

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

DISCIPLINE COMMITTEE

IN THE MATTER OF: Charges against **GEORGE EDWARD ARLEN, CA**, a member of the Institute, under **Rule 206** of the Rules of Professional Conduct, as amended.

TO: Mr. George Edward Arlen, CA
5-295 Southgate Drive
GUELPH, ON N1G 3M5

AND TO: The Professional Conduct Committee, ICAO

REASONS
(Decision And Order Made June 11, 2004)

1. This panel of the Discipline Committee of the Institute of Chartered Accountants of Ontario met on June 11, 2004 to hear charges brought by the Professional Conduct Committee against Mr. George Edward Arlen, a member of the Institute.

2. The Professional Conduct Committee was represented by Ms. Barbara Glendinning. She was accompanied by Mr. Paul Gibel, the investigator appointed by the Professional Conduct Committee. Mr. Arlen was present and represented himself. He confirmed that he knew he had the right to retain counsel.

3. The decision and the order of the Discipline Committee were made known at the hearing on June 11, 2004. The formal decision and order made on June 11, 2004 was signed by the secretary on August 9, 2004 and sent to the parties that day. These reasons, given pursuant to Bylaw 574, include the charges, the decision, the order and the reasons of this panel of the Discipline Committee for the decision and order.

CHARGES

4. The charges made by the Professional Conduct Committee on March 11, 2004 read as follows:

1. THAT the said George E. Arlen, in or about the period March 31, 2003 through June 24, 2003 while engaged to perform an audit of the financial statements of Waterloo Region – Wellington – Dufferin District Health Council for the year ended March 31, 2003, 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 of the rules of professional conduct, in that:

- (a) he failed to properly account for Capital Assets;

- (b) he improperly recorded "\$13,613 Demutualization funds – Clarica Life" as deferred revenue when it should have been included in fund balances as equity; and
 - (c) he failed to communicate with those having oversight responsibility for the financial reporting process;
2. THAT the said George E. Arlen, in or about the period March 31, 2003 through July 29, 2003, while engaged to perform an audit of the financial statements of Canadian Dairy Network (a Not-for-profit Organization) for the year ended March 31, 2003, 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 of the rules of professional conduct, in that:
- (a) he failed to communicate with those having oversight responsibility for the financial reporting process; and
 - (b) he failed to present net assets invested in capital assets in the statement of financial position (balance sheet).
5. Mr. Arlen entered a plea of not guilty to both charges.

EVIDENCE

6. Ms. Glendinning gave a brief overview of the case for the Professional Conduct Committee. She explained that the charges arose out of the re-investigation which was made pursuant to the order of the Discipline Committee made on October 31, 2002. The charges related to Mr. Arlen's audit of two not-for-profit organizations.
7. Mr. Gibel was called to testify. A document brief containing the relevant documents was filed and marked as Exhibit No. 4. A copy of Mr. Gibel's curriculum vitae was filed and marked as Exhibit No. 5. Mr. Gibel's qualifications to give expert evidence were not challenged by Mr. Arlen. The committee recognized Mr. Gibel as an expert qualified to give opinion evidence.
8. Mr. Gibel explained that he had been engaged to conduct the re-investigation of Mr. Arlen's practice after the period of supervised practice ordered by the Discipline Committee was completed. Mr. Gibel said that Mr. Arlen was co-operative throughout. He testified that Mr. Arlen had drastically changed his practice after the prior discipline hearing. He had no review engagements and he had only four audits, all of not-for-profit entities.
9. Mr. Gibel, when giving his evidence, referred to the document brief, the particulars of the charges and specific provisions of the *CICA Handbook*. He reviewed the financial statements with reference to each particular of the relevant charge and the *CICA Handbook* requirement and expressed the opinion that, for the reasons particularized in the relevant charge, Mr. Arlen had not provided his professional services in accordance with the generally accepted standards of the profession.

10. Mr. Arlen cross-examined Mr. Gibel. At the conclusion of Mr. Gibel's evidence, members of the panel asked questions with respect to particular (b) of Charge No. 1, the Demutualization funds from Clarica Life.

11. Mr. Arlen testified on his own behalf. He did not disagree with the facts set out by Mr. Gibel or his testimony with respect to the applicability of sections of the *CICA Handbook*. However, it was Mr. Arlen's position that as the financial statements were not misleading and as there was no intent to mislead, the fact that he had not complied with specific provisions of the *CICA Handbook* did not mean that he was guilty of professional misconduct.

