

THE INSTITUTE OF CHARTERED ACCOUNTANTS OF ONTARIO
THE CHARTERED ACCOUNTANTS ACT, 2010

DISCIPLINE COMMITTEE

IN THE MATTER OF: Charges against **JAMES A. DUFFIELD, CA**, a member of the Institute, under **Rules 201.1 and 205** of the Rules of Professional Conduct, as amended.

TO: Mr. James A. Duffield

AND TO: The Professional Conduct Committee, ICAO

REASONS
(Decision and Order made September 20, 2011)

1. This panel of the Discipline Committee of the Institute of Chartered Accountants of Ontario met on September 20, 2011 to hear charges of professional misconduct brought by the Professional Conduct Committee (PCC) against James Allan Duffield, a member of the Institute.

2. Ms. Alexandra Hersak appeared on behalf of the PCC. Mr. James Duffield attended and was unrepresented. Mr. Duffield acknowledged that he understood he was entitled to be represented by counsel, and that he was waiving that right. Mr. Robert Peck attended the hearing as counsel to the Discipline Committee.

3. The decision of the panel was made known at the conclusion of the hearing on September 20, 2011, and the written Decision and Order was sent to the parties on September 29, 2011. These reasons, given pursuant to Rule 20.04 of the Rules of Practice and Procedure, contain 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. Duffield by the PCC on May 31, 2011:

1. THAT the said James A. Duffield, in or about the period July 1, 1998 through January 31, 2003, while Manager of Finance for "CET", associated himself with statements and representations which he knew or should have known were false or misleading contrary to Rule 205 of the Rules of Professional Conduct, in that:
 - (a) he prepared claim submissions in respect of three projects which contained false or misleading information relating to amounts up to \$345,000, knowing that those submissions were to be submitted to a federal government agency (the "Agency") for reimbursement.

2. THAT the said James A. Duffield, in or about the period July 1, 1998 through January 31, 2003, while Manager of Finance for "CET", failed to act in a manner which will maintain the good reputation of the profession and its ability to serve the public interest contrary to Rule 201.1 of the Rules of Professional Conduct, in that he was aware that "CET" was submitting false claims to the Agency for reimbursement but did not take steps to stop those activities or to notify the Agency about the false claims.

Plea

5. Mr. Duffield pleaded guilty to the charges.

The Proceedings

6. Ms. Hersak made an opening statement. She advised that the case for the PCC would be presented by way of an Agreed Statement of Facts and Document Brief. She then filed the Agreed Statement of Facts (Exhibit 1) and a Document Brief (Exhibit 2). The Agreed Statement of Facts was signed by Mr. Duffield on his own behalf and by Ms. Hersak on behalf of the PCC.

7. In presenting the case of the PCC Ms. Hersak reviewed the Agreed Statement of Facts and in doing so made reference to the relevant documents in the Document Brief. There were no other witnesses called by the PCC or Mr. Duffield. Both Ms. Hersak and Mr. Duffield responded to the questions asked by members of the panel and helped clarify the facts and circumstances for the panel.

8. Ms. Hersak made submissions with respect to the charges. Mr. Duffield said he agreed with the submissions and did not wish to add anything to those submissions.

The Facts

9. The panel herein sets out the facts they believe are relevant, none of which are in dispute and all of which were contained in the Agreed Statement of Facts and Document Brief. The conduct which led to the charges against Mr. Duffield came to light when the Peel Regional Police conducted an investigation into an alleged fraud against a federal government agency (the "Agency") related to the outsourcing of government services to organizations or corporations (Service Providers) to train and monitor the unemployed.

10. A corporation or organization which wanted to be a Service Provider to the Agency would submit a proposal, including a budget outlining the expected costs to provide the services, for approval. When a proposal was accepted, a Contribution Agreement was signed by both parties which provided for the Agency to reimburse the Service Provider for the actual expenses directly related to the project up to the amount of the budget set out in the proposal. The funding was not a grant and the Service Provider had to retain proof of the expenses claimed.

11. The police made a series of arrests and laid numerous charges. One of the parties investigated by the police was CET, a not-for-profit education and training organization which was a division of a district school board. The police alleged that CET submitted fraudulent claims to the Agency for reimbursement.

12. Mr. Duffield, Manager of Finance for CET from 1996 until the time of the hearing, was a senior accountant for CET during the period of the alleged fraud. He was not part of the senior management group however, who all earned bonuses in addition to their regular salaries, and

no one in the organization reported directly to Mr. Duffield. He reported directly to the CEO of CET and indirectly to three of the four division directors who were in charge of the projects for the Agency. The police laid charges against the CEO of CET and three Directors. The charges were ultimately withdrawn by the Crown and the case was closed. During their investigation, the police interviewed Mr. Duffield but no charges were laid against him.

13. The four division Directors and Senior Managers of CET developed the proposals and initial budgets for Agency projects. While Mr. Duffield was not involved in the initial proposals, he reviewed the expense summaries which were provided to him and which he used to prepare the claims which he then submitted for payments. Mr. Duffield knew the claims were not entirely supportable. Further, upon instructions from a Director he did prepare budgets for contracts which were to be renewed and these renewal budgets were inflated in line with the original false program budget and subsequent false claims.

