

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

**DISCIPLINE COMMITTEE**

**IN THE MATTER OF:** Charges against **NOEL CLIVE WOODSFORD, CA**, a member of the Institute, under **Rules 206 and 218** of the Rules of Professional Conduct, as amended.

**TO:** Mr. Noel. C. Woodsford, CA  
Deloitte & Touche LLP  
2 Queen Street East  
Suite 1200, P.O. Box 8  
Toronto, ON M5C 3G

**AND TO:** The Professional Conduct Committee, ICAO

**REASONS**  
**(Decision and Order Made October 16, 2008)**

1. This panel of the Discipline Committee of the Institute of Chartered Accountants of Ontario met on October 16, 2008, to hear charges of professional misconduct, brought by the Professional Conduct Committee against Mr. Noel C. Woodsford, CA, a member of the Institute.
2. Mr. Paul Farley appeared on behalf of the Professional Conduct Committee. He was accompanied by Mr. Jim King, CA, the investigator appointed by the Professional Conduct Committee, and Ms. Theresa Tonelli, CA, the Director of Standards Enforcement.
3. Mr. Woodsford was in attendance and was represented by his counsel Mr. Frank Bowman.
4. The decision of the panel with respect to guilt or innocence was made known to the parties during the hearing. At the conclusion of the hearing on October 16, 2008, the panel outlined the terms of its order. The written Decision and Order was sent to the parties on November 13, 2008. These reasons, given pursuant to Bylaw 574, include the charges, the decision, the order, and the reasons of the panel for its decision and order.

**The agreement of the parties with respect to the proceedings**

5. Prior to Mr. Woodsford being asked to plead to the charges, Mr. Farley advised the panel that the Professional Conduct Committee wished to withdraw particulars (c), (e) and (f) of Charge 1. Mr. Farley also outlined the agreement which had been reached between the Professional Conduct Committee and Mr. Woodsford as to how the hearing would proceed. The Professional Conduct Committee would call only one witness, Mr. King, who would not be cross-examined. Mr. Bowman would not call evidence with respect to the question of guilt or innocence. Mr. Bowman confirmed this was the agreement that had been made between the parties.

## The Charges

6. The Chair then amended the charges, which had been marked as Exhibit 1. The charges, which were laid on January 21, 2007, as amended, read as follows:

1. THAT, the said Noel C. Woodsford, in or about the period December 1, 1996 through March 31, 1997, while engaged to perform an audit of the financial statements of Philip Environmental Inc. for the year ended December 31, 1996, 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 consider the extent of errors that may exist when relying upon estimates used to determine inventory quantities and as a result, failed to obtain sufficient appropriate audit evidence to support the balance sheet item "Inventory for resale \$248,055,000";
  - (b) he failed to conduct sufficient and appropriate audit procedures to support the inventory cut-off with respect to the piles weighed subsequent to year end;
  - (c) *withdrawn*
  - (d) having made the determination that the company's estimate of scrap inventory was understated in the material amount of approximately \$16,500,000, he failed to ensure that a portion of the inventory adjustment was recorded in prior periods;
  - (e) *withdrawn*
  - (f) *withdrawn*
  - (g) he failed to ensure that assistants employed on the audit were properly supervised and that the audit work was adequately planned and properly executed.
2. THAT, the said Noel C. Woodsford, in or about the period December 1, 1996 through May 14, 1998, having been engaged to perform an audit of the financial statements of Philip Environmental Inc. for the year ended December 31, 1996, failed to retain for a reasonable period of time such working papers, records or other documentation which reasonably evidence the nature and extent of work done in respect of the engagement contrary to Rule 218 of the rule of professional conduct

## **Plea**

7. Mr. Woodsford entered a plea of not guilty to both charges.

## **The case for the Professional Conduct Committee**

8. Mr. Farley made an opening statement and called Mr. King as his first and only witness. Mr. Farley also filed a Document Brief (Exhibit 2) of relevant documents from the working papers of the member, and a Brief of Authoritative Literature (Exhibit 3).

