

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF ONTARIO
THE CHARTERED ACCOUNTANTS ACT, 1956

DISCIPLINE COMMITTEE

IN THE MATTER OF: Charges against **BERNARD DESMOND PEIRCE WEATHERHEAD, CA**, a member of the Institute, under **Rules 203.1, 204.4(23)(i) and 206.1** of the Rules of Professional Conduct, as amended.

TO: Mr. B. Desmond P. Weatherhead, CA
B.D.P. Weatherhead C.A. Professional Corporation
751 Main Street East, Unit 4
MILTON, ON L9T 3Z3

AND TO: The Professional Conduct Committee, ICAO

REASONS
(Decision and Order Made June 28, 2006)

1. This panel of the Discipline Committee of the Institute of Chartered Accountants of Ontario met on June 28, 2006, to hear charges of professional misconduct against Mr. B. Desmond P. Weatherhead, a member of the Institute.

2. Ms. Barbara Glendinning appeared on behalf of the Professional Conduct Committee, and was accompanied by Peter K. Harris, CA, the investigator appointed by the Professional Conduct Committee. Mr. Weatherhead attended and was unrepresented. He confirmed that he understood he had the right to be represented by counsel and wished to proceed without counsel.

3. The decision of the panel was made known to the parties at the conclusion of the hearing on June 28, 2006, and the written Decision and Order sent to them on July 6, 2006. These reasons, given pursuant to Bylaw 574, include the charges, the decision, the order, and the reasons of the panel for its decision and order.

CHARGES

4. The following charges were laid against Mr. Weatherhead on April 12, 2006:

1. THAT the said Bernard Desmond Peirce Weatherhead, in or about the period February 28, 2002 to September 6, 2002, while engaged to perform an audit of the financial statements of "H. C. C. No. 56" as at February 28, 2002, failed to perform his professional services in accordance with generally accepted standards of practice of the profession, including the Recommendations set out in the CICA Handbook, contrary to Rule 206.1 of the Rules of Professional Conduct (as amended from time to time), in that:
 - (a) he failed to obtain sufficient appropriate audit evidence to support the balance sheet item "Investments (Note 5) \$255,517";

- (b) he failed to make preliminary decisions as to materiality and the components of audit risk;
 - (c) he failed to perform the audit with an attitude of professional scepticism;
 - (d) he failed to ensure disclosure of the fact that the comparative figures were based upon financial statements which were reported on by other auditors; and
 - (e) he failed to comply with section 67(4) of the *Condominium Act, 1998* in that he did not include in his report a statement that the reserve funds were not invested in accordance with the requirements of the *Condominium Act, 1998*.
2. THAT the said Bernard Desmond Peirce Weatherhead, in or about the period February 28, 2002 through August 25, 2005, failed to sustain his professional competence by keeping informed of, and complying with, developments in professional standards in all functions in which the member practiced, contrary to Rule 203.1 of the Rules of Professional Conduct, in that:
- (a) while engaged to perform an audit of the financial statements of "H. C. C. No. 56" as at February 28, 2002, he was unaware of the requirement in section 67(4) of the *Condominium Act, 1998*, S.O. 1998, c. 19, to include disclosure of non-compliance with the *Act* in his Auditor's Report;
 - (b) while engaged to perform an audit of the financial statements of "H. C. C. No. 57" as at January 31, 2005, he was unaware of the requirements in section 66(2) of the *Condominium Act, 1998*, S.O. 1998, c. 19 and section 16(3) of the Regulations O. Reg. 48/01, with respect to "materials" to be included in the financial statements;
 - (c) while engaged to perform audits of the financial statements of "H. C. C. No. 56" as at February 28, 1998 and 2002; an audit of the financial statements of "H. C. C. No. 57" as at January 31, 2005; and an audit of "R. C. L." as at May 31, 2005, he failed to comply with all of the relevant provisions of the accounting standards that apply to not-for-profit organizations, as set out in section 4400 of the CICA Handbook; and
 - (d) while engaged to perform an audit of the financial statements of "R. C. L." as at May 31, 2005, and an audit of the financial statements of "H. C. C. No. 57" as at January 31, 2005, he was unaware of the requirement to communicate at least annually in a letter to the audit committee, matters that bear on independence.
3. THAT the said Bernard Desmond Peirce Weatherhead, in or about the period May 31, 2005 to August 25, 2005, while engaged to issue a written communication under the terms of an audit engagement for "R. C. L." as at May 31, 2005, failed to be and remain independent in that during the engagement period, the member prepared 26 adjusting journal entries without obtaining the approval of management, contrary to Rule 204.4(23)(i) of the Rules of Professional Conduct.

