

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

DISCIPLINE COMMITTEE

IN THE MATTER OF: Charges against **JOHN F. CLEVELAND-ILIFFE, CA** a member of the Institute, under **Rules 302.1 and 202** of the Rules of Professional Conduct, as amended.

TO: Mr. John F. Cleveland-Iliffe, CA

AND TO: The Professional Conduct Committee, ICAO

REASONS
(Decision and Order Made September 28, 2009)

1. This panel of the Discipline Committee of the Institute of Chartered Accountants of Ontario, convened on September 28, 2009, to hear charges of professional misconduct brought by the Professional Conduct Committee against Mr. John F. Cleveland-Iliffe, CA, a member of the Institute.
2. The Professional Conduct Committee was represented by Ms. Alexandra Hersak. She was accompanied by Mr. Robert Robertson, CA, the investigator appointed by the Professional Conduct Committee.
3. Mr. Cleveland-Iliffe was present. He was represented by his counsel, Mr. Frank Bowman and Mr. Douglas Stewart.
4. The decision and the terms of the order were made known to the parties at the conclusion of the hearing on September 28, 2009. The written Decision and Order was sent to the parties on September 30, 2009. These reasons, given pursuant to Bylaw 574, include the charge, the decision, the order and the reasons of the panel for its decision and order.

The proceedings with respect to the charge

5. After the hearing had been called to order and prior to the plea being taken, Ms. Hersak advised the panel that with respect to the charges, the parties had agreed that: the member would enter a plea of guilty to charge number one; charge number two would be withdrawn; and the evidence of the Professional Conduct Committee would be presented by way of an Agreed Statement of Facts.

6. The Chair directed that the charges be amended to show that charge number two was withdrawn. As a result, Mr. Cleveland-Iliffe was asked to plead to the following charge laid by the Professional Conduct Committee on February 14, 2008:

THAT, the said John F. Cleveland-Iliffe, in or about the period July 29, 2005 through March 31, 2006, accepted an engagement to audit the financial statements of Fareport Capital Inc. as at July 31, 2005, thereby replacing another member or firm, without first communicating with such person or firm and enquiring whether there are any circumstances that should be taken into account which might influence the decision whether or not to accept the engagement, contrary to Rule 302.1 of the rules of professional conduct.

The plea

7. Mr. Cleveland-Iliffe entered a plea of guilty to the charge and acknowledged that on the basis of his plea, and on that basis alone, he could be found guilty of the charge.

The Case for the Professional Conduct Committee

8. Ms. Hersak filed an Agreed Statement of Facts (Exhibit 2) and a Document Brief (Exhibit 3). Ms. Hersak reviewed the Agreed Statement of Facts with the panel, and in doing so, made reference to the two documents in the Document Brief.

9. Thereafter, Ms. Hersak made brief submissions to the effect that the Agreed Statement of Facts and acknowledgement by the member made it clear that there should be a finding of guilt on the charge. Mr. Bowman agreed with the submissions of Ms. Hersak and said that he had nothing further to add.

Decision

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

THAT, charge No. 2 having been withdrawn by the Professional Conduct Committee, having heard the plea of guilty to charge No. 1 and having seen and considered the evidence, including the agreed statement of facts, filed, the Discipline Committee finds John Frederick Cleveland-Iliffe guilty of charge No. 1.

Reasons for the Decision on the Charge

11. The facts are succinctly summarized in the charge itself. Mr. Cleveland-Iliffe was responsible for accepting an audit engagement without first communicating with the previous auditor and inquiring whether there were any circumstances that should be taken into account which might influence the decision whether or not to accept the engagement.

12. Mr. Cleveland-Iliffe's firm, Segal LLP, had been asked by the new majority shareholder of a public company to undertake the audit for the financial statements for the year ending July 31, 2005. The new majority owner wanted to change auditors because there had been serious malfeasance by the former management.

13. Mr. Cleveland-Iliffe, who was not a partner at the time, planned and supervised the engagement. He did not write to the former auditors, nor did he ensure that the communication

required by Rule 302.1 had been made. Mr. Cleveland-Iliffe agreed that the decision of Segal LLP to accept the engagement might have been influenced by a reply from the former auditors, and if the engagement were accepted, alternative audit procedures might have been appropriate given the information from the predecessor auditors.

14. Mr. Cleveland-Iliffe acknowledged that his breach of Rule 302.1 constituted professional misconduct.

15. In light of the undisputed facts set out above, the panel concluded that the charge had been proven and that Mr. Cleveland-Iliffe was guilty of professional misconduct.

SANCTION

16. Ms. Hersak advised the panel that the Professional Conduct Committee did not intend to call evidence with respect to sanction, and that the submissions with respect to sanction were joint submissions on behalf of both parties.

17. Ms. Hersak outlined the order sought by the Professional Conduct Committee and agreed to by the member. The order she requested was: a reprimand from the Chair; a fine of \$5,000; costs in the amount of \$10,000; and publicity in the ordinary course.