14. Charge No. 1 related to three specific projects for which Mr. Duffield submitted the claims for reimbursement which exceeded the actual costs by a total of \$345,000. Mr. Duffield knew that the claims were false and misleading. When he reviewed summary schedules of the three projects which the police had prepared he was able to provide the police with details of the actual costs for the project. He indicated with an "F" on the summaries the items where costs claimed exceeded the actual costs incurred and which rendered the claims false and misleading.

15. Mr. Duffield, who was not the author of the fraudulent schemes at CET, was at all material times aware that CET should not have been making claims for reimbursement from the Agency for other than actual costs. He took no action to alert members of the school board to the fraud. Mr. Duffield himself was involved in approximately 25% of the Agency contracts with CET. Despite this, and despite dealing directly with Agency representatives who attended CET as provided for in the Contribution Agreement to monitor the costs of the projects, Mr. Duffield did not advise them that the claims he was preparing and submitting for reimbursement contained false information.

16. Mr. Duffield agreed that he had failed to comply with the Rules of Professional Conduct as set out in the charges. He stated he was not proud of his past activities and was remorseful. Although there was no financial benefit to him, he did keep his job and he is still employed with the school board at the time of the hearing. During the period of his misconduct, there was a pervasive sense of entitlement throughout the organizations, and Mr. Duffield thought he might lose his job if he disclosed the fraudulent activity. Policies are now in place to prevent a recurrence of this type of activity.

Decision

17. After deliberating, the panel made the following decision:

THAT having heard the plea of guilty to Charge Nos. 1 and 2, and having seen and considered the evidence, including the Agreed Statement of Facts, filed, the Discipline Committee finds James Allan Duffield guilty of the charges.

Reasons for Decision

18. There was no dispute that the prosecution had satisfied the burden of proof and the panel found the facts set out above to be proven. There is no question that Mr. Duffield's conduct breached the Rules of Professional Conduct and constituted professional misconduct

as he himself conceded. Accordingly he was found guilty.

19. The panel understood that according to the evidence the environment in which Mr. Duffield worked was not conducive to maintaining the Rules of Professional Conduct. He may well have felt great pressure to conform to the illegal activities as directed by his superiors. Chartered accountants sometimes face such pressures and the standard of the profession requires that they do not yield to them.

20. The panel also acknowledged that Mr. Duffield was not the author or initiator of the fraud. However, he was more than a mere innocent bystander. As the evidence which proved charge 1 makes clear, he had a detailed knowledge of \$345,000 of claims which were fabricated and yet he submitted them for reimbursement. He developed renewal contracts based on similarly inflated claims, thus making it appear that the original contracts were reasonable. He met with representatives of the Agency but he did not disclose to them that the information he was providing them was false and misleading. In the panel's mind Mr. Duffield was in fact a partner, albeit perhaps a reluctant partner, in the alleged fraud.

Sanction

21. Ms. Hersak did not call evidence with respect to sanction. She did file, at Mr. Duffield's request, a letter from the school board (Exhibit 3), which made it clear that Mr. Duffield's employer supported him and intended that his employment continue.

22. Ms. Hersak advised the panel that Mr. Duffield agreed with the PCC with respect to the appropriate sanction. Ms. Hersak set out the jointly recommended sanction which was: a written reprimand; a fine of \$5,000; suspension from membership in the Institute for a period of six months; and the usual order regarding publicity. The PCC also sought an order for partial indemnity for costs of the investigation and hearing in the amount of \$5,000.

23. Ms. Hersak submitted that Mr. Duffield had exhibited a serious lapse in judgement over a period of time in submitting false information to a government agency. Over a period of four years, he did not take steps to stop the scheme or alert the Agency to what was taking place. Although Mr. Duffield said he received no monetary gain, his actions did allow him to keep his job. Ms. Hersak stated that the integrity of chartered accountants is paramount and Mr. Duffield has damaged his own and the profession's reputation.

24. Ms. Hersak also noted a number of mitigating factors. Mr. Duffield had expressed remorse for his actions, acknowledged his misconduct, pleaded guilty to the charges, signed the Agreed Statement of Facts, had no discipline history, cooperated with the police and in the PCC investigation and he has shown a willingness to be rehabilitated. He is still employed with the same employer who has full knowledge of the matter.

25. Ms. Hersak submitted that the proposed sanctions would satisfy the applicable principles of sentencing: specific deterrence, general deterrence and rehabilitation and would adequately protect the public interest. In her view the fine and suspension together with the publicity would satisfy the principles of specific and general deterrence.

26. Ms. Hersak distributed a Case Brief containing five ICAO Discipline Committee cases involving false or misleading activities: *Adair*, *Becker*, *Gera*, *Jean-Baptiste* and *Margel*. She reviewed the misconduct and sanction imposed in those cases which in her submissions supported the sanction requested in this case.

27. Ms. Hersak filed a Costs Outline (Exhibit 4) which showed that the costs of the investigation and hearing were just over \$12,000. The PCC was seeking costs on a partial indemnity basis in the amount of \$5,000, less than 50% of the actual costs incurred.

