

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

DISCIPLINE COMMITTEE

IN THE MATTER OF: Charges against **THOMAS PATRICK DOHERTY, CA**, a member of the Institute, under **Rules 204.1 and 206** of the Rules of Professional Conduct, as amended.

TO: Mr. Thomas Patrick Doherty, CA
32 Hostetler Road
NEW HAMBURG, ON NOB 2G0

AND TO: The Professional Conduct Committee, ICAO

REASONS
(Decision And Order Made November 3, 2004)

1. This panel of the discipline committee of the Institute of Chartered Accountants of Ontario met on November 3, 2004 to hear charges brought by the Professional Conduct Committee against Thomas Patrick Doherty, a member of the Institute.

2. The Professional Conduct Committee was represented by Ms. Barbara Glendinning. She was accompanied by Ms. Melanie Russell, the investigator appointed by the Professional Conduct Committee.

3. Mr. Doherty was present at the hearing and was not represented by counsel. He acknowledged for the record that he understood that he had the right to be represented by counsel and that he was made aware of that right before the hearing.

4. The decision and order of the panel were made known at the hearing. The formal, written decision and order was signed by the secretary to the discipline committee and sent to the parties on November 5, 2004. These reasons, given in writing pursuant to Bylaw 574, set out the charges, the decision and the order, as well as the reasons of the discipline committee.

CHARGES

5. The Notice of Assignment Hearing dated August 9, 2004, the Notice of Hearing dated September 13, 2004 and the Charges dated July 20, 2004 were entered as Exhibits 2, 3 and 4, respectively. Exhibit 1 had been entered into the record at the August 9, 2004 Assignment Hearing.

6. The charges laid against Mr. Doherty read as follows:

1. THAT the said Thomas Patrick Doherty, in or about the period December 31, 2003 to February 21, 2004, while engaged to perform an audit of the financial statements of Stratford Furniture Ltd. for the year ended December 31, 2003, failed to be and remain free of any influence, interest, or relationship which, in respect of the engagement, impairs the member's professional judgment or objectivity or which, in the view of a

reasonable observer, would impair the member's professional judgment or objectivity, contrary to Rule 204.1 of the rules of professional conduct in that he performed an audit of Stratford Furniture Ltd. while he was employed by the said company as financial controller.

2. THAT, the said Thomas Patrick Doherty, in or about the period December 31, 2003 to February 21, 2004, while engaged to perform an audit of the financial statements of Stratford Furniture Ltd. 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 of the Rules of Professional Conduct, in that;
 - a) he failed to properly assess materiality and audit risk;
 - b) he failed to obtain sufficient appropriate audit evidence to support the Income Statement items "wages and benefits", "advertising expenses", "building expenses", and "freight and delivery";
 - c) he failed to obtain sufficient appropriate written representations from management; and
 - d) he failed to properly document items important to support his auditor's report.
3. THAT, the said Thomas Patrick Doherty, in or about the period June 30, 2003 to October 30, 2003, while engaged to perform an audit of the financial statements of the Ontario English Catholic Teachers' Association – Huron-Perth Secondary Unit 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 properly assess materiality and audit risk;
 - (b) he failed to obtain an engagement letter from the Association with respect to the audit;
 - (c) he failed to obtain a representation letter from management; and
 - (d) he failed to properly document items important to support his auditor's report.
4. THAT the said Thomas Patrick Doherty, in or about the period December 31, 2003 to February 21, 2004, while engaged to perform a review of the financial statements of Retail Advantages Inc. for the year ended August 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 of the Rules of Professional Conduct, in that:
 - (a) he failed to obtain an engagement letter;
 - (b) he failed to obtain a representation letter from management; and
 - (c) he failed to properly document items important to support his report.
7. Mr. Doherty entered a plea of not guilty to each charge.

EVIDENCE

8. Ms. Glendinning gave a brief overview of the case for the Professional Conduct Committee. She said that the only witness for the prosecution would be the investigator, Ms. Russell. Ms. Glendinning filed a document brief which was marked as Exhibit 5.

9. Ms. Russell provided the panel with an outline of her professional and educational background. The panel accepted her as an expert witness qualified to give opinion evidence at this hearing.

10. Ms. Russell testified that she was asked by the Professional Conduct Committee to investigate Mr. Doherty's practice because of a complaint arising out of a practice inspection. She was asked to specifically review the file and financial statements for Stratford Furniture Ltd. (Stratford), an audit client of Mr. Doherty's. She was also asked to review the file and financial statements for at least one other client. She selected Ontario English Catholic Teachers' Association – Huron-Perth Secondary Unit (Ontario English), an audit client, and Retail Advantages Inc. (Retail Advantages), a review client.

11. Ms. Russell briefly outlined the background of Mr. Doherty for the panel. He obtained his Chartered Accountant designation in 1986 with Clarkson Gordon (as it was then known). He then practiced at three other firms before setting up his own practice as a sole practitioner in 1993. Mr. Doherty has a very small practice, with gross billings of approximately \$70,000. His practice is comprised of approximately 500 personal tax returns, 2 review engagements (Retail Advantages and one other), 6 GST filings, 20 notice to reader engagements, 2 audits (Stratford and Ontario English), and working as the part time controller for Stratford. She described Mr. Doherty's duties at Stratford as including depositing cheques, reconciling bank statements, payroll preparation, preparation of cheques for signature by the owners and the preparation of monthly financial statements (to which Mr. Doherty attaches a notice to reader report).

