

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

DISCIPLINE COMMITTEE

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

TO: Mr. Roger P. Miller, CA
600 - 880 Ouellette Avenue
Windsor, ON N9A 1C7

AND TO: The Professional Conduct Committee, ICAO

REASONS
(Decision And Order Made October 11, 2005)

1. This panel of the Discipline Committee of the Institute of Chartered Accountants of Ontario met on October 11, 2005 to hear charges brought by the Professional Conduct Committee against Roger Phillip Miller, a member of the Institute.

2. Ms. Barbara Glendinning appeared on behalf of the Professional Conduct Committee, and was accompanied by Mr. Robert Rose, CA, the investigator appointed by the Professional Conduct Committee. Mr. Miller was in attendance and was represented by his counsel, Mr. Michael Girard.

3. The decision of the panel was made known to the parties at the conclusion of the hearing on October 11, 2005, and the written Decision and Order sent to them on October 25, 2005. These reasons, pursuant to Bylaw 574, include the charge, the decision, the order, and the reasons of the panel for its decision and order.

CHARGES

4. The following charges were laid by the Professional Conduct Committee against Mr. Miller on June 2, 2005:

1. THAT the said Roger P. Miller, in or about the period June 30, 2003 through January 27, 2004, while engaged to perform an audit of the financial statements of "ABC Condominium Corporation" for the year ended June 30, 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 obtain and apply knowledge of the entity's business in a continuous and cumulative manner;

(b) he failed to adequately plan and supervise the audit;

- (c) he failed to appropriately assess audit risk;
 - (d) he failed to perform a sufficient and appropriate review of subsequent events;
 - (e) he failed to ensure that the representations of management set out in the representation letter dated November 5, 2003 included all required disclosures;
 - (f) he failed to ensure adequate disclosure of a related party transaction; he failed to ensure disclosure of the fair value of financial instruments;
 - (g) he failed to ensure disclosure of the necessary information related to the correction of an error in a prior period; and
 - (h) he failed to perform the engagement with due care.
2. THAT the said Roger P. Miller, in or about the period December 31, 2003 through March 19, 2004, while engaged to perform a review of the financial statements of "XYZ Centre Inc." for the year ended December 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 (as amended) of the rules of professional conduct, in that:
- (a) he failed to ensure that equipment was recorded at cost when it was appropriate to do so;
 - (b) he failed to ensure that a U.S. dollar lien note was adjusted to reflect the exchange rate in effect at the balance sheet date;
 - (c) he failed to ensure disclosure of the aggregate amount of payments due under lien contracts estimated to be required in each of the next five years;
 - (d) he failed to ensure disclosure of the fair value of financial instruments;
 - (e) he failed to properly classify long-term debt as a current liability when it was appropriate to do so; and
 - (f) he failed to perform the engagement with due care.
3. THAT the said Roger P. Miller, in or about the period December 31, 2003 through June 25, 2004, while engaged to perform an audit of the bingo financial reports of "a certain Church" for the year ended December 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 (as amended) of the rules of professional conduct, in that:
- (a) he failed to ensure that his auditor's report disclosed that the financial statements were prepared using a basis of accounting other than generally accepted accounting principles;
 - (b) he failed to ensure that the financial statements were prepared on a comparative basis when it was appropriate to do so;

- (c) he failed to ensure that the representations of management set out in the representation letter dated June 25, 2004 included all required disclosures; and
- (d) he failed to perform the engagement with due care.

5. At the outset of the hearing the Professional Conduct Committee withdrew particular 3(b). Mr. Miller entered a plea of guilty to each of the charges as they remained and acknowledged that on the basis of the plea of guilty and on that basis alone he could be found guilty of the charges.

EVIDENCE

6. The evidence in this matter was presented by way of an Agreed Statement of Facts (Exhibit 5), along with an accompanying Document Brief (Exhibit 6). Neither party called any further evidence.

7. The panel finds the evidence as contained in the Exhibits is clear, cogent and convincing.

8. The panel notes that, with respect to Charge No. 1, Mr. Miller failed to obtain and apply knowledge of the *Condominium Act, 1998*, when auditing a condominium corporation and that Mr. Miller failed to adequately plan and supervise the audit in that he inappropriately relied on the work of a certified general accountant who assisted on the audit, performed the day-to-day accounting, drafted the financial statements, and asked Mr. Miller to take on the audit engagement as a favour.

9. With respect to Charge No. 2, the panel notes that Mr. Miller advised the investigator he was unaware that guidelines of the Emerging Issues Committee had the authority of GAAP.

10. With respect to all the charges, Mr. Miller admitted he did not ensure compliance with CICA Handbook requirements, including specific accounting and disclosure requirements for related party transactions, prior period adjustments, capital assets, foreign currency translation, and long-term debt disclosure which have been in effect for many years.

11. With respect to all the charges, Mr. Miller admitted he had not performed the audits in accordance with the generally accepted standards of practice of the profession.

DECISION

12. The panel is satisfied that the allegations set out in the charges have been proven and that the nature and extent of the departure from the required standard of practice is so significant as to constitute professional misconduct. The panel found Mr. Miller guilty of the charges. The chair read the following decision:

THAT, having seen and considered the evidence, including the Agreed Statement of Facts, filed, and charge No. 3 having been amended at the hearing, and having heard the plea of guilty to charges Nos. 1, 2 and 3, as amended, the Discipline Committee finds Roger Phillip Miller guilty of charges Nos. 1, 2 and 3.

