

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

DISCIPLINE COMMITTEE

IN THE MATTER OF: Charges against **MARK J. ORLAND CA** a member of the Institute, under **Rules 201.1 and 206.1** of the Rules of Professional Conduct, as amended.

TO: Mr. Mark J. Orland

AND TO: The Professional Conduct Committee, ICAO

REASONS

(Decision and Order made May 4, 2011)

1. This panel of the Discipline Committee of the Institute of Chartered Accountants of Ontario met on May 4, 2011 to hear charges of professional misconduct brought by the Professional Conduct Committee against Mark Joel Orland, a member of the Institute.

2. Ms. Alex Hersak appeared on behalf of the Professional Conduct Committee. Mr. James Lane represented Mr. Orland, who attended throughout the hearing. Mr. Glenn Stuart 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 May 4, 2011, and the written Decision and Order sent to the parties on May 6, 2011. These reasons, given pursuant to Bylaw 574, 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. Orland by the Professional Conduct Committee on March 1, 2011:

1. THAT, the said Mark Orland, in or about the period July 1, 2009 through February 28, 2010, failed to conduct himself 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, by attempting to mislead investigators retained by the Professional Conduct Committee in that:
 - a. In responding to a complaint against him, he provided to the Professional Conduct Committee photocopied working papers which he knew to have been altered from the originals but failed to disclose their alteration; and
 - b. He participated in the alteration of the working papers by signing and backdating an altered document.
2. THAT, the said Mark Orland, in or about the period March 1, 2008 through May 31,

2008, while engaged to perform an audit of the financial statements of "PT" for the year ended December 31, 2007, 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 practice with a quality assurance manual throughout the engagement;
- b. He failed to properly document considerations regarding accepting the engagement, including the basis for his own independence;
- c. He failed to document his involvement in the formal planning of the audit;
- d. He failed to properly document the procedures performed and conclusions reached with respect to the risks of material misstatement;
- e. He failed to document the report release date and the documentation completion date;
- f. He failed to properly document the assessment to ensure adequate disclosure about the ability of "PT" to continue as a going concern;
- g. He failed to obtain sufficient appropriate audit evidence to support the Statement of Operations item "Contract settlement (Note 12) (1,121,910)";
- h. He failed to obtain sufficient appropriate audit evidence to support the Balance Sheet item "Property and Equipment (Note 3) 1,282,664";
- i. He failed to obtain sufficient appropriate audit evidence to support the Balance Sheet item "Licence Rights (Note 3) 40,000" and failed to ensure adequate disclosure of the nature of the asset;
- j. He failed to document the extent of his review of the audit file as the engagement partner;
- k. He failed to adequately document items important to support his auditor's report.

Plea

5. Mr. Orland pleaded guilty to the two charges.

The proceedings

6. Ms. Hersak made an opening statement and filed an Agreed Statement of Facts (Exhibit 1), a Document Brief (Exhibit 2) and a Brief of Authorities (Exhibit 3). The Agreed Statement of Facts was signed by Mr. Orland on his own behalf and by Ms. Hersak on behalf of the Professional Conduct Committee. Ms. Hersak reviewed the Agreed Statement of Facts for the panel. Mr. Lane agreed with Ms. Hersak's submission and did not add anything further.

7. There were no witnesses called by the Professional Conduct Committee or Mr. Orland, and neither party submitted any other evidence.

The relevant facts

8. The relevant facts as set out in Exhibit 1 are not in dispute. Mr. Orland was approached in March 2008 by the predecessor auditor, RM, to complete the December 31, 2007 audit of PT, a construction company. RM resigned from the audit of PT when the audit was substantially completed to become a shareholder and officer of PT. In the course of the Professional Conduct Committee's (PCC) investigation of the independence of RM, potential issues were identified regarding Mr. Orland's audit standards, and the extent of the work performed to support his audit opinion. At the time of the investigation, RM and Mr. Orland's firm operated out of shared offices.