5. Prior to Mr. Weatherhead entering a plea to the charges, the Professional Conduct Committee withdrew particular (d) of charge No. 1.

6. At the conclusion of the evidence, the Professional Conduct Committee moved to amend charge No. 2, by deleting "2002" from the preamble to the charge and substituting "1998" therefor, to conform to the evidence. Mr. Weatherhead did not object to the application. There being no prejudice to the member, the panel amended the charge as requested.

PLEA

7. Mr. Weatherhead entered a plea of not guilty to each of the charges as they remained.

EVIDENCE

8. The Professional Conduct Committee called Mr. Peter K. Harris as its only witness, and sought to have him qualified by the panel as an expert witness in the auditing and preparing of financial statements for condominium corporations and not for profit entities. In support of that application, Mr. Harris' *curriculum vitae* was filed (Exhibit 4) and he was questioned about his qualifications. Mr. Weatherhead did not object to the application, but, rather, supported it. After considering Mr. Harris' qualifications, the panel ruled that he would be permitted to give opinion evidence in the area requested by the Professional Conduct Committee.

9. Mr. Harris testified that he was retained by the Professional Conduct Committee to examine specified files of Mr. Weatherhead: the audits for the fiscal years 1998 and 2002 of Halton Condominium Corporation 56 (HCC 56), and the audits for the 2005 fiscal year of Halton Condominium Corporation 57 (HCC 57) and Royal Canadian Legion Ontario Branch No. 136 (Legion).

10. He met with Mr. Weatherhead on January 11, 2006, and was given complete access to the requested files. Mr. Weatherhead was fully cooperative. Mr. Harris' investigation with respect to the financial statements for fiscal 2002 for HCC 56 focussed on the major asset of that corporation: an investment in Millpond M & R Services Ltd. (Millpond). Millpond was the management company for the corporation.

11. With respect to charge No. 1, Mr. Harris testified that the only audit evidence obtained by Mr. Weatherhead to support the investment was to verify the opening balance with the previous year's audited statements and to verify the investment and interest calculation by having Millpond provide a letter to that effect. In Mr. Harris' opinion, these steps were insufficient, particularly for a non-arm's length investment that did not conform to the *Condominium Act, 1998*. Mr. Weatherhead did not: determine the nature of the investment; require a copy of the investment document; seek independent confirmation of the arrangement; or examine the financial statements of Millpond to determine whether it possessed sufficient assets to secure the investment, all steps which, in Mr. Harris' opinion, would have provided sufficient audit evidence.

12. Mr. Harris further testified that there was no evidence in the working papers that Mr. Weatherhead had considered audit risk or materiality, and that he would have expected to have found a check list or at least a handwritten note. It was his opinion that the audit of an entity with only one significant asset, where that asset was unusual, not at arms' length and not in

accordance with legislation, could only be high risk, and that the characterization of the audit risk determined the extent and timing of testing.

13. It was also Mr. Harris' opinion that Mr. Weatherhead had not approached the audit with professional scepticism, as he did not investigate the investment sufficiently. There was no evidence he had even inquired as to the nature of the investment, not even in the management representations letter.