SANCTION

13. The Professional Conduct Committee submitted that the member's work clearly fell below the accepted standard, and that the member had failed to stay current as well as not paying

sufficient attention to his work. The Professional Conduct Committee also noted that the member is remorseful and resolved to bring his practice up to the required standard, including registering in a number of professional development courses and engaging a senior member of the profession to oversee his work. In all the circumstances, the Professional Conduct Committee is seeking a sanction which primarily addresses rehabilitation and submitted that a reprimand, a fine of \$5,000, a period of one year of supervised practice followed by a further re-investigation, a requirement that the member attend certain professional development courses, publicity, and costs in the amount of \$2,500 would be appropriate.

14. Counsel for the member did not dispute the appropriateness of the majority of the sanction proposed by the Professional Conduct Committee, but confined his submissions to the quantum of the fine suggested and the necessity of a re-investigation. He outlined the steps the member has already taken to rehabilitate himself, and stressed the financial burdens, both professional and personal, he carries. Counsel emphasized the high degree of supervision the member's practice already has, and submitted there was no likelihood of recidivism or future harm to the public.

ORDER

15. After careful consideration of the submissions, the panel made the following order:

IT IS ORDERED in respect of the charges:

1. THAT Mr. Miller be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Miller be and he is hereby fined the sum of \$4,000 to be remitted to the Institute within two (2) years from the date this Decision and Order becomes final under the bylaws.
3. THAT Mr. Miller be and he is hereby charged costs fixed at \$2,500, to be remitted to the Institute within two (2) years from the date this Decision and Order becomes final under the bylaws.
4. THAT Mr. Miller be and he is hereby required to complete, by paying for and attending in their entirety, within one (1) year from the date this Decision and Order becomes final under the bylaws, the following professional development courses made available through the Institute, or, in the event a course listed below becomes unavailable, the successor course which takes its place:
 - (a) *Accounting, Auditing & Professional Practice Update*;
 - (b) *Financial Statement Presentation & Disclosure – A Practitioner's Workshop*;
 - and
 - (c) *Not-For-Profit Organizations – Accounting & Auditing Issues*.
5. THAT Mr. Miller be and he is hereby required to have his practice supervised, at his own cost, for a period of one (1) year from the date this Decision and Order becomes final under the bylaws, upon the following terms and conditions:
 - (a) that the supervisor must be approved by the Professional Conduct Committee; and
 - (b) that the responsibilities of the supervisor shall include supervision of the planning and conduct of a sample of assurance and compliance engagements.

6. THAT Mr. Miller be reinvestigated by the Professional Conduct Committee, or by a person retained by the Professional Conduct Committee, on one occasion, between six (6) months and one (1) year from the expiry of the period of supervised practice ordered in paragraph 5, the cost of the reinvestigation, up to \$1,500, to be paid by Mr. Miller within thirty (30) days of receiving notification of the cost of the reinvestigation.
7. THAT notice of this Decision and Order, disclosing Mr. Miller'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*.
8. THAT in the event Mr. Miller 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 one (1) year from the date of his suspension, and in the event he does not comply within this one-year 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. Miller's practice or employment.

REASONS FOR THE ORDER

Reprimand

16. The panel orders Mr. Miller be reprimanded in writing by the Chair of the panel to make it clear to Mr. Miller that his conduct is unacceptable.

Fine

17. The panel finds that a fine in the amount of \$4,000 is sufficient to serve as a general and specific deterrent in the circumstances, including the nature and severity of the charges, the remorse shown by Mr. Miller, the steps already taken to arrange supervised practice and the financial means of the member.

Professional Development

18. Mr. Miller acknowledges his need to ensure he is current and competent and expressed his willingness to take professional development courses, and has already undertaken or registered for a number of courses. The rehabilitation of Mr. Miller through education will serve to protect the public.

Supervised Practice

19. Given the deficiencies noted in the engagements undertaken by Mr. Miller, his rehabilitation and the protection of the public require that his practice be supervised for a period of time. It is

anticipated that the supervisor shall determine the appropriate sample of assurance and compilation engagements to be included in that supervision.

Re-investigation

20. Given the deficiencies noted in the engagements, a re-investigation following the period of supervised practice and education is required to ensure that Mr. Miller's standards are those of the profession.

Costs

21. It is appropriate that the member charged, as opposed to the membership as a whole, bear in part the costs of the investigation and prosecution occasioned by his misconduct. In this matter, taking into account the circumstances of the member and the sanction in totality, costs in the amount of \$2,500 are appropriate and so ordered by the panel.

Notice

22. Publishing names of members found guilty of professional misconduct is often the single most significant sanction that may be administered for general deterrence, education of the membership at large, and protection of the public. The panel therefore orders the publication of this proceeding in *Checkmark* and orders that notice be given to the Public Accountants Council for the Province of Ontario and to the Canadian Institute of Chartered Accountants.

Failing to Comply

23. To encourage compliance with discipline orders in cases in which members are not expelled outright, orders of a panel generally specify suspension, followed by, should the member still fail to comply, expulsion with newspaper notification to the public as an ultimate consequence for non-compliance. The panel so orders in this proceeding.

DATED AT TORONTO THIS 17th DAY OF NOVEMBER, 2005
BY ORDER OF THE DISCIPLINE COMMITTEE

B. L. HAYES, CA – DEPUTY CHAIR
DISCIPLINE COMMITTEE

MEMBERS OF THE PANEL:

R.J. ADAMKOWSKI, CA
M.B. MARTENFELD, FCA
A.D. NICHOLS, FCA
R.A. VICKERS, FCA
N.C. AGARWAL (Public Representative)