9. Mr. King gave his evidence making reference to the Document Brief and the Brief of Authoritative Literature. He opined that the member had failed to perform his professional services in accordance with the generally accepted standards of practice of the profession with respect to the four remaining particulars of the first charge. He also expressed the opinion that the member had not retained for a reasonable period of time working papers and other documents which reasonably evidenced the nature and extent of the work done on the engagement contrary to Rule 218.

10. Just before the morning break, the panel indicated that it was having difficulty following some of the evidence. After the break, Mr. Farley had Mr. King reiterate and clarify evidence dealing with inventory. After the lunch break, Mr. Farley filed two further exhibits consisting of copies of some of the member's working papers related to inventory (Exhibit 4) and an inventory count (Exhibit 5) which had been originally attached to the memorandum found in the Document Brief, Exhibit 2, Tab 5, at page 54.

11. At the conclusion of Mr. King's evidence, Mr. Bowman confirmed that he would not cross-examine Mr. King. The panel then took a brief recess, following which it asked a number of questions of Mr. King. Thereafter, the Professional Conduct Committee concluded its case.

12. Mr. Farley made brief submissions with respect to the issue of guilt or innocence. Mr. Bowman did not make submissions.

13. After hearing the submissions, the panel deliberated and made the following decision:

THAT, having seen, heard and considered the evidence, charge No. 1 having been amended at the hearing, the Discipline Committee finds Mr. Noel Clive Woodsford guilty of charge Nos. 1 and 2.

## **Relevant Facts and Findings**

14. It is accepted that the Professional Conduct Committee must present clear, cogent and compelling evidence of the misconduct before a panel of the Discipline Committee will find a member guilty of professional misconduct. The panel understood that the case for the Professional Conduct Committee was not contested, and that Mr. King's evidence, as to both the facts and the opinions he expressed, was not challenged. However, the panel did not understand some of the factual evidence on which his opinions were based and therefore asked for clarification. After hearing and considering the evidence, including the clarifications, the panel was satisfied that there was clear, cogent and compelling evidence of misconduct and sets out what it finds to be the relevant facts, and the conclusions which arise therefrom, in paragraphs 15 to 32 below.

15. Mr. Woodsford, a partner of Deloitte & Touche (Deloitte), was the engagement partner for the audit of Philip Environmental Inc. (Philip) for the year ending December 31, 1996. As such, he was responsible for what Deloitte did on the audit.

16. Philip was a waste management company. The Waxman division of Philip, located in Hamilton, Ontario, reprocessed and sold scrap metal. Waxman had a very substantial inventory of scrap metal in what it called the Centennial Yard.

### **Inventory – the quantity**

17. For the year ending December 31, 1996, the assets on the consolidated balance sheet of Philip totaled \$1,345,719,000 which included inventory for resale with a value of \$248,055,000 (Exhibit 2, Tab 1, page 2). Over 40% of the total value of the inventory, namely \$104,148,968, was in the Centennial yard of the Waxman division in Hamilton (Exhibit 2, Tab 3).

18. Prior to December 1995, the company had engaged two different appraisal companies to count the inventory in Centennial Yard at year-end. In 1996, it was decided that only one company would be retained to count the inventory which consisted of many piles of scrap metal. The appraiser's report, dated January 15, 1997, makes it clear there was a substantial amount of estimating involved in counting the inventory, which the appraiser concluded weighed approximately 122,565,840 pounds (Exhibit 2, Tab 5, pages 31 and 32).

19. The value of the inventory was ascertained by multiplying the price per pound of the metals such as copper or tin brass by their weight. Philip had taken the position for some time that the inventory had been understated not on account of the price per pound, but with respect to the quantity of inventory on hand (Exhibit 2, Tab 5, page 24).

20. Philip took this same position with respect to the inventory for the fiscal year ended December 31, 1996. Deloitte decided to weigh five piles of the scrap metal in the Centennial yard. On January 25, 1997 a pile of grease wire – jacketed was weighed, and on January 26, 1997 a pile of copper nickel was weighed (Exhibit 2, Tab 5, page 54). On February 25, 1997, three other piles, copper briquettes, tin brass and yellow brass coils were weighed (Exhibit 2, Tab 5, page 52 and Exhibit 4, pages 7 to 9). Deloitte found that the weighed piles exceeded the estimated weight, by 15.9889% for the copper nickel, 17.7045% for copper briquettes, 29.74% for tin brass, 29.3987% for brass coils, and 49.4625% for grease cable (see Exhibit 2, Tab 5, pages 28 and 29).