9. Respecting Charge No. 1, Mr. Orland provided the December 31, 2007 audit working paper file (the "September file") for PT to the PCC investigators in September 2009. The investigators requested the original working papers; however, the majority of the file provided to them by Mr. Orland was photocopied. Mr. Orland was unable to explain to the investigators why most of the file was photocopied but indicated he had used an original file when the Auditor's Report was issued.

10. Although the audited financial statements for the year ended December 31, 2007 were released in or around June 2008, several documents in the September file, which had been given to the PCC investigators, were marked as having been printed on September 22, 2009.

11. One of RM's staff, CD, advised the investigators that as a result of comments she heard during a meeting in September 2009, in Mr. Orland's office, she became concerned that RM's initials were still on some of the working papers. Since he was no longer the auditor, CD took the initiative to remove RM's initials from the file using whiteout and reprinted certain working papers from Caseware, the electronic auditing software used by both Mr. Orland and RM. CD indicated to the investigators that she left all the altered working papers with Mr. Orland, and she did not destroy the original working papers.

12. Contrary to statements made to the investigators in November 2009, Mr. Orland learned in September 2009 that CD had altered the working papers. He knew when he sent the September file to the PCC investigators that it included altered working papers, in an attempt to mislead them.

13. In January 2010, Mr. Orland sent approximately 100 pages of original working papers to the investigators, noting that he had discovered from discussions within his office that there were a number of working papers in the PT file that were not the original working papers. In a subsequent meeting with the investigators, Mr. Orland acknowledged that he had not been forthright when interviewed in November 2009 regarding the September file. He admitted he knew at the time he sent the file, but did not disclose that the September file was an altered version of the original file.

14. During the January 2010 interview, Mr. Orland told the investigators he had not altered or backdated any working papers. When the investigators pointed out discrepancies between the Independence checklists in the September file and the original file, Mr. Orland admitted that he had altered and backdated the September file Independence checklist.

15. Regarding Charge No. 2, Mr. Orland signed the Auditor's Report on behalf of his firm and released the December 31, 2007 financial statements for PT. Materiality for the engagement had

been set at \$60,000.

16. Throughout the audit, Mr. Orland's firm did not have a Quality Assurance Manual and did not have such a manual fully implemented until January 2009. As a result, appropriate quality control procedures were not in place during the conduct of the PT audit.

17. In completing the engagement, Mr. Orland failed to document risk considerations in the PT audit, including his own competence and independence. The Engagement Acceptance Checklist was completed and filed as though the predecessor auditor (RM) was the engagement partner, and the checklist indicated this was a recurring, rather than a new, engagement.

18. Mr. Orland delegated the responsibility of attending an audit planning meeting with the predecessor audit team to an associate. There was no documentation in the audit working papers about the meeting or any subsequent discussion of its outcome, and no indication of Mr. Orland's participation in the formal audit planning process.

19. The procedure and documentation requirements for responding to the risks of a material misstatement in the financial statements were inadequate in the PT working papers in several areas, including going concern assessment, revenue recognition and presentation of a contract settlement, equipment, licence and prepaid expense.

20. Mr. Orland failed to document the Auditor's Report release date or the completion date in the working paper files, and there was no documentation of any additions, deletions or amendments. There was no note to the financial statements disclosing any possible concern about the ability of PT to continue as a going concern.

21. Mr. Orland failed to obtain sufficient audit evidence to support PT's revenue being recorded when billed as these were generally fixed price contracts. The discussions and documentation in the working papers focused on the valuation of the receivables and did not assess the potential error in recording revenue.

22. The working paper file failed to document any review of the amortization method and estimates of the life and useful life of the property and equipment of PT.

23. Mr. Orland classified a fee for season tickets for hockey as a current asset under Licence Rights, without disclosing and documenting the nature and any future benefit of this asset on the balance sheet.

24. Mr. Orland told the investigators that his associate reviewed the predecessor auditor's working papers to ensure that the audit procedures were performed and documented to Mr. Orland's firm's standards, with the final review of the file and financial statements performed by him. Although Mr. Orland stated he spent seven to eight hours on this engagement, he neither tracked nor billed for his time, and there is no documentation in the file to support when, and to what extent, his review took place. Despite being the engagement partner, Mr. Orland did not sign the audit conclusion statement. The partner's section of the document is signed by a member of the predecessor auditor's engagement team.