14. Section 67(4) of the *Condominium Act, 1998* requires that when reserve funds are not invested in accordance with the requirements of the *Act*, an auditor must include a statement disclosing this information in his report. While Mr. Weatherhead did make disclosure in the notes to the financial statements, he failed to do so in his report. Mr. Harris stated that Mr. Weatherhead told him he was unaware of that requirement.

15. With respect to charge No. 2, Mr. Harris testified that section 66(2) of the *Condominium Act, 1998*, and section 16(3) of O. Reg. 48/01 require that the financial statements include a comparison between the amount of contributions to and expenditures from the reserve fund and the amount the plan for funding of the board indicated should have been made. Mr. Harris testified that his review of the financial statements of HCC 57 for fiscal 2005 revealed that, while the financial statements did provide a comparison for the contributions, they did not for the expenditures.

16. Pursuant to section 4400 of the CICA Handbook, any not for profit entity utilizing fund accounting must disclose that fact and any restricted nature of the funds in the financial statements. In both the 1998 and 2002 financial statements for HCC 56, the balance sheet indicates there are two funds. While the note to the reserve fund does identify it as a restricted fund, there is no such note or indication for either the contingency fund or for the investment. Likewise, the financial statements for HCC 57 for fiscal 2005 fail to disclose the nature of the contingency fund, although they do indicate the restrictions on the assets. Finally, the financial statements for the Legion for fiscal 2005 fail to differentiate the restricted funds from the general funds on the balance sheet.

17. Mr. Harris further testified that there was no evidence in the member's working papers for the audits for fiscal 2005 for either HCC 57 or the Legion that Mr. Weatherhead had communicated with the audit committee of either entity with respect to independence issues, as required by section 5751 of the CICA Handbook. Further, when he spoke to Mr. Weatherhead about the requirement, Mr. Weatherhead indicated he was unaware of it.

18. With respect to charge No. 3, Mr. Harris testified that his review of the working papers of the fiscal 2005 audit of the Legion revealed that Mr. Weatherhead had made 26 adjusting journal entries, which he characterized as a significant number, some of which were in material amounts. There was no evidence that management had approved those journal entries, as required by Rule 204.4(23)(i). Mr. Harris also stated that he did not ask Mr. Weatherhead about the adjusted entries.

19. Neither Mr. Weatherhead nor the panel had any questions of Mr. Harris, and the Professional Conduct Committee called no further evidence.

20. Mr. Weatherhead testified in his own defence. He denied particulars (a) (b) and (c) of charge No. 1. He examined the minute book of the corporation and had the directors confirm they had made the investment. He testified that he had no reason to believe differently than the

predecessor auditor that as Millpond always had the money to cover needed repairs, that the investment was confirmed.

21. Mr. Weatherhead testified that he did assess the audit risk; the level of risk impelled him to obtain the board minute. Materiality was not an issue, as he considers any amount, no matter how small, material.

22. Mr. Weatherhead insisted he was sceptical of the investment but believed, as the board had decided to make the funds available on an unsecured basis, it was not his place to delve more deeply into the nature of that investment.

23. Mr. Weatherhead admitted that he did not include a statement concerning the non-conformity of the investment in his report, as he believed, not having read the *Condominium Act, 1998* in detail, the note to the financial statements was sufficient.

24. With respect to charge No. 2, Mr. Weatherhead admitted that he overlooked the need to include a comparison of the expenditures from the reserve fund to the amount provided in the plan for funding, and that he has since rectified that lapse.

25. He further admitted that he did not set out the various funds as completely in the financial statements as he could have, and that that, too, had since been corrected.

26. Mr. Weatherhead stated that he would never perform an audit if he was not completely independent of the client and so he found it ludicrous to be required to write to the client and confirm the obvious. He therefore considered the provision inapplicable to him.

27. With respect to charge No. 3, Mr. Weatherhead testified that the accounting by the Legion was quite rudimentary, and there were a number of corrections which had to be made. He stated that he did sit down with the Legion treasurer prior to the presentation of the financial statements and received his concurrence with the adjustments, although he did not obtain a written approval. He now requires that any adjustments be signed off by management on the back of the last page.