21. Deloitte then increased the weight for all of the piles of scrap metal estimated by the appraiser by the percentage increase it found of the relevant pile actually weighed. The result was a substantial increase in the weight of the inventory which resulted in an increase to the value by \$16,515,959. Of this increase, \$9,884,763 was attributed to grease cable and \$6,313,003 was attributed to tin brass (Exhibit 2, Tab 5, pages 28 and 29). Materiality for the audit was \$3,450,000 (Exhibit 2, Tab 4, page 20).

22. One pile of grease cable was weighed. This was .83% of the total grease cable included in the inventory at the Centennial yard. The increase in the actual weight over the weight estimated by the appraiser (49.4625%) was attributed to 100% of the grease cable. Similarly, the tin brass actually weighed was only 2.92% of the total tin brass inventory at the Centennial yard. The increase in the actual weight over the weight estimated by the appraiser (15.74%) was attributed to 100% of the tin brass (Exhibit 2, Tab 5, pages 28 and 29). These samples

were too small to be used as the basis for the extrapolation which Deloitte performed. Accordingly, the panel found, as particular (a) of Charge 1 alleges, that Mr. Woodsford, who was responsible for the audit, failed to consider the extent of errors which may exist when relying on the estimates and as a result failed to obtain sufficient audit evidence to support the balance sheet item "inventory for resale \$248,055,000".

### **Inventory – the cut-off**

23. The company did have a perpetual inventory system and attempted to reconcile it to the physical inventory. Deloitte found that for the year ended December 1996, the unreconciled difference, year to year, between the perpetual inventory and the physical inventory was \$29.5 million. Deloitte concluded no reliance could be placed on the perpetual inventory system because of such a large difference (Exhibit 2, Tab 5, page 53).

24. The appraiser estimated the inventory as at December 27, 1996. Deloitte weighed the piles of the inventory on January 25 and 26, 1997, and on February 25, 1997. Deloitte did not obtain or review the documents showing the movement of inventory in the period between December 27, 1996 and January 25 and 26, 1997 and February 25, 1997. Instead, Deloitte relied on the observation that Deloitte which had been on the site since mid-January, determined through observation that no movement of these piles had occurred since year-end (Exhibit 2, Tab 5, page 52).

25. The panel found that the member had failed to conduct sufficient and appropriate audit procedures to support the inventory cut-off with respect to the piles weighed subsequent to year-end as alleged in particular (b) of Charge 1.

### **Adjustment for prior periods**

26. Philip had asserted that the inventory had been consistently understated. Deloitte, after concluding the weight of the inventory had been underestimated, included the entire adjustment of inventory in the year 1996. Deloitte did not consider apportioning some of the increased value of inventory to prior periods. The panel found that the member had failed to ensure that a portion of the inventory adjustment was reported in prior periods as alleged in particular (d) of Charge 1.

### **Supervision**

27. The Deloitte manual provided for three levels of review for the work done on the audit. The first level of review was to be conducted by a senior who would review the work of the junior and intermediate staff on the audit. The second level of review, referred to as the primary review, was to be done by a senior manager who would review both what the senior had reviewed and what the senior had not reviewed. A third review, the overriding review, was to be done by the engagement partner with respect to areas of particular risk and areas that were key to the audit.

28. The first review was done only in part. A senior manager was scheduled to do the primary review, but was not able to do so because of the pressure of time. It was agreed that Mr. Woodsford would do both the primary review and the overriding review. Mr. Woodsford did, in fact, do the overriding review, but he did not do the primary review. The panel found, in failing to comply with the review requirements of the Deloitte manual, he failed to ensure that the assistants employed on the audit were properly supervised, and that the audit work was adequately planned and properly executed as alleged in particular (g) of Charge 1.

