be published in the Members' Handbook, and on the website.”

The Resolution was modified on September 2007, deleting the requirement for an anonymous summary to be published in the Members Handbook.

A summary of the findings of unprofessional conduct or admissions made in a sanction agreement, the nature of the conduct and any orders or sanctions made as a result of the findings, are now published on the Institute's public website on a named basis.