28. Mr. Weatherhead testified that he did a good job for his clients, that the financial statements were all accurate, and that he had done nothing illegal or immoral. He further informed the panel that he does not intend to continue with an assurance practice; that he will be limiting his engagements to compilations.

29. In cross-examination, Mr. Weatherhead stated that he met with the manager of Millpond, but did not ask that manager where the funds had been invested, as he assumed they were being used by Millpond or the manager as an unsecured loan. Nor did he ask to see the financial statements of Millpond. He did not consider demanding records under the *Condominium Act, 1998*, as he believed he would not have received anything.

30. He admitted that he did not comply with the technical requirements as set out in charge No. 2. He stated that he was aware of the changes to the independence rule, but that he was not aware that making the adjustments might result in a loss of independence.

31. The panel asked Mr. Weatherhead to clarify the meaning of the phrase "review for market values", one of the steps checked off on the working papers for the audit of HCC 56 for 2002. Mr. Weatherhead stated that the market value was satisfied by looking at the interest

schedule and believing the money was available; in other words, the market value was the actual value of the investment.

32. Neither Mr. Weatherhead nor the Professional Conduct Committee called any further evidence.

SUBMISSIONS ON FINDING

33. The Professional Conduct Committee submitted that it was inappropriate for an auditor to place all responsibility for decisions concerning the single high-risk asset onto the board, without seeking further audit evidence. Further, Ms. Glendinning submitted that, while each of the particulars, taken in isolation, might not constitute professional misconduct, taken together they demonstrated a significant failure to meet the standards of practice of the profession and constituted professional misconduct.

34. Mr. Weatherhead submitted that, while he has not kept himself up to date to the extent that he should have, and did make some errors in the audits, all the financial statements were approved by the boards and members, and none contained any misrepresentations. In the circumstances, he urged the panel to find that he had not committed professional misconduct.

DECISION

35. The evidence in this matter is clear, cogent and uncontradicted, and the panel finds the facts to be as they were presented in that evidence. After deliberating, the panel made the following decision:

THAT, having seen, heard and considered the evidence, charge No. 1, particular (d) having been withdrawn by the Professional Conduct Committee, and charge No. 2 having been amended at the hearing, the Discipline Committee finds Mr. Bernard Desmond Peirce Weatherhead not guilty of charge Nos. 2 and 3, and guilty of charge No. 1.

REASONS FOR THE DECISION

36. With respect to charge No. 1, the panel concluded it is apparent from the evidence of Mr. Harris, set out at paragraphs 11 to 14 above, and the evidence of Mr. Weatherhead set out at paragraphs 20 to 23 above, that the charge is proven. Mr. Weatherhead was rightly sceptical about the reserve fund and whether Millpond, the management corporation, had used the fund for its own purposes or invested it as required by the *Condominium Act, 1998*. He did quantify the investment, but he did not take appropriate audit steps to ascertain whether or not HHC 56 would be able to realize on its asset, the only significant asset it had. This was not only a failure to adhere to the standards of the profession, but a fundamental failure to provide his clients with crucial information about its only significant asset. The breaches of the standards clearly constitute professional misconduct.

37. With respect to charge No. 2, it is common ground between the parties that Mr. Weatherhead did not disclose the non-compliance with the *Condominium Act, 1998* in his Auditor's Report to the financial statements of HCC 56 for 2002. He also neglected to include a comparison for expenditures in the financial statements of HCC 57 for 2005, to set out the restricted fund accounting in two sets of financial statements as fulsomely as he ought to have, and to confirm his independence in writing to the audit committees of his clients annually. The

issue is whether these errors constitute breaches of Rule 203.1, and if they do, whether or not the breaches are so significant they constitute professional misconduct. It is the view of the panel that the errors do not establish that Mr. Weatherhead was incompetent nor are they significant enough to constitute professional misconduct.