## **Charge 2**

29. The investigator was not provided with the working papers related to the sales, costs of sales or expenses. In some other areas, such as accounts receivable and accounts payable, the investigator was not provided with all of the working papers, including working papers with respect to a major supplier. The explanation given by the auditor was that the working papers had been lost as Deloitte was changing to a new system.

30. The panel found, contrary to Rule 218 of the Rules of Professional Conduct, the auditor had not maintained such working papers, records or other documentation which reasonably evidenced the nature and extent of the work done in respect to the engagement.

## **Conclusion with respect to the charges**

31. With respect to Charge 1, the panel concluded that the departures from the required standard of the profession, as is set out in particulars (a), (b), (d) and (g), all of which had been proven, were significant departures from the required standard and constituted professional misconduct. Accordingly, Mr. Woodsford was found guilty of Charge 1.

32. With respect to Charge 2, the panel concluded that the failure to retain so many relevant working papers constituted professional misconduct. Accordingly, the member was found guilty of the charge.

## **Sanction**

33. Neither party called evidence with respect to sanction. Both parties made submissions and filed Brief of Authorities (Exhibits 6 and 8).

34. Mr. Farley outlined the terms of the order which were sought by the Professional Conduct Committee, namely: a reprimand; a suspension of three months; a fine of \$75,000; publicity which included a notice in *CheckMark* disclosing the name of the member as well as notice to the Ontario Securities Commission, the Canadian Institute of Chartered Accountants and the Public Accountants Council; and suspension of Mr. Woodsford's licence to practise public accounting for the same period of time as his membership was suspended.

35. The Professional Conduct Committee also sought an order with respect to costs in the amount of \$160,000. Mr. Farley said that the Discipline Committee's jurisdiction to order costs was an issue which had been argued before, but not yet decided by, the Appeal Committee. He added that whichever side lost would apply to the courts for judicial review of the decision with respect to costs. As a result, both parties to this hearing asked that the provision with respect to costs stipulate that the costs will not be payable until after the final determination of the issue of jurisdiction is decided by the courts, and would only be payable if the courts uphold the jurisdiction of the Discipline Committee to award costs.

36. Mr. Farley advised the panel that the only issue between the parties, with respect to sanction, related to the requested suspension. The Professional Conduct Committee's position was that a suspension was appropriate and required; Mr. Bowman, on behalf of the member, took the position that a suspension was neither appropriate nor necessary.

37. Mr. Farley submitted the misconduct in this standards case was serious misconduct; that the deficiencies in the audit constituted basic failures which went to the heart of the profession's

credibility, its skill and standards in audit. In particular, he characterized the mistakes made with respect to inventory as big mistakes, he emphasized that there was a dearth of audit work done with respect to inventory in spite of the material increase made to the value of the inventory as a result of the audit procedures.

38. Mr. Farley acknowledged that the misconduct did not involve moral turpitude; however, he emphasized this was an audit of a public company, listed on both the Toronto Stock Exchange and the New York Stock Exchange, and that to the knowledge of the auditors the financial statements were used to raise US\$330,000,000 in capital markets. The fee for the audit was \$896,000.

39. Mr. Farley submitted that the most important principle governing the imposition of sanction in this case was general deterrence. He submitted that it was in the public interest that all members be deterred from similar misconduct.

40. Mr. Farley addressed the appropriateness of the fine, and the importance of the notice.

41. With respect to costs, Mr. Farley filed a Costs Outline (Exhibit 7) which set out the actual cost to the Institute for the investigation and prosecution which exceeded \$366,000. He submitted that it was appropriate that Mr. Woodsford partially indemnify the Institute to the extent of \$160,000.

42. Mr. Bowman confirmed that the member took issue only with the requested three month suspension.

43. Mr. Bowman submitted that the fine of \$75,000, which he characterized as at the high end of the appropriate range, combined with publication, would have the necessary general deterrent effect.

