

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 a disciplinary proceeding pursuant to Sections 25 and 26 of the Bylaws of The Society of Management Accountants of Ontario, as to complaints regarding the conduct of or actions of The Member.

BETWEEN:

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

(Applicant)

-and-

Member (the “Respondent”)

(Respondent)

DECISION, ORDER AND REASONS OF THE DISCIPLINE COMMITTEE

The Discipline Committee held a hearing at Victory Verbatim, Ernst & Young Tower, Suite 900, 222 Bay St., Toronto, Ontario M5K 1H6, on Wednesday, May 26, 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 the Member, 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

Ed Hazell, FCMA

Ray Jones, FCMA

Anne Mackenzie, CMA

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

The Respondent was present in person, and was represented by counsel, Gregory L. Chang of Bougadis, Chang LLP, Barristers.

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

Ms. Patterson tendered a Document Brief; this was marked as Exhibit 1.

Ms. Patterson tendered a Certified Copy of the Policy "Continuous Professional Learning and Development (CPLD)" approved by the Board of Governors of The Society of Management Accountants of Ontario on May 8, 2004; this was marked as Exhibit 2.

Ms. Patterson tendered the Notice of Hearing addressed to the Respondent; this Notice was marked as Exhibit 3.

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 charges (as set out in the Notice of Hearing), as follows:

- 1) That the Member failed to report Continuous Professional Learning and Development activities for the period from July 1, 2004 to June 30, 2007, as was required by Section 19 of the Bylaws of the Society in 2005, 2006 and 2007.
- 2) That the Member failed to reply in writing to a letter from the Society dated December 1, 2008 which specifically requested a reply within thirty (30) days of the date of receipt of such letter.

By reason of the foregoing, it is alleged that the Member is guilty of professional misconduct as that term is defined in Sections 20(2)(b) and 20(2)(e) of the Bylaws of the Society in effect in 2005, 2006 and 2007, as is currently defined in Sections 1(2)(b) and 1(2)(e) of the Professional Misconduct and Code of Professional Ethics Regulation, and is in breach of Section 19 of the Bylaws of the Society in effect in 2005, 2006 and 2007 and Sections 22 and 31 of the current Bylaws of the Society.

The Respondent pleaded guilty to the charges.

Statute

The Certified Management Accountants Act, 2010, S.O. 2010, c.6, Sched. B (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.

Bylaws

The Bylaws of the Society in effect in 2005, 2006 and 2007 provided in part as follows:

19. Rules of Conduct

All Members will comply with and their conduct will be governed by the by-laws and Code of Professional Ethics of the Society and rules established by the Board from time to time.

20. Professional Misconduct

- (2) For the purposes of the by-laws, “professional misconduct” means:
- ...
 - (b) a breach by a Member of the Act or the by-laws;
 - ...
 - (e) the failure of a Member to respond promptly and cooperate fully with respect to requests for information and other communications from the Society.

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.

31. Obligation to Reply to Society Requests

A Member will, in respect of any matter of professional conduct, reply in writing to any letter from the Society in which a reply is specifically requested within thirty (30) days of the date of receipt of such letter.

32. Continuous Professional Learning and Development

- 32.1 Every Certified Member shall undertake continuous professional learning and development relevant and appropriate to the Certified Member's work and professional responsibilities, as required by Section 32 and the regulations, and shall demonstrate compliance with the requirements as set out in Section 32 and the regulations, unless the Certified Member is exempt from such requirements under the provisions of the regulations.
- 32.2 The content and required minimum amount of continuous professional learning and development, the penalties and procedures applicable to non-compliance with the continuous professional learning and development provisions of Section 32 and the regulations and the exemptions available from the continuous professional learning and development obligations are set forth in the regulations.
- 32.3 Every Certified Member subject to the continuous professional learning and development requirement of Section 32 and the regulations shall submit annually, on or before the due date prescribed in the notice sent by the Society by mail, by electronic mail, or published in a publication of the Society generally circulated to its Members, a declaration in the prescribed form attesting whether the requirements of Section 32 and the regulations have been met.

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:

- ...
- (b) a breach by a Member of the Act or the by-laws;
- ...
- (e) the failure of a Member to respond promptly and cooperate fully with respect to requests for information and other communications from the Society.

Witnesses

The Respondent gave evidence on their own behalf.

Ms. Patterson called one witness for the Society: Ms. Katharine M. Harvey, Vice President, Regulatory Affairs and Registrar of the Society.

Summary of Evidence

The Discipline Committee heard the witnesses, and reviewed all of the exhibits tendered as evidence. It is convenient to summarize this evidence.