DECISION ON THE CHARGES

12. In our deliberations we concluded that particulars (a) and (c) of Charge No. 1 and particulars (a) and (b) of Charge No. 2 had been proven. We also concluded that Mr. Arlen had not provided his professional services in accordance with the generally accepted standards of practice of the profession. We had no doubt, particularly given the earlier decision of the Discipline Committee, that Mr. Arlen's continued failure to properly apply the requirements of the *CICA Handbook* constituted professional misconduct.

13. We accepted that Mr. Arlen acted honestly, that there was no intention to mislead and that the financial statements were not misleading. But good intentions and honest actions, which are fundamentally important, are not all that is required of an auditor. In both instances Mr. Arlen signed an audit report which concluded:

In my opinion, these financial statements present fairly, in all material respects, the financial position of the named client [sic] as at March 31, 2003 and the results of its operations for the year then ended in accordance with Canadian generally accepted accounting principles.

14. Mr. Arlen agreed with Mr. Gibel's testimony with respect to the facts and the applicability of the provisions of the *CICA Handbook*. He further acknowledged that he had not complied with the recommendations of the *Handbook* and did not suggest that he had reasons not to follow them. He denied this constituted professional misconduct because there was no dishonesty or intention to mislead. Mr. Arlen was not charged under Rule 201.1 with acting dishonestly or under Rule 205 with associating himself with statements which were false or misleading.

15. Rather he was charged under Rule 206 with not performing his services in accordance with the generally accepted standards of practice of the profession. Mr. Arlen agreed that the recommendations of the *Handbook* were applicable and that he did not follow them. Accordingly, he was not entitled to sign the audit report which indicated that the financial statements had been prepared in accordance with Canadian generally accepted accounting principles. In doing so, his conduct did not meet the standard required of the profession. The defence Mr. Arlen raised is not a defence to the charges he faced.

16. With respect to particular (b) of Charge No. 1, we concluded that the Professional Conduct Committee had not proved its case. Mr. Gibel acknowledged in cross-examination that there was room for doubt about this particular.

DECISION

17. When the hearing resumed, the Chair read for the record the decision of the committee. It is set out in the formal, written decision as sent to the parties on August 9, 2004, and reads as follows:

THAT, having seen, heard and considered the evidence, the Discipline Committee finds George Edward Arlen guilty of charges Nos. 1 and 2.

SANCTION

18. Ms. Glendinning called Mr. Gibel to testify with respect to sanction. Ms. Glendinning and Mr. Arlen both made submissions with respect to sanction.

19. Mr. Gibel again testified to the changes Mr. Arlen had made in his practice. With respect to the two audit files which Mr. Gibel re-investigated, although both files led to charges, he testified that Mr. Arlen's work on both files was vastly improved.

20. Ms. Glendinning asked for an order which was rehabilitative in nature. She advised the panel that the Professional Conduct Committee had concluded that Mr. Arlen's rehabilitation was not quite complete, but that he could be rehabilitated and should be given the chance to do so.

21. Ms. Glendinning, on instructions from the Professional Conduct Committee, requested an order which included the following terms: a reprimand; a requirement that Mr. Arlen take professional development courses; a requirement that Mr. Arlen's practice be supervised; and that Mr. Arlen be required to pay costs of \$3,000.

22. Mr. Arlen did not take issue with the reprimand or the requirement that he take courses. He did object to publication of his name which he said was detrimental to his clients and his practice. He also submitted that he did not have the financial resources to pay the costs requested, particularly in light of the financial costs of the courses and the supervised practice.

23. In his submissions, Mr. Arlen seemed to acknowledge that he knew that it was not acceptable for him to exercise his personal judgment and disregard the requirements of the *CICA Handbook*.

ORDER

24. After deliberations, the hearing resumed and the Chair set out the essential terms of the order on the record. The order itself, which was sent to the parties on August 9, 2004, reads as follows:

IT IS ORDERED in respect of the charges:

1. THAT Mr. Arlen be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Arlen be and he is hereby charged costs fixed at \$1,500, to be remitted to the Institute within one (1) year from the date this Decision and Order becomes final under the bylaws.