38. Rule 203.1 requires chartered accountants to maintain a degree of professional competence. The mistakes made by Mr. Weatherhead do not amount to a lack of competence. While he failed to disclose non-compliance with the *Condominium Act, 1998* in his report, it was clearly set out in the notes to the financial statement. Likewise, while there was no comparison of expenditures to forecast, there was one for revenues. Further, although the nature of the funds in the various financial statements could have been set out with greater clarity, the statements, when read in their entirety, make clear the nature of those funds. The financial statements upon which the charges are founded are not perfect. But the errors they contain are not of such a nature or so significant that they raise the question of Mr. Weatherhead's professional competence. The overall presentation of the financial statements was sufficient to ensure any user could derive an accurate and complete view of the corporations. The mistakes do not constitute professional misconduct.

39. With respect to charge No. 3, the evidence is Mr. Weatherhead was aware of the requirement to report on independence to his clients but that he believed, given the nature of the clients and his position that he would never act if he were in conflict, that the requirement was nonsensical and irrelevant, and he thus ignored it. This is an error of judgment but it does not amount to professional incompetence.

40. With respect to charge No. 3, the evidence makes it clear that the Legion was a client without much accounting expertise or skill. In his examination of the source data prior to preparing the financial statements, Mr. Weatherhead discovered a number of accounting errors had been made. He corrected the entries and spoke with the treasurer of the Legion, taking him through the adjustments and obtaining his approval of them prior to the presentation of the financial statements. The Professional Conduct Committee investigation stopped short of asking Mr. Weatherhead about the adjusted entries and so was not given this information. Although there is nothing in writing, the evidence of Mr. Weatherhead, which this panel accepts, is that he did obtain management approval of the changes. He has complied with Rule 204.4(23)(i) and is not guilty of charge No. 3.

SUBMISSIONS ON SANCTION

41. Counsel for the Professional Conduct Committee submitted that a sanction of: a written reprimand; a fine of \$2,500; a period of supervised practice for 12 months, three specified courses of professional development; publication in the usual course; and costs in the range of \$2,500 to \$5,000 would satisfy the principles of general and specific deterrence, as well as rehabilitation.

42. Ms. Glendinning noted that the financial statements for 2002 for HCC 56 contained fundamental flaws, and submitted that both the courses of professional development and supervised practice were required to ensure their correction. The remainder of the sanction sought was directed towards deterrence, and she emphasized that, while the fine needed to take into account the nature of Mr. Weatherhead's practice, it should not be seen by him, the profession or the public as merely a licensing fee.

43. Mr. Weatherhead took no issue with most of the sanction proposed by the Professional Conduct Committee. He indicated that he was aware that he had let his current knowledge slip, and that he needed to take professional development. He stated that he had learned from his mistakes and that the presentation deficits pointed out to him had been corrected, and that he did not believe he required supervision.

ORDER

44. After deliberating, the panel made the following order:

IT IS ORDERED in respect of the charge:

1. THAT Mr. Weatherhead be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Weatherhead be and he is hereby fined the sum of \$1,000 to be remitted to the Institute within twelve (12) months from the date this Decision and Order becomes final under the bylaws.
3. THAT Mr. Weatherhead be and he is hereby charged costs fixed at \$1,000 to be remitted to the Institute within twelve (12) months from the date this Decision and Order becomes final under the bylaws.
4. THAT Mr. Weatherhead be and he is hereby required to pay for and complete, in their entirety, within twelve (12) months from the date this Decision and Order becomes final under the bylaws, the following professional development courses made available through the Institute, or, in the event a course listed below becomes unavailable, the successor course which takes its place:
 - (a) A-Z of a Risk Based Audit;
 - (b) Condominium Corporations; and
 - (c) Not-for-Profit Organizations – Accounting & Auditing Issues.
5. THAT Mr. Weatherhead be reinvestigated by the Professional Conduct Committee, or by a person retained by the Professional Conduct Committee, on one occasion within twelve (12) months following the completion of the above-mentioned courses, which reinvestigation shall examine three (3) assurance files for which Mr. Weatherhead is responsible, the cost of the reinvestigation, up to \$2,000, to be paid by Mr. Weatherhead within thirty (30) days of receiving notification of the cost of the reinvestigation.
6. THAT notice of this Decision and Order, disclosing Mr. Weatherhead's name, be given after this Decision and Order becomes final under the bylaws, in the form and manner determined by the Discipline Committee:
 - (a) to the Public Accountants Council for the Province of Ontario;
 - (b) to the Canadian Institute of Chartered Accountants; and
 - (c) by publication in *CheckMark*.
7. THAT in the event Mr. Weatherhead fails to comply with any of the requirements of this Order, he shall thereupon be suspended from the rights and privileges of membership in the Institute until such time as he does comply, provided that he

