

**CERTIFIED MANAGEMENT ACCOUNTANTS OF ONTARIO  
DISCIPLINE COMMITTEE**

Ellen Bessner, (Chair of Panel)	]	
Timothy Galvin, CMA, CA, LPA	]	
James Karas, (Public Member)	]	Friday, 16 December 2011
Salim Somani, CA, LPA	]	
Betty Wong, CMA	]	

IN THE MATTER of the *Certified Management Accountants Act, 2010*, Statutes of Ontario 2010, C.6, Schedule B, as amended (the "Act");

AND IN THE MATTER of a Hearing of a matter regarding the conduct of the Member as directed by the Complaints Committee of Certified Management Accountants of Ontario (the "Corporation") to be held according to the *Act* and Bylaws of the Corporation and the Rules of Procedure of the Discipline Committee of the Corporation.

BETWEEN:

Certified Management Accountants of Ontario  
(Applicant)

-and-

The Member  
(Respondent)

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**ORDER**

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THIS HEARING was heard at Victory Verbatim, Ernst & Young Tower, Suite 900, 222 Bay Street, Toronto, Ontario M5K 1H6, on Friday, 16<sup>th</sup> day of December 2011, in the presence of the lawyer for the Applicant, with the Respondent and the lawyer for the Respondent attending electronically.

ON READING THE NOTICE OF HEARING filed by the Applicant, and upon hearing the agreed statement of facts and reviewing the exhibits filed, and upon hearing the submissions of the lawyer for the Applicant and of the lawyer for the Respondent.

1. THE DISCIPLINE COMMITTEE FINDS AND DECLARES that the Member is guilty of professional misconduct as that term is defined in Section 1.2(b) of the "*Professional Misconduct and Code of Professional Ethics Regulation*", in effect in September 2008, and in breach of sections 2(4)(b) of that Regulation and Section 22 of the Bylaws of the Corporation in effect in September 2008.

2. THE DISCIPLINE COMMITTEE ISSUES, under the authority of paragraph 6 of section 35(4) of the *Act*, a Reprimand the particulars of which are attached to this Order; and DIRECTS that such Reprimand be recorded on the Respondent's record.
3. THE DISCIPLINE COMMITTEE DIRECTS, under the authority of paragraph 8 of Section 35(4) of the *Act*, that the Respondent pay a fine of one thousand five hundred dollars (\$1,500); and SPECIFIES that such payment shall be made on or before the 29<sup>th</sup> day of February 2012.
4. THE DISCIPLINE COMMITTEE ORDERS, under the authority of paragraph 11 of section 35(4) of the *Certified Management Accountants Act, 2010*, that:

notice of the decision and order of the Discipline Committee and brief particulars of the professional misconduct be published and shall be distributed to the Board and to the Members in the CMA Ontario 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, will be published and maintained in the public area of CMA Ontario's website;

the Discipline Committee determines that the disclosure of the name of the Member is not required in the public interest and its disclosure would be unfair to the Member.

Ellen Bessner, Chair of the Panel of the Discipline Committee

Timothy Galvin

James Karas

Salim Somani

Betty Wong

IN THE MATTER of the *Certified Management Accountants Act, 2010*, Statutes of Ontario 2010, C.6, Schedule B, as amended (the “*Act*”);

AND IN THE MATTER of a Hearing of a matter regarding the conduct of **the Member** as directed by the Complaints Committee of Certified Management Accountants of Ontario (the “Corporation”) to be held according to the *Act* and Bylaws of the Corporation and the Rules of Procedure of the Discipline Committee of the Corporation.

BETWEEN:

Certified Management Accountants of Ontario

(Applicant)

-and-

The Member

(Respondent)

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**REASONS OF THE DISCIPLINE COMMITTEE**

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The formal Order of the Discipline Committee having been issued, these are the reasons for the decision and Order.

The Discipline Committee held a Hearing at Victory Verbatim, Ernst & Young Tower, Suite 900, 222 Bay St., Toronto, Ontario M5K 1H6, on Friday, 16<sup>th</sup> day of December 2011, 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 Respondent, a Member of Certified Management Accountants of Ontario.

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

Ellen Bessner, (Chair of Panel)

Timothy Galvin, CMA, CA, LPA

James Karas, (Public Member)

Salim Somani, CA, LPA

Betty Wong, CMA

Counsel for the Applicant was Ms. Catherine M. Patterson of Ferguson Patterson, Barristers & Solicitors.

Counsel for the Respondent was Mr. Sean Bawden of Beament Green, Barristers & Solicitors.

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

The Respondent and his counsel were present by a conference telephone connection.

Ms. Patterson advised the Committee that the Applicant and the Respondent have agreed to a Statement of Facts, and that they would be presenting a Joint Submission on Penalty.

Ms. Patterson tendered a Notice of Hearing in this matter dated June 24, 2011; this was marked as Exhibit 1.

Ms. Patterson tendered a print-out of the Summary of the Allegations that appear on the Corporation's website; this was marked as Exhibit 2.

### **Preliminary Matters**

As no objections were raised against the matter proceeding or as to the jurisdiction of the Discipline Committee to hear the matter, the hearing commenced.

### **Charges**

Ms. Patterson read the charges (as set out in the Notice of Hearing (Exhibit 1), as follows:

1. that commencing in or about July 2005 the Respondent made inappropriate comments of a sexual nature to Complainant, a co-employee working with the Respondent at Company A. Particulars of the comments include telling the Complainant that the Respondent had a large penis, whispering "kiss me" to her, and asking if she would like to touch his penis or go with the Respondent to his van to "make it rock";
2. that in or about August 2007 the Respondent insisted that the Complainant look at a picture of his penis on his cell phone; and
3. that commencing in or about 2007 and ending in January 2008 the Respondent winked at and blew air kisses to the Complainant.