25. Mr. Orland agreed that he had failed to document what is required to demonstrate compliance with generally accepted auditing standards contained in the *CICA Handbook*, and to show that the audit conclusions are supported

Finding

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

THAT, having seen and considered the evidence, including the agreed statement of facts, and having heard the guilty plea to Charge Nos. 1 and 2, the Discipline Committee finds Mark J. Orland guilty of the charges.

Reasons for Finding

27. There were two different charges that the panel had to consider in determining, on the balance of probabilities, whether Mr. Orland had breached the Rules of Professional Conduct. The first charge alleged that Mr. Orland “failed to act in a manner which will maintain the good reputation of the profession and its ability to serve the public interest” in that, in the first particular, he provided the Professional Conduct Committee with working papers that he knew had been altered from the originals and failed to disclose the alteration to the Professional Conduct Committee investigators, and in the second particular, he participated in the alteration of the working papers by signing and backdating an altered document. The purpose in altering and backdating documents was to mislead the investigators who had been engaged to investigate the audit of Mr. Orland’s client company.

28. The second charge set out eleven particulars alleging that in conducting the audit of the subject client company, Mr. Orland did not have in place a quality assurance manual, that there were deficiencies in documenting auditing procedures allegedly to have been performed, and that he did not obtain sufficient appropriate audit evidence to support his audit opinion. These deficiencies then constituted a lack of adherence to generally accepted practice standards of the profession.

29. The panel carefully considered the evidence contained in Exhibits 1, 2 and 3. Exhibit 1, the Agreed Statement of Facts, sets out the background of the charges, the conduct and findings of the investigation. The Exhibit sets out the findings in the order of the charges and particulars of each charge. The final paragraph of the Exhibit states the conclusion, which reads “Orland agrees that he had failed to comply with the Rules of Professional Conduct of the Institute as described herein, and set out in the Charges.” As noted above, the document is signed by both Ms. Hersak, on behalf of the Professional Conduct Committee, and by Mr. Orland, on his own behalf.

30. Exhibit 2, Document Brief, contains copies of documents cross-referenced in Exhibit 1. The panel found the information set out in Exhibit 2 substantiated the findings as set out in Exhibit 1.

31. Exhibit 3, Brief of Authorities, sets out technical cross-references made in Exhibit 1 to the CICA Handbook. The panel found the information set out in Exhibit 3 substantiated the findings as set out in Exhibit 1

32. Mr. Orland pleaded guilty to the two charges. Mr. Orland admitted in the Agreed Statement of Facts that his conduct did not comply with the Rules of Professional Conduct, as set out in the charges. The submission made by Ms. Hersak in reviewing the Agreed Statement of Facts was not disputed by Mr. Orland. Mr. Lane did not make any submissions or call any evidence on behalf of Mr. Orland.

33. From the evidence led, the submissions made, and the admission of guilt by Mr. Orland, the panel found that, on the balance of probabilities, the Professional Conduct Committee had proven both charges of professional misconduct against Mr. Orland to the requisite standard of proof.

Sanction

34. Ms. Hersak, on behalf of the PCC, did not call evidence with respect to sanction. Mr. Lane called Mr. Orland to give evidence on sanction.

35. Mr. Orland stated that he is ashamed and embarrassed by his actions on this file, and regrets his acts of misconduct. Mr. Orland recognized that he has to phase out assurance work, and this matter has hastened his decision to do so. He has been transferring responsibility for assurance engagements to his new partners.

36. Mr. Orland stated that his firm has taken steps to ensure that audit engagements are performed in accordance with generally accepted auditing procedures. A partner in the firm is developing a strategy to improve documentation, ensure there is a quality assurance manual in place, meticulously review files and organize continuing education for staff. His firm is no longer involved with the client PT, who is still in business, and was not impacted by the deficiencies in the working paper files.

