

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

DISCIPLINE COMMITTEE

IN THE MATTER OF: Charges against **DOUGLAS JOHN ENSTROM, CA**, a member of the Institute, under **Rules 206 and 206.1** of the Rules of Professional Conduct, as amended.

TO: Mr. Douglas John Enstrom, CA
Fukushima Enstrom LLP
577 Eleventh Avenue
THUNDER BAY, ON P7B 2R5

AND TO: The Professional Conduct Committee, ICAO

REASONS
(Decision And Order Made March 2, 2005)

1. This panel of the Discipline Committee of the Institute of Chartered Accountants of Ontario met on March 1 and 2, 2005 to hear charges brought by the Professional Conduct Committee against Douglas John Enstrom, a member of the Institute.
2. The Professional Conduct Committee was represented by Ms. Barbara Glendinning. She was accompanied by Paul Gibel, CA, the investigator appointed by the Professional Conduct Committee.
3. Mr. Enstrom was present at the hearing and was represented by James Lane, his counsel.
4. The Decision and Order of the panel were made known at the hearing. The formal, written Decision and Order was signed by the Registrar and sent to the parties on March 22, 2005. These reasons, given in writing pursuant to Bylaw 574, set out the charges, the decision, the order, and the reasons of this panel of the Discipline Committee for the Decision and Order.

CHARGES AND PLEA

5. The charges made by the Professional Conduct Committee and dated November 4, 2004 read as follows:
 1. THAT the said Douglas J. Enstrom, in or about the period March 31, 2001 to September 28, 2001, while engaged to perform an audit of the financial statements of Sand Point First Nation as at March 31, 2001, failed to perform his professional services in accordance with generally accepted standards of practice of the profession, contrary to Rule 206.1 of the Rules of Professional Conduct, in that,

- (a) he failed to properly disclose in the auditor's report attached to the financial statements the scope limitation he considered necessary;
 - (b) he failed to take adequate steps to properly determine whether the corporations disclosed as "First Nations Controlled Entities" on the statement of Financial Position met the definition of government business enterprises set out in the CICA public sector accounting recommendations;
 - (c) he failed to obtain sufficient appropriate audit evidence to support the balances on the statement of financial position set out under the heading: "First Nation Controlled Entities";
 - (d) he failed to ensure disclosure on the financial statements of a change in accounting policy with respect to the capitalization of assets;
 - (e) he relied upon the March 31, 2000 balance sheet figures, which had not been audited by him, without first obtaining sufficient appropriate audit evidence to allow him to do so; and
 - (f) having determined that there were material errors in the March 31, 2000 financial statements, he failed to ensure there was a retroactive restatement of the comparative figures of the prior period.
2. THAT the said Douglas J. Enstrom, in or about the period March 31, 2002 to May 17, 2002, while engaged to perform an audit of the financial statements of Sand Point First Nation as at March 31, 2002, failed to perform his professional services in accordance with generally accepted standards of practice of the profession, contrary to Rule 206.1 of the Rules of Professional Conduct, in that;
- (a) he failed to obtain sufficient appropriate audit evidence to support the statement of financial position item "Current portion due from Ontario Hydro - \$1,200,000";
 - (b) in Note 4 to the financial statements headed "Due from Ontario Hydro", he identified a change in accounting policy when it was inappropriate to do so;
 - (c) he failed to take adequate steps to properly determine whether the corporations disclosed as "First Nations Controlled Entities" on the statement of financial position met the definition of government business enterprises set out in the CICA public sector accounting recommendations; and
 - (d) he failed to obtain sufficient appropriate audit evidence to support the balances on the statement of financial position set out under the heading: "First Nation Controlled Entities".
3. THAT the said Douglas J. Enstrom, in or about the period March 31, 2003 to June 24, 2003, while engaged to perform an audit of the financial statements of Matawa First Nations Management as at March 31, 2003, failed to perform his professional services in accordance with generally accepted standards of practice of the profession, contrary to Rule 206 of the Rules of Professional Conduct, in that:

- (a) he improperly issued audit reports on both consolidated and unconsolidated financial statements for Matawa First Nations Management for the year ended March 31, 2003;
 - (b) he failed to ensure proper disclosure of related party transactions in the unconsolidated set of financial statements;
 - (c) he failed to properly document items important to support his auditor's report in both the consolidated and unconsolidated financial statements.
4. THAT the said Douglas J. Enstrom, in or about the period November 30, 2003 to February 17, 2004, while engaged to perform a review of the financial statements of Nadin Contracting Ltd. as at November 30, 2003, failed to perform his professional services in accordance with generally accepted standards of practice of the profession, contrary to Rule 206.1 of the Rules of Professional Conduct, in that:
- (a) he failed to ensure proper disclosure of the fact that the fair value of financial instruments was not reasonably ascertainable;
 - (b) he failed to ensure proper disclosure of the interest rate risk attached to a portion of the long-term debt;
 - (c) he failed to ensure proper disclosure of related party transactions;
 - (d) he failed to ensure adequate disclosure of bank security in note 4 to the financial statements;
 - (e) he failed to properly classify long-term loans as current liabilities when it was appropriate to do so; and
 - (f) he failed to properly document items important to support his report.