complies within three (3) months from the date of his suspension, and in the event he does not comply within the three (3) month period, he shall thereupon be expelled from the membership in the Institute, and notice of his expulsion, disclosing his name, shall be given in the manner specified above, and in a newspaper distributed in the geographic area of Mr. Weatherhead's employment and/or residence.

REASONS FOR THE ORDER

Reprimand

45. The panel orders that Mr. Weatherhead be reprimanded in writing to make clear to him that a failure to remain current with respect to the standards of practice of the profession cannot be tolerated.

Fine

46. A fine is necessary to send a message not only to Mr. Weatherhead but to all members of the profession that the standards of practice are important and are to be upheld at all times. The quantum of the fine is less than that sought by the Professional Conduct Committee, in consideration of Mr. Weatherhead's particular circumstances, including the nature of his practice, and the over 35 years he has been a chartered accountant without any disciplinary concerns.

Costs

47. It is appropriate that the member charged, rather than the membership as a whole, bear part of the costs of the proceeding. The costs assessed in this matter are far lower than those usually imposed, particularly for a contested hearing. The panel has done so having regard to Mr. Weatherhead's circumstances, as well as to the nature of the defence he presented and the fact that he has been found not guilty of two of the charges.

Professional Development

48. It is clear that a failure to maintain current is at the root of Mr. Weatherhead's difficulties, and therefore professional development is crucial to both his meeting the standards of practice of the profession and to the public interest. Mr. Weatherhead has indicated his intention to take professional development courses, and that intention is to be encouraged. Given the particular issues in this case, courses focussed on audits, condominium corporations and not for profit entities are appropriate.

Reinvestigation

49. The panel has declined to order supervised practice, as sought by the Professional Conduct Committee. The panel believes that Mr. Weatherhead, having been made aware of the deficits in his practice, has taken and will take appropriate steps to remedy those deficiencies without the necessity of supervision. However, to ensure the public interest is protected, the panel orders a reinvestigation of Mr. Weatherhead's practice after he has had the opportunity of bringing it up to standard, to ensure our belief is not misplaced.

Notice

50. Publishing the names of members found guilty of professional misconduct is often the single most significant sanction that may be administered for general deterrence, education of the membership at large, and protection of the public. It is only in the most exceptional circumstances that such important principles will be over-balanced by privacy considerations. No such circumstances were urged on the panel in this matter, and indeed Mr. Weatherhead most fairly agreed that he saw no reason why he should not be treated as any other member who comes before the Discipline Committee.

Failure to Comply

51. To encourage compliance with discipline orders in cases in which members are not expelled outright, orders of a panel generally specify suspension, followed by, should the member still fail to comply, expulsion with newspaper notification to the public as an ultimate consequence for non-compliance. The panel so orders in this proceeding.

DATED AT TORONTO THIS 17TH DAY OF NOVEMBER 2006
BY ORDER OF THE DISCIPLINE COMMITTEE

H.B. BERNSTEIN, CA – CHAIR
DISCIPLINE COMMITTEE

MEMBERS OF THE PANEL:

J.B. BARRACLOUGH, CA
A.D. NICHOLS, CA
R. VICKERS, CA
D.J. ANDERSON (Public Representative)