44. Mr. Farley and Mr. Bowman agreed that a fine, a suspension and publicity were the terms of the order sought which would serve the purpose of general deterrence. They disagreed only on the question of whether or not a suspension was required for the order to have the appropriate impact. Both made reference to the authorities they filed in support of their submissions that a suspension was, or was not, required. The panel wishes to acknowledge the care and expertise which both counsel showed in reviewing the cases they presented as precedents, pointing out the factors which led panels of the Discipline Committee to impose, or not to impose, a suspension. The cases reviewed include: *Smith (1991)*, *Howe (1996)*, *Parisi (2003)*, *Barrington et al (2007)*, *Enstrom (2005)*, *Grunberg (1993)*, *Cadesky (1994)*, *Campbell (2005)*.

45. It became apparent early in the deliberations that the panel had two questions which it thought the parties should be given an opportunity to address and accordingly the hearing reconvened. The first question was about the statement in Mr. Woodsford's CV (Exhibit 8): "Effective November 1, 2008, Noel will no longer hold a Licence to Practise as a Public Accountant in the Province of Ontario." Mr. Bowman advised the panel that the statement was an undertaking and that Mr. Woodford would not practise public accounting as of November 1, 2008.

46. The second question of the panel related to the notice ordered by the panel in *Barrington et al.* In that case, the panel ordered publication of the notice disclosing the members' names in *CheckMark, The Globe and Mail, the National Post* and *The Toronto Star*. Both parties were asked whether the panel had the authority to order a similar notice in this case. In answering the question, and in responding to a question from the counsel to the panel, it became apparent that the parties agreed the panel did have the authority to order such notice pursuant to Bylaw 575(1). Mr. Farley said that the Professional Conduct Committee had not requested such notice because of the length of time that had passed since the audit. Mr. Bowman submitted that such publication was not necessary.

### **Order**

47. After hearing the submissions and deliberating, the panel made the following order:

IT IS ORDERED in respect of the charges:

1. THAT Mr. Woodsford be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Woodsford be and he is hereby fined the sum of \$75,000 to be remitted to the Institute within six (6) months from the date this Decision and Order becomes final under the bylaws.
3. THAT notice of this Decision and Order, disclosing Mr. Woodsford'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
  - (d) to the Ontario Securities Commission,and shall be made available to the public.
4. THAT notice of this Decision and Order, disclosing Mr. Woodsford's name, be given by publication in the *Hamilton Spectator, The National Post* and *The Globe and Mail*. All costs associated with the publication shall be borne by Mr. Woodsford and shall be in addition to any other costs ordered by the committee.
5. THAT in the event Mr. Woodsford 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 and his public accounting licence shall thereupon 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 month period, he shall thereupon be expelled from membership in the Institute and his public accounting licence shall thereupon be revoked, and notice of his expulsion and licence suspension and revocation, disclosing his name, shall be given in the manner specified above, and in the *Hamilton Spectator, The National Post* and *The Globe and Mail*. All costs associated with the publication shall be borne by Mr. Woodsford and shall be in addition to any other costs ordered by the committee.



AND IT IS FURTHER ORDERED:

6. That Mr. Woodsford be and he is hereby charged costs fixed at \$160,000, to be remitted to the Institute within six (6) months from the date that the issue of the jurisdiction of the Discipline Committee to award costs is determined by the Appeal Committee of this Institute; or in the event there is an application for judicial review from the decision of the Appeal Committee to the courts, such costs are to be remitted within six months from the date the question of the jurisdiction of the Discipline Committee to award costs is determined by the courts.

**General Deterrence**

48. The panel agreed with both parties that the principle of sanction which should have priority in this case is general deterrence. As Mr. Woodsford has given an undertaking that he will not hold a licence to practise public accounting, effective November 1, 2008, the principles of rehabilitation and specific deterrence are less relevant.

49. The panel agreed with the submissions of the Professional Conduct Committee that the deficiencies in the audit constituted basic failures. The audit was not conducted with the skill, and in accordance with the standards, the profession requires. The Institute cannot condone this misconduct. The sanction imposed must have a significant impact – and be seen to have a significant impact – if the interest of the profession and the interest of the public are to be served.