6. Mr. Enstrom entered a plea of guilty to Charges 1 and 2. Mr. Enstrom entered a plea of not guilty to Charges 3 and 4. He confirmed for the record that he understood that upon the basis of his plea of guilty to Charges 1 and 2, and on that basis alone, he could be found guilty of those charges.

THE EVIDENCE

7. Ms. Glendinning made an opening statement and gave an overview of the case for the Professional Conduct Committee. She also filed a Document Brief (Exhibit 4) which included the relevant financial statements of Sand Point First Nation (Sand Point), Matawa First Nations Management (Matawa) and Nadin Contracting Ltd. (Nadin).

8. Before Ms. Glendinning called evidence, Mr. Lane gave a brief opening statement setting out the member's position. Mr. Lane said the issue with respect to Charges 3 and 4 was not a denial of the facts asserted as particulars or a denial that there had been a breach of the requirements of the *CICA Handbook* but that the breaches, either taken individually or cumulatively, did not constitute such a significant departure from the required standard as to

constitute professional misconduct worthy of a sanction. Mr. Lane also advised the panel that with respect to sanction, there was primarily one issue which related to a requested suspension.

9. Ms. Glendinning called Mr. Paul Gibel, CA, the investigator appointed by the Professional Conduct Committee, as the only witness for the prosecution. Mr. Gibel was accepted as an expert qualified to give opinion evidence.

10. Ms. Glendinning took Mr. Gibel through the documents in the document brief which were relevant to Charges 1 and 2. With respect to both charges Mr. Gibel expressed the opinion that Mr. Enstrom had failed to perform his professional services in accordance with the generally accepted standards of practice of the profession.

11. In light of the plea of not guilty to Charges 3 and 4, Ms. Glendinning had Mr. Gibel review the relevant documents in more detail and outlined the deficiencies he found with the audit, which was the subject of Charge 3 and the review engagement, which was the subject of Charge 4.

12. With respect to the audit of Matawa, Mr. Gibel expressed the opinion that Mr. Enstrom had not performed his services in accordance with the generally accepted standards of practice of the profession. With respect to the review of Nadin, again after reviewing the relevant documents, Mr. Gibel expressed the view that Mr. Enstrom had not performed his professional services in accordance with the generally accepted standards of practice of the profession.

13. Mr. Lane cross-examined Mr. Gibel with respect to his evidence concerning Charges 1 and 2, and more extensively with respect to his evidence about Charges 3 and 4. With respect to both Charges 3 and 4, Mr. Lane asked Mr. Gibel which particular he regarded as the most significant departure from the required standard.

14. Mr. Lane called Mr. Enstrom who testified briefly with respect to Charges 1 and 2, and at more length with respect to Charges 3 and 4.

15. With respect to particular (d) of Charge 1, Mr. Enstrom testified that the only assets of Sand Point which were acquired before the year ending March 31, 2001, (the year being audited) were two desks, two chairs and a computer.

16. Mr. Lane filed a Document Brief (Exhibit 5). In giving his evidence, Mr. Enstrom made specific reference to the particulars set out in Charges 3 and 4, to Mr. Gibel's evidence and to documents in the Document Briefs. It was clear from his evidence that Mr. Enstrom, as Mr. Gibel had testified, had a good working knowledge of his clients. Mr. Enstrom also testified about the difficulty of the Sand Point audit and the highly politicized atmosphere which prevailed at the time of the audit and thereafter.

17. When Mr. Enstrom had finished his evidence, Ms. Glendinning called Mr. Gibel in reply. While Mr. Lane had no questions for Mr. Gibel, members of the panel did.

DECISION

18. After hearing submissions from both counsel, we deliberated. We concluded that particular (d) of Charge 1 had not been proven and that the other particulars of Charges 1 and 2 had been proven. We also concluded that the departure from the required standard was significant and constituted professional misconduct.