12. The first charge relates to the alleged failure of Mr. Doherty to remain free of any influence, interest or relationship which in the view of a reasonable observer would impair the member's professional judgement or objectivity. The charge relates to Mr. Doherty performing an audit of Stratford, while he was employed by Stratford as financial controller.

13. Ms. Russell advised the panel that Mr. Doherty was not aware of the requirements of Rule 204.1 – either the new rule or the old rule. She testified that Mr. Doherty told her that no one had told him that he could not do this and that he did not believe his objectivity was compromised. In fact, Mr. Doherty's view was that he did a better audit of Stratford because of his increased knowledge of the business, where he functioned as a part time controller. Ms. Russell said, as Mr. Doherty himself later confirmed to the panel, he would not stop being the controller of Stratford unless he was told to do so. Lastly, we were told that Stratford pays the mortgage for Mr. Doherty and that it was a very important client to him.

14. With respect to the second, third and fourth charges, Ms. Russell's evidence was given with specific reference to the relevant documents included in Exhibit 5 and in her testimony she made specific reference to the allegations set out in the charges. The first charge related to the 2003 audit of Stratford, the second to the 2003 audit of Ontario English and the third to the 2003 review of Retail Advantages. Ms. Russell's evidence was that Mr. Doherty's three files were deficient. In some cases, he failed to properly assess materiality and audit risk. In others, he failed to obtain sufficient appropriate audit evidence. He also failed to either obtain a representation letter from management or obtain sufficient appropriate written representations from management and failed to properly document items important to support his report.

15. Ms. Russell also testified that Mr. Doherty was generally cooperative with her investigation. When asked how he kept current with changes in professional standards, Mr. Doherty advised that he

had not taken professional development courses in many years. He advised that he generally scans updates to the Handbook of the Canadian Institute of Chartered Accountants for issues relevant to his practice. However, he was not aware of the requirement to refer to Canadian generally accepted accounting principles and auditing standards in his reports, nor was he aware of the new standard on differential reporting.

16. Mr. Doherty did not testify and called no evidence.

Submissions

17. With respect to the first charge, the Professional Conduct Committee submits that a reasonable observer would take the view that Mr. Doherty was not free from any interest, influence or relationship with respect to Stratford. The Professional Conduct Committee submits that because Mr. Doherty was the part time controller at Stratford, he was essentially auditing his own work when he subsequently audited the financial statements of Stratford.

18. With respect to the charges, two, three and four, the Professional Conduct Committee submits that the charges had been proven through the evidence of Ms. Russell.

19. Mr. Doherty then provided the panel with some brief submissions. Some of his submissions repeat parts of Ms. Russell's testimony set out above. In addition, Mr. Doherty advises that he relies on the audit skills that he used in practising in the 1980s. He attended one course approximately 10 years ago aimed at new practitioners. He advises that he could not afford counsel for the hearing because of the small size of his practice and because of his personal financial commitments. He told the panel he has decided that his money is more appropriately spent on his family than on professional development.

20. There were also submissions by both the Professional Conduct Committee and Mr. Doherty as to whether he is an employee of Stratford or is employed by Stratford. There is agreement between the parties that Mr. Doherty was employed by Stratford and that he was not an employee of Stratford.

DECISION

21. After deliberating, the panel concludes that there is no doubt that Charges Nos. 2, 3, and 4, have been proven. We accept Ms. Russell's testimony in this regard. Mr. Doherty standard of conduct fell significantly short of the standard the profession requires.

22. However, the panel concludes that Charge No.1 against Mr. Doherty has not been proven by the Professional Conduct Committee. The panel reviewed and discussed the Council Interpretation of (old) Rule 204. The panel decided the charge has not been proven for three primary reasons. First, there was some evidence provided that Stratford did accept responsibility for financial information in that the owners of Stratford, and not Mr. Doherty, signed cheques for Stratford. Second, it is not clear to the panel that Mr. Doherty had assumed the role of an employee of Stratford, although we acknowledge that the parties agreed he was employed by Stratford. Third, Mr. Doherty's economic dependence on Stratford is not proven. As a result, the panel determines that the charge has not been proven.

23. The panel understands that Mr. Doherty has registered for a course on the new independence rules. The panel strongly encourages Mr. Doherty to get a clear understanding of what he can and cannot do under the *Rules of Professional Conduct* and to refresh and renew his understanding on a regular basis. The panel, as above, finds Mr. Doherty not guilty of the charge only because, in our view, the charge was not proven by the Professional Conduct Committee. If the Professional Conduct Committee had more directly addressed some of the views and interpretations set out in the Council Interpretations of Rule 204, Mr. Doherty may well have been found guilty under this charge as well.

