

IN THE MATTER of the Society of Industrial and Cost Accountants of Ontario Act, 1941, Statutes of Ontario 1941, c.77; as amended by Statutes of Ontario 1967, c.129; Statutes of Ontario 1971, c.126; Statutes of Ontario 1981, c.100; and Statutes of Ontario 2004, c.8;

IN THE MATTER of the Certified Management Accountants Act, 2010, S.O. 2010, c.6, Sched. B

AND IN THE MATTER of the Statutory Powers Procedure Act, Revised Statutes of Ontario 1990, c.S.22, as amended;

AND IN THE MATTER OF complaints regarding the conduct of or actions of Dennis Chong.

BETWEEN:

Certified Management Accountants of Ontario  
(previously known as “The Society of Management Accountants of Ontario”)  
(the “Society”)

(Applicant)

-and-

Dennis Chong (the “Respondent”)

(Respondent)

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**DECISION, ORDER AND REASONS OF THE DISCIPLINE COMMITTEE**

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The Discipline Committee held a hearing at Victory Verbatim, Ernst & Young Tower, Suite 900, 222 Bay St., Toronto, Ontario M5K 1H6, on Thursday, May 27, 2010 to hear evidence, and submissions and argument and to deliver its decision; all to consider matters arising out of a complaint regarding the conduct of Dennis Chong, a Member of Certified Management Accountants of Ontario (previously known as “The Society of Management Accountants of Ontario”).

The panel of the Discipline Committee conducting the hearing was composed of:

J. Allan Thom, CD, FCMA (Chair)

Cliff Bilyea, MBA (Public Member)

Ted Brabers, FCMA

Eran Goldenberg, FCMA

Ed Hazell, FCMA

Ray Jones, FCMA

Counsel for the Applicant was Ms. Catherine M. Patterson of Ferguson Patterson Lawyers.

The Respondent was not present in person, and was not represented by counsel or an agent.

Counsel for the Discipline Committee was Mr. Hugh M. Kelly, Q.C., of Miller Thomson LLP, Barristers & Solicitors.

Ms. Patterson tendered the Affidavit of Catherine Patterson confirming service of the Notice of Hearing upon the Respondent; this Affidavit was marked as Exhibit 1.

Ms. Patterson tendered a Document Brief; this was marked as Exhibit 2.

### **Preliminary Matters**

No objections were raised against the matter proceeding or as to the jurisdiction of the Discipline Committee to hear the matter; the hearing commenced.

### **Charge**

Ms. Patterson read the charge (as set out in the Notice of Hearing), as follows:

That on January 20, 2010 Dennis Chong pleaded guilty to, and was convicted of fraud over \$5,000.00, contrary to Section 380(1)(a) of the Criminal Code, as amended.

BY REASON of the foregoing, it is alleged that Dennis Chong is guilty of professional misconduct as defined in Section 1(2)(d)(i) of the Professional Misconduct and Code of Professional Ethics Regulation (the "Regulation") and is in breach of Section 22 of the Bylaws and Sections 2(1)(b), 2(1)(c), 2(3)(c) and 2(4)(b) of the Regulation.

As the Respondent was not present, the Discipline Committee proceeded as if the Respondent had pleaded not guilty to the charges.

### **Statute**

The *Certified Management Accountants Act*, 2010, S.O. 2010, C.6 (the "CMA Act") provides in part:

17. Subject to the by-laws, a member of the Corporation has the right to use the designations "Certified Management Accountant", "comptable en management accrédité", "Registered Industrial Accountant" and "comptable en administration industrielle", and to use the initials "C.M.A.", "CMA", "R.I.A." and "RIA".

35. (1) The discipline committee shall hear every matter referred to it by the complaints committee.

(3) The discipline committee shall find a member or firm guilty of professional misconduct if in the committee's opinion the member or firm is guilty of professional misconduct as defined in the by-laws.

(4) If the discipline committee finds a member or firm guilty of professional misconduct, it may by order do one or more of the following:

1. If at least two-thirds of the committee panel hearing the matter agrees, revoke the member's membership or the firm's registration.
2. Suspend the member's membership or the firm's registration for a period determined in accordance with the by-laws.
3. Despite section 17, direct that a member whose membership is suspended refrain from using any designation, term, title, initials or description implying that the member is practising as a Certified Management Accountant or a Registered Industrial Accountant during the period of suspension.
4. Determine the timing and manner of the return of a certificate of membership to the Corporation by an individual whose membership is suspended or revoked.
5. Impose restrictions or conditions on the right of the member or firm to practise as a Certified Management Accountant.
6. Issue a reprimand and, if the committee considers it appropriate, direct that the reprimand be recorded in the register.
7. Direct the member or firm to take any specified rehabilitative measure, including requiring the member or any member practising as a Certified Management Accountant through the firm to successfully complete specified professional development courses or to seek specified counselling or treatment.
8. Direct the member or firm to pay a fine and specify the timing and manner of payment.
9. Direct that the imposition of a measure under this subsection be postponed for a specified period or on specified terms, including the successful completion of specified courses of study.
10. Direct that a failure to comply with the committee's order shall result in the revocation of the member's membership or the firm's registration.
11. Make any other order that the committee considers appropriate in the circumstances.