19. With respect to Charge 3, we concluded that all three particulars had been proven and that particular (a), in and of itself, was a serious enough departure from the required standard to constitute professional misconduct.

20. With respect to Charge 4, we concluded that all five particulars had been proven, and that while no one particular was a significant enough departure from the standard to warrant a finding of professional misconduct, that taken together the cumulative effect of the departures from the required standard did constitute professional misconduct.

21. Accordingly, we concluded Mr. Enstrom was guilty on each of the four charges. When the hearing reconvened, the Chair read the following decision for the record:

THAT, having seen, heard and considered the evidence, and having heard the plea of guilty to charges 1 and 2, the Discipline Committee finds Douglas John Enstrom guilty of charges 1, 2, 3 and 4.

SANCTION

22. On behalf of the Professional Conduct Committee, Ms. Glendinning sought: a reprimand; a fine of \$10,000; a suspension for three months; supervised practice for a period of 12 months; a re-inspection subsequent to the period of supervised practice; and a requirement that Mr. Enstrom take specified professional development courses. Ms. Glendinning also requested the usual publication of notice of the decision and order, including the disclosure of the member's name in *CheckMark*; and costs in the amount of at least \$10,000.00.

23. Ms. Glendinning did not call evidence with respect to sanction.

24. Mr. Lane called Mr. Gordon Fukushima, Mr. Enstrom's partner. Mr. Fukushima testified about the firm's practice, Mr. Enstrom's practice and the period when Mr. Enstrom went through some personal difficulties. He also testified about how the partnership had reacted to the charges and the changes the firm has made, including hiring two Chartered Accountants. Further, he testified about impact which a suspension of Mr. Enstrom would have on the firm.

25. Mr. Lane recalled Mr. Enstrom who gave further evidence with respect to his background, his experience with practice inspection which had been positive, the impact that the marriage breakdown had on his practice, the difficulties with the Sand Point Nation and the changes the firm had made since the investigation and charges.

Submissions of Counsel

26. Ms. Glendinning submitted that all three of the general principles which guide a panel of the discipline committee when imposing a sanction were important in this case.

27. Ms. Glendinning submitted that the principles of specific deterrence and rehabilitation required a reprimand, a fine, supervised practice, re-inspection and the publication of the notice of the decision and order. She submitted that a fine, a suspension and the notice were necessary in the interest of general deterrence.

28. With respect to the requested suspension, Ms. Glendinning advised us that the Professional Conduct Committee had concluded because of the nature and extent of the

serious deficiencies that a three month suspension was required.

29. Mr. Lane did not take issue with the submission that the three general principles were all important in this case. He did submit that specific deterrence had already been achieved, that rehabilitation was underway and that a suspension would be harmful to that rehabilitation. He also submitted that the principle of general deterrence would be satisfied by the terms of the order providing for a fine and notice.

30. Mr. Lane outlined the mitigating factors which included: Mr. Enstrom was an honest and hard-working chartered accountant; he had co-operated fully with the investigation and at the hearing; he had a clean record prior to this case; there was no moral turpitude; the practice inspections of the firm had been favourable; and the failure to adhere to the required standards could be explained, in large part, because of personal difficulties experienced by the member at the relevant time, including a matrimonial breakdown.

31. Mr. Lane also pointed out that there had been no loss to the public, and that the Sand Point audit was a particularly difficult file. He referred to the changes the partners had put in place and submitted that a suspension of Mr. Enstrom would put an unnecessary cloud over the future of the firm. Mr. Lane also reviewed the impact which a suspension would have on Mr. Fukushima as well as on the firm itself, particularly given that the name of the firm included both partners' names.

ORDER

32. When counsel had concluded their submissions the panel deliberated. When we had made our decision the hearing resumed and the chair summarized on the record the essential terms of the order. The formal order was included in the decision and order dated March 22, 2005 which was sent to the parties. The order reads:

IT IS ORDERED in respect of the charges:

1. THAT Mr. Enstrom be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Enstrom be and he is hereby fined the sum of \$5,000 to be remitted to the Institute within six (6) months from the date this Decision and Order becomes final under the bylaws.
3. THAT Mr. Enstrom be and he is hereby charged costs fixed at \$5,000, to be remitted to the Institute within six (6) months from the date this Decision and Order becomes final under the bylaws.
4. THAT Mr. Enstrom be and he is hereby required to complete, by paying for and attending in their entirety, within one (1) year 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) *Financial Statement Presentation & Disclosure*;
 - (b) One course yet to be determined involving quality assurance of professional firms;
 - (c) *Accounting, Auditing & Professional Practice Update*; and