18. Ms. Hersak also explained that the agreement between the parties was that the costs would be payable only if the court determined that the Institute has the authority to charge costs. She explained that this issue has been raised in two applications for judicial review which were presently before the Divisional Court.

19. Ms. Hersak said that the principles of sanction which were relevant in this case were specific deterrence and general deterrence. She submitted that the terms of the order requested would discourage Mr. Cleveland-Iliffe from similar conduct in the future and discourage other members from similar misconduct.

20. Ms. Hersak pointed out that the aggravating factors in this case were that it was known that the public company, under new management, changed auditors because of malfeasance on the part of the previous management. This made the communication to the predecessor accountant all the more important.

21. Ms. Hersak also pointed out that the mitigating factors in this case included: the fact that the member had entered a plea of guilty; the hearing proceeded by way of an Agreed Statement of Facts which reduced the time and costs of the hearing; the member had cooperated throughout the investigation on a timely basis; and the member had no previous history of misconduct.

22. Ms. Hersak filed a Costs Outline (Exhibit 4) which disclosed that the costs of the investigation and prosecution exceeded \$23,000.

23. Ms. Hersak filed a Brief of Authorities (Exhibit 5). She acknowledged that the authorities, *Hasan* (2006); *Hindocha* (1997); *Fitz-Andrews* (1997); and *Bellamy* (2005), were cases involving more than a breach of Rule 302.1 similar to the breach in this case. Ms. Hersak submitted that the sanction imposed in the four cases demonstrated that a fine of \$5,000, usual notice, combined with publication of the usual notice, was an appropriate sanction for the misconduct in this case.

24. Mr. Bowman made brief submissions, and in doing so, made it clear that he agreed with Ms. Hersak's submissions. He submitted that the misconduct warranted a sanction falling in the lower range of possible sanctions, as the Professional Conduct Committee acknowledged and proposed.

Order

25. After deliberation, the panel made the following order:

IT IS ORDERED in respect of the charges:

1. THAT Mr. Cleveland-Iliffe be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Cleveland-Iliffe be and he is hereby fined the sum of \$5,000 to be remitted to the Institute within one (1) month from the date this Decision and Order becomes final under the bylaws.
3. THAT notice of this Decision and Order, disclosing Mr. Cleveland-Iliffe'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 all members of the Institute;
 - (b) to the Public Accountants Council for the Province of Ontario
 - (c) to all provincial institutes/Ordre,
and shall be made available to the public.

AND IT IS FURTHER ORDERED:

4. THAT Mr. Cleveland-Iliffe be and he is hereby charged costs fixed at \$10,000, such costs to be paid within six (6) months of the date the court determines that the Institute has jurisdiction to award costs.

The Misconduct in this Case

26. The communication required by Rule 302.1 is sometimes referred to as a courtesy letter. It is, as the Council Interpretation makes clear, far more than a courtesy, it is a significant procedural requirement. This is particularly so in this case, which involved the audit of a public corporation, where it was known there had been malfeasance by the previous management.

27. There is no evidence or suggestion that, other than on this one occasion, Mr. Cleveland-Iliffe has failed to practise in accordance with the required standards of the profession. Nevertheless, it is important that he be specifically deterred from similar misconduct in the future. It is also important that the membership be generally deterred from such misconduct.

The Joint Submission

28. The panel accepted the jointly recommended sanction as it fell within the appropriate range of sanction for the misconduct in this case.

Reprimand

29. The written reprimand was ordered to emphasize to Mr. Cleveland-Illiffe that his conduct failed to meet the conduct required of members.

Fine and notice

30. The panel concluded that the principles of specific and general deterrence were adequately addressed with a fine of \$5,000, and the usual publicity.

31. The Discipline Committee and the Appeal Committee have established that notice to the profession, disclosing the member's name, serves the purposes of specific deterrence and general deterrence. The notice informs the membership at large and the public. The notice also demonstrates that the Institute takes the obligation to govern its members' conduct seriously.

32. It has been held that only in the most rare and unusual circumstances should the name of the member be withheld from the notice. As members value their reputations, the effectiveness of the notice lies in the fact that members know that, should they misconduct themselves, the fact of their misconduct and the sanction imposed will be made known to the profession and made available to the public. In this case, there were no rare and unusual circumstances that outweighed the need for publication of the notice disclosing the member's name.

Costs

33. The panel found the costs requested by the Professional Conduct Committee were reasonable. The panel agreed, in light of the fact that the jurisdiction to award costs is before the courts, that it is appropriate to provide the payment of the costs be contingent upon the court holding that the Institute has the jurisdiction to award costs.

DATED AT TORONTO THIS 4TH DAY OF DECEMBER, 2009.
BY ORDER OF THE DISCIPLINE COMMITTEE

J.A. CULLEMORE, FCA – DEPUTY CHAIR
DISCIPLINE COMMITTEE

MEMBERS OF THE PANEL:

J.B. BARRACLOUGH, FCA
S.M. DOUGLAS, FCA
P. McBURNEY (PUBLIC REPRESENTATIVE)