(5) Unless the discipline committee orders otherwise, a final decision or order of the committee under this section takes effect on the day on which the time to appeal ... expires, if no notice of appeal is filed with the appeal committee in accordance with that subsection.

Under the *Statutory Powers Procedure Act*, Revised Statutes of Ontario 1990, c.S.22, as amended, the Discipline Committee is a “tribunal”. That Act provides in part:

- 25.** (1) An appeal from a decision of a tribunal to a court or other appellate body operates as a stay in the matter unless,  
...  
(b) the tribunal ... orders otherwise.

## **Bylaws**

The current Bylaws of the Society provide in part as follows:

### **22. Rules of Conduct Governing Members**

All Members shall be familiar with and comply with the bylaws, regulations and Code of Professional Ethics of the Society and the rules and standards established or adopted by the Board from time to time. The “Code of Professional Ethics” of the Society is set forth in the regulations.

25.6 Whenever the Discipline Committee finds a Member is guilty of professional misconduct, unless an appeal of the decision and order has been filed with the Chair of the Appeal Committee,

- (a) notice of the decision and order of the Discipline Committee, disclosing the name of the Member and brief particulars of the professional misconduct, will be published and distributed to the Board and to the Members and may at the discretion and by Order of the Discipline Committee be published in the local or daily newspaper of the community or communities where the Member resides and/or carries on business; and
- (b) the decision and order of the Discipline Committee, together with the written reasons for the decision and the name of the Member with brief particulars of the finding of professional misconduct, will be published and maintained in the public area of the Society’s website;

unless the Discipline Committee determines that disclosure of the name of the Member in any or all of the above publications is not required in the public interest and its disclosure would be unfair to the Member.

### **Professional Misconduct and Code of Professional Ethics Regulation**

The Professional Misconduct and Code of Professional Ethics Regulation of the Society (the “Code”) provides in part as follows:

#### **1. Professional Misconduct**

- (2) For the purposes of the by-laws, “professional misconduct” means:

...

- (d) the Member has:
  - (i) committed or been convicted of any criminal offence including but not limited to fraud, theft, forgery, tax evasion, and violation of securities laws ...

## **2. Code of Professional Ethics**

All Members will adhere to the following "*Code of Professional Ethics*" of the Society:

- (1) A Member will act at all times with:
  - ...
  - (b) fairness and loyalty to such Member's associates, clients and employers; and
  - (c) competence through devotion to high ideals of personal honour and professional integrity.
- (3) A Member will:
  - ...
  - (c) not, in the course of exercising his or her duties on behalf of such Member's employer or client, hold, receive, bargain for or acquire any fee, remuneration or benefit without such employer's or client's knowledge and consent; and
- (4) A Member will:
  - ...
  - (b) not commit an act discreditable to the profession;

## **Witnesses**

No witnesses were called for the Society, but Ms. Patterson reviewed the Document Brief, Exhibit 2.

As the Respondent was not present, there was no evidence led on behalf of the Respondent.

## **Summary of Evidence**

The Discipline Committee reviewed all of the exhibits tendered as evidence and the representations by counsel. It is convenient to summarize this evidence.

The Discipline Committee carefully reviewed the contents of the Document Brief, Exhibit 2. While no witnesses were called, Ms. Patterson highlighted a number of sections of that Brief, in particular:

that Dennis Chong was charged with the criminal offence of defrauding his employer of a sum in excess of \$5,000, and pleaded guilty to the charge;

that, although the employer asserted that unauthorized amounts taken by the employer exceeded \$99,000, Dennis Chong admitted to defrauding his employer of \$75,000; and

that the employer had commenced a civil action against Dennis Chong to recover its losses, and for other damages.

Ms. Patterson tendered a copy of the Victim Impact Statement made the 12<sup>th</sup> day of January 2010 that was filed in the criminal proceedings; this was marked as Exhibit 4. This statement confirmed that the employer placed great trust in the Respondent, and that the taking of the money by fraud had caused great hardship personally, dampened employee morale, and destroyed previously fine business relationships.