50. The panel also agreed with the parties that the terms of the order sought which address general deterrence are the fine, suspension and publicity, as the publication of a notice of a Decision and Order was referred to by both counsel. The panel also agreed with the parties that it is the combined effect of the terms of the Order which must be seen to have a significant impact if the order is to achieve the desired measure of general deterrence.

**Fine, Suspension and Publication of Notice**

51. The dispute between the parties with respect to sanction was whether or not there should be a suspension. The imposition of sanction, as both counsel acknowledged, is a fact specific exercise. This is particularly so in a standards case when the issue is whether or not the member should be suspended. The facts and circumstances of each case are different. There is no one definitive set of criteria for determining whether or not a suspension will be imposed.

52. There are a number of factors which persuaded the panel that a substantial fine and publication in the financial press would have a greater general deterrent effect than a lesser fine, a suspension and less publicity.

53. The impact of a suspension of a partner of a national firm, whose role is managing the national office, would not have an impact on the day-to-day activities of the member or the firm.

54. This is not a case in which a suspension is required to provide the member with time to rehabilitate himself.

55. The panel did think the fact that sanction is being imposed nine years after the misconduct was relevant to the issue of suspension. In this case the circumstances of the member have changed significantly from the time of the misconduct. As we have said above, Mr. Woodsford will not practise public accounting and his management role would not be affected by a suspension.

56. The panel accepts that a suspension of Mr. Woodsford would have the effect of damaging his reputation. However, the panel was satisfied that his reputation will suffer because of the finding of misconduct and the notice of this Decision and Order which is to be published. Any additional damage to his reputation, as a result of the imposition of a suspension, would be minimized by the knowledge that it would have no practical impact.

57. The panel accepted that a fine of \$75,000 was appropriate and would be seen as a significant fine by the profession and by the public. It is relevant that the audit fee in this case was \$896,000. A fine should never be seen as a licence fee for a member's misconduct. The panel was satisfied that a fine of \$75,000 would be seen as significant and appropriate.

58. The panel concluded that the case which was most similar to this case was *Barrington et al.* In that case, a suspension was not imposed on the three members, one of whom had retired entirely from business affairs, and one of whom had retired as a partner of the firm. The panel concluded, as in *Barrington*, that notice in *CheckMark* was not sufficient. The public, not just the profession, should know that the Institute will not tolerate audits like the audit of Philip. In addition, members should know that the public will be told if they misconduct themselves as Mr. Woodsford did.

59. The audit of Philip was the subject of critical commentary in the press. The investigation started because of an article in the *Hamilton Spectator*. The fact the misconduct took place nine years ago may be relevant with respect to the question as to whether or not a suspension should be imposed on a member, but it is no reason not to tell the public. The appropriate way to communicate with the public, in this case, is in the financial press and in the newspaper which brought the matter to the public's attention. Accordingly, the panel decided that the notice should be placed in *The Globe and Mail*, the *National Post* and the *Hamilton Spectator*.

60. The other terms of the order were not opposed. The reprimand was intended to stress to Mr. Woodsford that his conduct was unacceptable. The provisions of the Order, which set out the consequences in the event Mr. Woodsford fails to comply with the terms of the Order, are the usual provisions for noncompliance.

## **Costs**

61. The panel was satisfied that the total costs set out in the Costs Outline (Exhibit 7) were reasonable. The investigator's fees, which exceeded \$330,000, were for an investigation which commenced in 1998. Given that the requested partial reimbursement was for less than 50% of the actual costs, the panel had no difficulty ordering costs in the amount of \$160,000.

62. As the jurisdiction of the Discipline Committee to order costs is disputed in a case before the Appeal Committee and will go before the courts, the panel thought it was appropriate to provide, as the parties requested, that the order for costs not take effect until and unless it is ultimately concluded by the courts that the Discipline Committee does have jurisdiction to award costs.

DATED AT TORONTO THIS 6TH DAY OF JULY, 2009.  
BY ORDER OF THE DISCIPLINE COMMITTEE

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

MEMBERS OF THE PANEL:

A. HANSON, CA  
M.S. LEIDERMAN, CA  
P. MCBURNEY (PUBLIC REPRESENTATIVE)  
H.G. TARADAY, CA