(d) *Auditing Refresher.*

5. THAT Mr. Enstrom be and he is hereby required to have his practice supervised, at his own cost, for a period of one (1) year from the date this Decision and Order becomes final under the bylaws, upon the following terms and conditions:
 - (a) that the supervisor be independent of Mr. Enstrom and shall not be Mr. Enstrom's partner, Mr. Fukushima;
 - (b) that the responsibilities of the supervisor shall include, at a minimum, the review and approval of Mr. Enstrom's working papers and financial statements prior to Mr. Enstrom's issuance of the audit and review reports;
 - (c) that the supervision be limited to one review file and three audit files.
6. THAT Mr. Enstrom be reinvestigated by the professional conduct committee, or by a person retained by the professional conduct committee, on one occasion, within one (1) year from the expiry of the period of supervised practice ordered in paragraph 5, the cost of the reinvestigation, up to \$2,000, to be paid by Mr. Enstrom within thirty (30) days of receiving notification of the cost of the reinvestigation.
7. THAT notice of this Decision and Order, disclosing Mr. Enstrom'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*.
8. THAT in the event Mr. Enstrom 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 this three month period, he shall thereupon be expelled from 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. Enstrom's practice or employment.

33. There are three major differences between the order made and the order sought by the Professional Conduct Committee. The scope of supervised practice is limited to one review file and three audit files; the quantum of the fine and costs is half of that requested and there is no suspension.

No Suspension

34. The panel concluded Mr. Enstrom was an honest and sincere member who both acknowledged and regretted the fact that he let his standards slip below the required standard at a time of personal difficulty. The panel concluded Mr. Enstrom in particular, and the firm in general, had taken steps to minimize the possibility that such a slip would occur in the future. The panel decided a suspension would not help the rehabilitation which is underway.

35. With respect to general deterrence, it is recognized that the Notice of the order, disclosing the member's name published in *CheckMark*, is the single most effective term of an order which a panel can make. This is a standards case, and the finding of professional misconduct made against the member, who will be named, together with the terms of the order will be made known to the profession. The panel concluded this would be a sufficient general deterrent in this case.

Supervised Practice

36. The panel was satisfied that Mr. Enstrom was a competent Chartered Accountant, who had and was taking steps to rehabilitate himself. Nevertheless, the panel concluded that it was in the public interest that there be a limited supervision of Mr. Enstrom's practice. This limited supervision, and the re-inspection by the Professional Conduct Committee after the period of supervised practice, is intended to ensure that the public interest is protected and Mr. Enstrom is satisfactorily rehabilitated.

Quantum of Fine and Costs

37. With respect to the fine, the panel determined the appropriate fine was \$5,000. It was apparent that Mr. Enstrom knew his clients well. There was a problem with the presentation of financial statements and the appropriate procedures were not always followed. But, Mr. Enstrom knew and understood the clients' financial positions. The failures were not egregious.

38. With respect to the costs, the panel decided the appropriate amount was \$5,000. The panel took into account the money Mr. Enstrom and the firm had spent and would spend as a result of the investigation and charges.

39. The other terms of the order were not contentious.

Reprimand

40. A reprimand was given to stress to Mr. Enstrom that his conduct was unacceptable.

Professional Development Courses

41. The parties agreed that the professional development courses ordered were appropriate. The formalized quality assurance requirement of the profession is relatively new and an appropriate course could not be identified at the hearing itself. In effect, the quality assurance requirements are intended to ensure that more than just one member of the firm is satisfied with the work on a file. When an appropriate course is identified Mr. Enstrom will benefit from it.

Notice

42. There are no rare and unusual circumstances which warrant or require Mr. Enstrom's name to be withheld from the notice to be published in *CheckMark*.

43. As we have said above, publication of notice disclosing the member's name is the one term of the order likely to have the most impact on other members of the profession. All members should realize that if they let their standard slip, their name could appear in *CheckMark* and they would have to face the resulting embarrassment and business difficulties.

Failure to Comply

44. As usual, the order provides consequences for failure to comply with the terms of the order. If there were no such consequences the order could well be meaningless.

DATED AT TORONTO THIS 17th DAY OF NOVEMBER, 2005
BY ORDER OF THE DISCIPLINE COMMITTEE

D. DAFOE, FCA – DEPUTY CHAIR
DISCIPLINE COMMITTEE

MEMBERS OF THE PANEL:

P. CLEVELAND, FCA
G. PEALL, CA
H. TARADAY, CA
N.C. AGARWAL (Public Representative)