28. Mr. Duffield stated that he was in agreement with the joint submission on sanction and indicated that the timing of payment of the fine and costs was not an issue.

Order

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

IT IS ORDERED in respect of the charges:

1. THAT Mr. Duffield be reprimanded in writing by the Chair of the hearing.
2. THAT Mr. Duffield 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 was made.
3. THAT Mr. Duffield be suspended from the rights and privileges of membership in the Institute for a period of six (6) months from the date this Decision and Order was made.
4. THAT notice of this Decision and Order, disclosing Mr. Duffield's name, be given in the form and manner determined by the Discipline Committee:
 - (a) to all members of the Institute
 - (b) to all provincial institutes/Ordre;
 and shall be made available to the public.
5. THAT Mr. Duffield surrender his certificate of membership in the Institute to the Discipline Committee Secretary within ten (10) days from the date this Decision and Order is received, to be held during the period of suspension and thereafter returned to Mr. Duffield.

IT IS FURTHER ORDERED:

6. THAT Mr. Duffield be and he is hereby charged costs fixed at \$3,000 to be remitted to the Institute within six (6) months from the date this Decision and Order was made.

AND IT IS FURTHER ORDERED:

7. THAT in the event Mr. Duffield fails to comply with any of the requirements of this Order, he shall be suspended from the rights and privileges of membership in the Institute until such time as he does comply, provided that he complies within thirty (30) days from the date of his suspension, and in the event he does not comply within the thirty (30) day period, his membership in the Institute shall be revoked, and notice of his membership revocation, disclosing his name, shall be given in the manner specified above, and in a newspaper distributed in the geographic area of Mr. Duffield's practice and/or residence. All costs associated

with the publication shall be borne by Mr. Duffield and shall be in addition to any other costs ordered by the committee.

Reasons for Sanction

30. Joint submissions are to be given particular weight by the panel provided the sanction recommended falls within the appropriate range of sanction. As the submission was a joint submission the panel carefully considered the cases referred to by counsel and compared the sanction imposed in those cases with the misconduct in this case, recognizing that no two cases are exactly alike.

31. The panel concluded that the requested fine, suspension and publicity fell within the range of sanctions imposed in similar cases. The panel was convinced the requested order satisfied the three general principles which apply to sanction, namely: general deterrence, specific deterrence and rehabilitation. In effect, the order assumes that Mr. Duffield is capable of being rehabilitated, indeed that he is on the way to being rehabilitated and thus it would be better for Mr. Duffield to practice within the discipline of the profession than outside that discipline. The panel was satisfied that the order serves the public interest.

32. Mr. Duffield was an active participant in the alleged fraud and although many opportunities were available to him to disclose the misconduct he maintained his silence for over four years. While he did not benefit directly in the sense that he received money which CET received or a bonus because of the money which CET received, he did continue to be employed and further he did continue to participate in the misrepresentation. Both by his actions and his inactions he breached the rules and damaged the professions reputation. The sanction proposed was appropriate for Mr. Duffield's serious professional misconduct.

33. While superiors were primarily responsible for this fraud, Mr. Duffield was an active participant. He had many opportunities to disclose the fraudulent conduct to the Agency or to the publicly elected members of the school board who were his superiors' superior. The serious nature of Mr. Duffield's actions and inactions resulted in a serious breach of the rules that damaged the profession's reputation and warrant the fine and suspension proposed.

34. The written reprimand is to reinforce what the panel believes Mr. Duffield now knows, namely that his conduct was unacceptable. The provision in the Order for failure to comply with the terms of the Order is the usual provision, without which the Order would appear to be meaningless.

Costs

35. Ms. Hersak acknowledged that this case was one of numerous cases investigated by the PCC with respect to a major fraud on the agency. The nature of the fraud was such that the investigations often overlapped and accordingly it was necessary to apportion the costs attributable to Mr. Duffield. Further, the PCC's request for partial reimbursement of the actual costs was less than 50% of those costs as set out in the Cost Outline.

36. The Cost Outline itself sets out factors which are often considered when a panel makes an award of cost. These factors include: the complexity of the case; its importance; whether the member was cooperative; and did either party take unnecessary steps resulting in wasted time; did the member admit the facts asserted against him; and did the member plead guilty to the charges. In this case Mr. Duffield had cooperated with the police, acknowledged his guilt at an early stage when dealing with the PCC; signed an Agreed Statement of Facts and entered a

plea of guilty. All of these factors together with our understanding of the inherent inaccuracies that may result because the costs were apportioned in the Cost Outline persuaded the panel that the appropriate award for costs in this case should be \$3,000.

DATED AT TORONTO THIS 1ST DAY OF DECEMBER, 2011
BY ORDER OF THE DISCIPLINE COMMITTEE



R.J. ADAMKOWSKI, CA – DEPUTY CHAIR
DISCIPLINE COMMITTEE

MEMBERS OF THE PANEL:

H.L. PRATT, CA

B. SOLWAY (PUBLIC REPRESENTATIVE)

R.A. WORMALD, FCA