37. Ms. Hersak filed a signed Undertaking of Mark J. Orland (Exhibit 4) that states he will not accept or perform any assurance engagements in the future. Ms. Hersak, with the agreement of Messrs. Lane and Orland, submitted a joint sanction on penalty. Ms. Hersak submitted that an appropriate sanction would be: a written reprimand, a fine of \$15,000, the requirement to take one professional development course - *Professional Risk Management*, suspension from membership in the Institute for six months, and the usual order regarding publicity. The Professional Conduct Committee also sought an order for partial indemnity for costs of the investigation and hearing.

38. Ms. Hersak stated that Mr. Orland's Undertaking not to engage in assurance engagements had an impact on the sanctions requested by the Professional Conduct Committee. Had Mr. Orland's Undertaking not been given, the Professional Conduct Committee would have asked for additional professional development education, as well as a period of supervised practice.

39. Ms. Hersak submitted that Mr. Orland had exercised poor judgment by his attempt to mislead the Institute's investigators. He ought to have been honest and forthright in his response to the investigators. Mr. Orland eventually provided the original file requested by the investigators, but his actions complicated and lengthened the investigation. Ms. Hersak stated that integrity is paramount and Mr. Orland's actions damaged his and the profession's reputation.

40. Ms. Hersak also noted a number of mitigating factors. Mr. Orland had shown remorse for his actions, acknowledged his misconduct, pleaded guilty to the two charges, had no discipline history, did not cause harm to clients, eventually cooperated with the Professional Conduct Committee, did not gain personally from his actions, and has taken steps to rehabilitate himself. His actions have demonstrated his remorse and willingness to be rehabilitated. The proposed sanctions would satisfy the specific and general deterrence principles of sentencing.

41. Ms. Hersak distributed a Case Brief containing five ICAO Discipline Committee cases involving misleading elements: *Jean-Baptiste, Margel, Gandza, Lee and Becker*, and two cases involving audit related deficiencies: *Pillo and Baker*.

42. Ms. Hersak filed a Costs Outline (Exhibit 5) which showed that the costs of the investigation and hearing were in excess of \$33,000. The Professional Conduct Committee was seeking costs on a partial indemnity basis in the amount of \$15,000.

43. Mr. Lane submitted that Mr. Orland acknowledges the seriousness of the matters and the penalties warranted. Mr. Orland recognizes that his skills and knowledge in the audit field are not current and do not meet the standards of the profession. He has expressed regret for his conduct and belatedly tried to remedy the situation by admitting his deception to the investigators. Mr. Lane submitted that the penalty proposed reflects the seriousness of Mr. Orland's conduct, which was regrettable but not deliberate. While he took no issue with the imposition of a fine or the payment of costs, he asked the panel to consider making half of these amounts payable when the decision and order is final, with the balance due in six months. He submitted that an appropriate assessment of costs would be \$10,000.

Order

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

IT IS ORDERED in respect of the charges:

1. THAT Mr. Orland be reprimanded in writing by the Chair of the hearing.
2. THAT Mr. Orland be and he is hereby fined the sum of \$15,000 to be remitted to the Institute as follows:
 - (a) \$7,500 within ten (10) days from the date this Decision and Order becomes final under the bylaws; and
 - (b) a further \$7,500 within six (6) months from the date this Decision and Order becomes final under the bylaws.
3. THAT Mr. Orland be suspended from the rights and privileges of membership in the Institute and his public accounting licence shall be suspended for a period of six (6) months from the date this Decision and Order becomes final under the bylaws.
4. THAT Mr. Orland 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 made available through the Institute *Professional Risk Management – a Practical Perspective* or, in the event the course becomes unavailable, the successor course which takes its place.
5. THAT notice of this Decision and Order, disclosing Mr. Orland'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; and
 - (c) to all provincial institutes/Ordre;and shall be made available to the public.

6. THAT in the event Mr. Orland 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 and his public accounting licence shall be suspended 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, his membership in the Institute and public accounting licence shall be revoked, and notice of his membership and licence revocation, disclosing his name, shall be given in the manner specified above, and in a newspaper distributed in the geographic area of Mr. Orland's practice and/or residence. All costs associated with the publication shall be borne by Mr. Orland and shall be in addition to any other costs ordered by the committee.