BY REASON OF the foregoing, it is alleged that the Respondent is guilty of professional misconduct as that term was defined in Sections 1(2)(b) of the Professional Misconduct and Code of Professional Ethics Regulation in effect in September 2008 and is in breach of Sections 2(1)(c) and 2(4)(b) of that Regulation and Section 22 of the Bylaws in effect in September 2008.

Ms. Patterson advised the Discipline Committee that the charge of a breach of Section 2(1)(c) was withdrawn.

## **Plea**

The Respondent pleaded guilty to the charge of a breach of 2(4)(b) of the Professional Misconduct and Code of Professional Ethics Regulation in effect in September 2008 and Section 22 of the Bylaws in effect in September 2008.

## **Other Evidence**

Ms. Patterson tendered an Agreed Statement of Facts as follows:

1. The complainant and the Member were co-workers from 2005 to 2008.
2. The complainant has alleged that during the course of their employment together the Member made offensive comments and gestures to her of a sexual nature.
3. The Member admits that he made an error in judgment in some of his actions and comments but denies that he was motivated by an intention to harass the complainant. As an example: the Member admits that he would make a "peace out" gesture to the complainant in which he would kiss his fingers before making a peace sign and on occasion he would wink at the complainant.
4. The Member acknowledges that the complainant was offended and would like to offer the complainant a written apology through the Corporation.
5. The Member no longer works with the complainant and the complainant is not cooperating with the Corporation in its prosecution of this matter.
6. The Member is remorseful and acknowledges his obligation in future to ensure that his workplace communications remain respectful and professional.
7. The Member and the Corporation agree that disclosure of the name of the Member is not required for the protection of the public and its disclosure would be unfair to the Member.

This Agreed Statement of Facts is dated December 16, 2011 and was marked as Exhibit 3.

The Respondent acknowledged to the Discipline Committee the content of the Agreed Statement of Facts dated December 16, 2011.

Ms. Patterson tendered a letter dated December 16, 2011, signed by the Respondent addressed to the Corporation for the attention of the Chair of the Discipline Committee, to which was attached a letter bearing the same date signed by the Respondent and addressed to the Complainant as an apology for his actions that gave rise to the complaint; this was marked as Exhibit 4. Ms. Patterson acknowledged that the Respondent would not have access to the

address of the Complainant, but that the Corporation does and would transmit to the Complainant the letter addressed to her.

The Respondent confirmed the content of Exhibit 4.

Ms. Patterson tendered a letter dated December 16, 2011, signed by the Respondent addressed to Chair of the Discipline Committee expressing apologies to the Corporation for his actions towards the Complainant; this was marked as Exhibit 5.

The Respondent confirmed the content of Exhibit 5.

Ms. Patterson tendered a submission by the Corporation jointly with the Respondent as to what they agreed would be an appropriate penalty in the circumstances; this was marked as Exhibit 6.

Counsel for the Respondent confirmed the joint submission in Exhibit 6.

Arising out of the joint submissions in Exhibit 6, Ms. Patterson tendered a form of Reprimand of the Respondent that the Corporation and the Respondent considered as appropriate in the circumstances; this was marked as Exhibit 7.

Counsel for the Respondent confirmed the joint submission in Exhibit 7.

### **Findings on the Charge**

The Discipline Committee considered the Agreed Statement of Facts, and in the light of the Respondent's plea of guilty, found that the Respondent is guilty of professional misconduct as that term was defined in Sections 1(2)(b) of the Professional Misconduct and Code of Professional Ethics Regulation in effect in September 2008 and is in breach of Section 2(4)(b) of that Regulation and Section 22 of the Bylaws in effect in September 2008.

### **Submissions on Costs**

The Discipline Committee, having observed that the joint submissions on penalty noted that no Order as to costs was being sought, requested the parties' to make submissions in respect of costs. The Corporation and the Respondent both stated that they did not wish the Discipline Committee to make an Order as to costs.

### **Determination of Penalty**

The decision of the Discipline Committee is based in part upon the fact that the apologies as contained in the letters entered as Exhibits 4 and 5 have been made; and expects that the Corporation will take whatever steps as may be necessary to have the letter addressed to the Complainant will be delivered to her as soon as practicable.

The Discipline Committee accepts the joint submission of the parties as to the imposition of a Reprimand, and as to its contents, and that the Reprimand should be recorded in the register.

In respect of the publication of the notice of the decision and Order, the Discipline Committee accepts the joint submission of the parties and determines that the disclosure of the name of the Member is not required in the public interest and its disclosure would be unfair to the Member.

The Discipline Committee does not propose to make any order as to costs.

The Discipline Committee does not, however, consider that the aggregate of the foregoing is an adequate response in the light of the agreed facts. The Discipline Committee considers that the admitted actions of the Respondent require something more substantial. Although conscious that revocation or suspension of membership may be too severe, especially considering that the Respondent cooperated with the Corporation to his detriment when he may not have been required to do so, the Discipline Committee nevertheless concludes that a material burden is necessary to give the right message to him and to others that comments and gestures of a sexual nature are totally unacceptable for a person who is a Member of the Certified Management Accountants of Ontario. As a consequence, the Discipline Committee imposes a fine of one thousand, five hundred dollars (\$1,500) payable on or before the 29<sup>th</sup> day of February 2012.

All of which is submitted this 16<sup>th</sup> day of December 2011

Ellen Bessner, Chair of the Panel of the Discipline Committee

Timothy Galvin

James Karas

Salim Somani

Betty Wong