3. THAT Mr. Arlen be and he is hereby required to complete, by paying for and attending in its entirety, within one (1) year from the date this Decision and Order becomes final under the bylaws, the professional development course *Not-for-Profit Organizations – Accounting & Auditing Issues*, made available through the Institute, or, in the event the course becomes unavailable, the successor course which takes its place.
4. THAT Mr. Arlen be and he is hereby required to have his practice supervised for a period of one (1) year, at his own cost, upon the following terms and conditions:
 - (a) Mr. Arlen shall, within thirty (30) days from the date this Decision and Order becomes final under the bylaws, advise the director of standards enforcement in writing of the name of, and contact information for, his chosen supervisor;
 - (b) Mr. Arlen's chosen supervisor must be experienced in not-for-profit organizations;
 - (c) no assurance report may be released by Mr. Arlen without prior clearing of all queries through, and final sign-off by, his supervisor;
 - (d) at the end of the period of supervised practice, the supervisor must report to the professional conduct committee about the cooperation received from Mr. Arlen;
 - (e) in the event there is any issue relating to the supervision of Mr. Arlen's practice about which Mr. Arlen and the professional conduct committee cannot agree, either may apply to the chair or a deputy chair of the discipline committee at an assignment hearing for directions;
 - (f) the one (1) year period of supervised practice shall commence on the day Mr. Arlen notifies the director of standards enforcement of the name of his supervisor pursuant to paragraph 4(a), or on such other day as may be set by the chair or a deputy chair of the discipline committee in the event an application is made to the discipline committee pursuant to paragraph 4(e).
5. THAT notice of this Decision and Order, disclosing Mr. Arlen'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*.
6. THAT in the event Mr. Arlen 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 (3) 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. Arlen's current or former practice, employment and/or residence.

REASONS FOR THE ORDER

Reprimand

25. The panel was persuaded that a reprimand was an adequate specific deterrent to Mr. Arlen. He did seem to acknowledge at the hearing that he was not entitled to disregard the requirements of the *Handbook* even if his own professional judgment suggested it would be okay to do so. This acknowledgment, combined with Mr. Gibel's evidence as to the substantial improvement in his practice, and the acknowledgment by the Professional Conduct Committee that Mr. Arlen had largely succeeded in rehabilitating himself, persuaded this panel that in the particular circumstances of this case neither a fine nor a suspension was required as a specific deterrent.

Supervised Practice

26. The panel concluded that Mr. Arlen's rehabilitation would be materially assisted if he was required to practise under supervision for a period of one year. The panel also concluded that the supervision need only relate to assurance engagements, and that rather than a re-investigation at the end of the year, the supervisor should report to the Professional Conduct Committee about the co-operation received from Mr. Arlen.

27. It was apparent at the hearing that Mr. Arlen respected Mr. Gibel. The panel understands the reluctance of the Professional Conduct Committee to have the investigator appointed as the supervisor of a discipline member's practice. But this is an unusual case. The panel concludes that it would facilitate Mr. Arlen's rehabilitation if Mr. Gibel were the supervisor. While the panel recognizes it does not have the authority to order that Mr. Gibel be the supervisor, we so recommend.

Costs

28. The costs sought by the Professional Conduct Committee are modest even on a partial reimbursement basis. The costs of the prosecution and hearing were the direct result of Mr. Arlen's failure to adhere to the standards of the profession. However, the panel concluded that an award of costs which Mr. Arlen would find onerous would be detrimental to his efforts to rehabilitate himself. Accordingly, the panel reduced the award of costs requested, even though the costs requested were relatively modest.

Publication

29. Publication of the notice of the decision and order in *CheckMark* addresses the principle of general deterrence. The panel recognizes that it is embarrassing to Mr. Arlen to have his name published in *CheckMark* and further, that his name will be published twice in *CheckMark* even though his misconduct did not involve moral turpitude. There are no rare and unusual circumstances which would warrant withholding Mr. Arlen's name from the notice. Accordingly, the panel finds the usual order for publication is necessary in this case.

Failure To Comply

30. An order which did not provide for consequences to the member in the event he or she did not comply with the order would be meaningless. Accordingly, the usual provision for a period of suspension in the event of a failure to comply, and ultimate expulsion if the failure continues, was included in the order.

DATED AT TORONTO, THIS 21ST DAY OF OCTOBER, 2005
BY ORDER OF THE DISCIPLINE COMMITTEE

D.W. DAFOE, FCA – DEPUTY CHAIR
DISCIPLINE COMMITTEE

MEMBERS OF THE PANEL:

R.I. COWAN, CA
J.A. CULLEMORE, CA
P.J. HOLT, CA
M.S. LEIDERMAN, CA
B. RAMSAY (Public Representative)