Ms. Patterson noted that the amount taken by the Respondent from his employers in this case represented one of the five highest thefts by a Member shown on the records of the Society.

### ***Response of Respondent***

As the Respondent was not present, there was no response on behalf of the Respondent.

### **Submissions**

Ms. Patterson submitted that the Society had proven that the Respondent was guilty of professional misconduct.

On the assumption that the Discipline Committee would in fact find the Respondent guilty, Ms. Patterson requested the following penalty:

the Respondent be reprimanded, with the reprimand to be recorded on the Respondent's record;

the membership of the Respondent be cancelled/revoked and the removal of the name of the Member for the record of Members;

the imposition of a fine of \$25,000 payable on or before 30 September 2010;

require the Respondent to return his certificate of membership to the Society forthwith, and if he fails to do so or provide a statutory declaration of loss of his certificate, that the facts in this case be published in a Toronto newspaper;

request that, in the event that the Respondent applies for readmission to the Society, the Board of Governors review and consider the file of these proceedings.

As the Respondent was not present, there was no response to the Society.

### **Findings on the Charges**

The Discipline Committee considered both oral and written evidence, and the submissions made by the Society. The Discipline Committee is satisfied that the Society has established the facts supporting the allegations set out in the Notice of Hearing. Accordingly, the Discipline

Committee finds that the Respondent failed to comply with the Bylaws and Code of Professional Ethics of the Society in that:

the Respondent pleaded guilty to, and was convicted of, fraud over \$5,000.00, contrary to Section 380(1)(a) of the Criminal Code, as amended;

such conviction constituting professional misconduct by the Respondent as that term is defined in the Bylaws and the Professional Misconduct and Code of Professional Ethics Regulation of the Society.

The Discipline Committee finds that the Respondent is guilty of professional misconduct as defined in Section 1 (2)(d)(i) of the Professional Misconduct and Code of Professional Ethics Regulation (the "Regulation") and is in breach of Section 22 of the Bylaws and Sections 2(1)(b), 2(1)(c), 2(3)(c) and 2(4)(b) of the Regulation.

### **Order**

Having found the Respondent guilty of professional misconduct as noted above, the Discipline Committee unanimously orders as follows:

1. Under the authority of paragraph 6 of s.35(4) of the *Certified Management Accountants Act*, the Discipline Committee orders that Dennis Chong be reprimanded the particulars of which Reprimand are attached to this Order, and that such Reprimand be recorded on the Respondent's record.
2. Under the authority of paragraph 1 of s.35(4) of the *Certified Management Accountants Act*, the Discipline Committee revokes the membership of Dennis Chong, and directs that the name of Dennis Chong be removed from the record of Members of the Society.
3. Under the authority of paragraph 8 of s.35(4) of the *Certified Management Accountants Act*, the Discipline Committee imposes a fine of thirty thousand dollars (\$30,000) payable in a lump sum on or before 30 September 2010.
4. Under the authority of paragraph 4 of s.35(4) of the *Certified Management Accountants Act*, requires the Respondent to return his certificate of membership to the Society forthwith;
5. Under the authority of paragraph 11 of s.35(4) of the *Certified Management Accountants Act*, the Discipline Committee Orders that:

notice of the decision and order of the Discipline Committee disclosing the name of the Member and brief particulars of the professional misconduct be published and distributed to the Board and to the Members in the Society journal, and be published in the local or daily newspaper of the community or communities where the Member carries on business; and

the decision and order of the Discipline Committee, together with the written reasons for the decision and the name of the Member with brief particulars of the finding of professional misconduct, will be published and maintained in the public area of the Society's website;

the Discipline Committee has determined that disclosure of the name of the Member by publication in the Society journal and on the Society website, and in the local or daily newspaper of the community or communities where the Member carries on business, is required in the public interest, and that its disclosure would not be unfair to the Member.

6. Under the authority of paragraph 11 of s.35(4) of the *Certified Management Accountants Act*, the Discipline Committee requests that, in the event that the Respondent applies for readmission to the Society, the Board of Governors would review and consider the file of these proceedings.
7. Under the authority of s.35(5) of the *Certified Management Accountants Act*, the Discipline Committee orders that the above orders of the Discipline Committee shall take effect when pronounced, the 27<sup>th</sup> day of May 2010.
8. Under the authority of s.25(1)(b) of the *Statutory Powers Procedure Act*, the Discipline Committee orders that an appeal of these orders of the Discipline Committee shall not operate as a stay in this matter.

Decision rendered on the 27<sup>th</sup> day of May 2010, and Decision and these Reasons released on the 28<sup>th</sup> day of July 2010.