The Respondent tendered their Affidavit sworn the 25th day of May 2010. The Respondent also gave evidence that matched the Affidavit. The Respondent advised that they had been a CMA for 23 years, and that there had not been any disciplinary proceedings against them during that time.

The Respondent testified that they had been away from Canada from 2003 through 2009 looking after their dying mother in Thailand. The Respondent had a friend in Canada who paid their Society dues, and who received their mail. The friend did not, however, forward the regular mass mailings from the Society including those respecting CPLD, and so the Respondent was unaware of the CPLD requirements. Due to grief and poor health, the Respondent testified, they were incapable of responding from Thailand to the Society demand for a reply to the Complaints Committee. The Respondent did not dispute that a complaint had been filed with the Complaints Committee for failure to report CPLD activities for the period from July 1, 2004 to June 30, 2007 as required by the Policy, nor did The Respondent dispute that they had not responded to the letter from Ms. Harvey requiring a reply to the Complaints Committee within 30 days.

Status of Respondent's Credits

Ms. Harvey testified that Ms. Ann Henderson, the Society's CPLD Advisor, had reviewed Exhibit "A" to the Respondent's Affidavit, and that Ms. Henderson confirmed that the activities of the Respondent in the period from July 1, 2004 to June 30, 2007 would qualify to compliance with the CPLD requirements.

Submissions

Ms. Patterson indicated that the Society was sympathetic to what the Respondent had gone through, but the Respondent had breached her obligations respecting CPLD and was therefore guilty on both counts of professional misconduct. Acknowledging that the Respondent had now reported the required number of CPLD activities for 2004-2007, Ms. Patterson requested the following penalty:

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

the imposition of a fine of \$1,000 payable on or before 30 September 2010;

particulars of the professional misconduct published and distributed to the Board and to the Members in the Society journal to include her name.

Mr. Chang, on behalf of the Respondent, noted that the Respondent was a long term member of the Society with an unblemished record; that the Respondent was unaware of the CPLD requirements until December 2008 and regrets failing to follow up on returning to Canada; that the Respondent had in fact complied with the CPLD requirements although they had failed to report earned credits; and that the Respondent did not interact with the public during this time. Mr. Chang asked that his client not be reprimanded, that the Respondent's name should not be published, and that the fine should not exceed \$200.

Findings on the Charges

The Discipline Committee considered both the oral and written evidence presented and the submissions made, and found the evidence presented to be credible and reliable. The Discipline Committee is satisfied that the Society has established the facts supporting the allegations set out in paragraphs 1 and 2 of 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:

contrary to the requirements of the “Continuous Professional Learning and Development (CPLD)” Policy approved by the Board of Governors of the Society on May 8, 2004, the Respondent failed to report the required Continuous Professional Learning and Development for the period July 1, 2004 through June 30, 2007; and

contrary to the Bylaws, the Respondent failed to reply in writing to the letter from the Society dated December 1, 2008, in which a reply was specifically requested within thirty (30) days of receipt of such letter;

such failures 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 that term is defined in Sections 20(2)(b) and 20(2)(e) of the Bylaws of the Society in effect in 2005, 2006 and 2007, and as is currently defined in Sections 1(2)(b) and 1(2)(e) of the Professional Misconduct and Code of Professional Ethics Regulation, and is in breach of Section 19 of the Bylaws of the Society in effect in 2005, 2006 and 2007 and Sections 22 and 31 of the current Bylaws of the Society.

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 The Member be reprimanded the particulars of which Reprimand are attached to this Order, but that such Reprimand not be recorded on the Respondent’s record.
2. Under the authority of paragraph 8 of s.35(4) of the *Certified Management Accountants Act*, the Discipline Committee imposes a fine of one thousand dollars (\$1,000) payable in a lump sum on or before 30 September 2010.
3. 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 brief particulars of the professional misconduct be

published and distributed to the Board and to the Members in the Society journal; and

the decision and order of the Discipline Committee, together with the written reasons for the decision with brief particulars of the finding of professional misconduct, 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 is not required in the public interest, and that its disclosure would be unfair to the Member.

4. Under the authority of paragraph 11 of s.35(4) of the *Certified Management Accountants Act*, the Discipline Committee orders that the fine and Reprimand shall be suspended during the period that the Respondent keeps current on her CPLD and reporting requirements until the last reporting date in 2013, failing which the fine and Reprimand will come into effect immediately; and if she does keep current until such date, the fine and Reprimand are revoked.

Decision and Order rendered on the 26th day of May 2010.