IT IS FURTHER ORDERED:

7. THAT Mr. Orland be and he is hereby charged costs fixed at \$15,000 to be remitted to the Institute as follows:
 - a. \$7,500 within ten (10) days from the date this Decision and Order becomes final under the bylaws; and
 - b. a further \$7,500 within six (6) months from the date this Decision and Order becomes final under the bylaws.

Reasons for Sanction

45. There was a joint submission on penalty, and the panel had to ensure that the sanction imposed on Mr. Orland was appropriate and fell within the range of sanctions imposed in other similar situations.

46. Mr. Orland had no previous discipline history. He was remorseful and stated he was ashamed and embarrassed by his misconduct. The panel also noted that he has taken steps to remedy his admitted technical deficiencies and has undertaken not to engage in assurance assignments. The panel accepted that his rehabilitation has begun.

47. The panel also noted that upon being shown conflicting documents suggesting alteration Mr. Orland admitted his involvement and from that time onward cooperated with the investigators. It also noted that Mr. Orland cooperated by signing an Agreed Statement of Facts, which saved time. However, it agreed with Ms. Hersak that Mr. Orland's attempt to mislead the investigators resulted in a longer, and therefore more costly, investigation.

48. The panel accepted that the client did not suffer any financial loss, nor did Mr. Orland realize any monetary gain from his actions.

49. The panel took into consideration that the lack of integrity shown by Mr. Orland cannot be taken lightly. His actions have damaged his reputation and that of the profession.

50. A written reprimand from the Chair reinforces the unacceptable conduct of Mr. Orland in this matter and reinforces to Mr. Orland that his conduct is not to be tolerated.

51. The panel accepted that a fine of \$15,000 was appropriate, and was within the range of fines imposed in cases with similar findings. There were no submissions made regarding Mr. Orland's financial situation or his ability to pay the fine. The magnitude of the fine serves as a

specific deterrent to reinforce to Mr. Orland that misleading the Institute is a very serious matter, and not to be taken lightly. The quantum of fine also reflects the fact that Mr. Orland did not keep his standards up to those expected of a practising chartered accountant. The fine serves as a general deterrent to others in that such conduct is unacceptable. The panel accepted Mr. Lane's submission that Mr. Orland should be given time to pay the full amount of the fine since the suspension will likely have an impact on Mr. Orland's earnings.

52. The suspension serves as a specific and general deterrent to demonstrate that the Institute takes matters of professional misconduct very seriously. The panel was satisfied that the six (6) month suspension is appropriate to demonstrate that there are serious consequences for acts of dishonest misconduct.

53. The panel determined that the professional development course *Professional Risk Management – a Practical Perspective*, or its successor course, is appropriate and will assist Mr. Orland in bringing his standard up to those expected of a practising chartered accountant.

54. The panel concluded that there were no rare and unusual circumstances to justify withholding publication of Mr. Orland's name, and no submissions were made to seek such withholding. Accordingly, in keeping with the transparency of the Institute's disclosure of disciplinary matters, and to serve as a general deterrent, publicity of this matter was ordered.

55. Failure to comply with this Order will result in the expulsion of Mr. Orland from membership in the Institute. Failure to comply signifies that Mr. Orland is ungovernable and should not retain the privileges of membership in the Institute.

56. The panel concluded that Mr. Orland ought to bear some of the costs of this matter. The Professional Conduct Committee sought costs in the amount of \$15,000, and Mr. Lane submitted that a cost award of \$10,000 was appropriate, given that Mr. Orland would incur other costs related to this matter. The panel was not moved by Mr. Lane's submissions. Mr. Orland attempted to deceive the Institute's investigators, and these actions required a longer than necessary investigation. The additional costs must be borne by Mr. Orland.

DATED AT TORONTO THIS 26TH DAY OF JULY, 2011
BY ORDER OF THE DISCIPLINE COMMITTEE

A.D. NICHOLS, FCA – DEPUTY CHAIR
DISCIPLINE COMMITTEE

MEMBERS OF THE PANEL:

S.M. DOUGLAS, FCA
G. HINTON (PUBLIC REPRESENTATIVE)
W.K. McDOUGALL, CA