24. When the hearing reconvened, the chair read the following decision into the record:

THAT, having seen, heard and considered the evidence, the Discipline Committee finds Thomas Patrick Doherty not guilty of charge No. 1 and guilty of charges Nos. 2, 3 and 4.

SANCTION

25. The Professional Conduct Committee then made its sanction recommendation. The panel is advised that the sanction focuses primarily on the rehabilitation of Mr. Doherty and specific deterrence to Mr. Doherty. The Professional Conduct Committee recommends a reprimand from the chair of the hearing, identified professional development courses, reinvestigation by the Professional Conduct Committee following the successful completion of the professional development courses and notice to the Canadian Institute of Chartered Accountants and to the Public Accountants' Council. The courses recommended by the Professional Conduct Committee are Accounting, Auditing and Professional Practice Update, Audit of a Small Business and the new course on independence standards. The Professional Conduct Committee did not request a fine, costs or publication in *CheckMark*.

26. Mr. Doherty also made submissions on the proposed sanction. He advises the panel that he is happy that the Professional Conduct Committee has not requested a fine or costs. He advises that he is registered for the course on independence standards the day following the hearing and that he has no problem with taking any courses determined to be appropriate by the panel. He also advises the panel that he had volunteered in July 2004 to give up his audit and accounting engagements in exchange for no charges being laid by the Professional Conduct Committee. He also requests that any courses ordered by the panel be at a course location that is accessible to people with disabilities such as his.

27. The panel is troubled by some of Mr. Doherty's submissions and by his general demeanour, conduct and attitude towards the discipline process and the discipline committee panel. At times, he sounded hostile. Most of the time it wasn't clear to the panel that he understands there were serious deficiencies in his standard of practice and it was those deficiencies which brought him before the discipline committee. It also isn't clear to the panel that he understands that if the ordered reinspection finds significant issues with his standard of practice or compliance with the Rules that he may once again find himself involved in the discipline process. The panel is particularly disturbed by Mr. Doherty's comments that "this whole thing wasn't his doing" and his references to choosing not to take professional development courses in order to spend the money on personal expenditures. All professionals, and particularly chartered accountants, have an ongoing obligation to maintain their knowledge and professional standards. Mr. Doherty did not meet his obligation to maintain his knowledge and to make sure his practice was being operated in accordance with the generally accepted standards of the profession.

28. Most of the members of the panel, although prepared to fashion a sanction against Mr. Doherty that is based primarily on rehabilitation, have serious doubts whether the sanction proposed by the Professional Conduct Committee is appropriate. Because of the concerns outlined in the previous paragraph, the panel questions whether the proposed courses and reinspection will have the desired result of ensuring that Mr. Doherty takes his professional obligations seriously and makes the necessary and substantial upgrades to both his knowledge base and practice in order to comply with the standards of the profession. The panel is hopeful that it will be proven wrong and is prepared to concur with the Professional Conduct Committee's recommendation on proposed sanction. However, the panel would like to warn Mr. Doherty that, should he find himself involved in the discipline process at some future date, the discipline committee would be unlikely to make an order focused primarily on his rehabilitation.

ORDER

IT IS ORDERED in respect of charges Nos. 2, 3 and 4:

1. THAT Mr. Doherty be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Doherty be and he is hereby required to complete, by paying for and attending in their entirety, by December 31, 2005, 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 and Professional Practice Update;
 - (b) Audit of a Small Business or Auditing Refresher; and
 - (c) New Independence Rules.
3. THAT Mr. Doherty be reinvestigated by the professional conduct committee, or by a person retained by the professional conduct committee, on one occasion, within twelve (12) months following the completion of the professional development courses ordered in paragraph 2.
4. THAT notice of this Decision and Order, disclosing Mr. Doherty'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; and
 - (b) to the Canadian Institute of Chartered Accountants.
5. THAT in the event Mr. Doherty fails to comply with 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 three (3) months from the date of his suspension, and in the event he does not comply within this three (3) month 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 *CheckMark* and in a newspaper distributed in the geographic area of Mr. Doherty's current or former practice, employment and/or residence.

Reprimand

29. The panel determines that, in accordance with normal practice, a reprimand to Mr. Doherty is necessary to stress to him the serious nature of his misconduct and the unacceptability of it as a chartered accountant.

Professional Development Courses, Reinvestigation

30. The panel orders the professional development courses as set out. It also strongly recommends to Mr. Doherty that he purchase and use the Canadian Institute of Chartered Accountants Professional Engagement Manual in operating his practice. As above, the panel has serious concerns about Mr. Doherty's professional capabilities and his demonstrated lack of understanding of the accounting and auditing requirements of the profession.

Reinspection

31. The panel determines that reinspection of Mr. Doherty's practice after the completion of the defined professional development courses is appropriate in order to determine whether Mr. Doherty has taken the appropriate steps to rectify the serious deficiencies in his practice.

Notice

32. The panel determines that notice to the Canadian Institute of Chartered Accountants and to the Public Accountants Council for the Province of Ontario is appropriate. The panel does not order that notice be published in *CheckMark*.

33. The order is intended to facilitate Mr. Doherty's rehabilitation. Given his very limited practice, there is a concern that he would not have a reason to rehabilitate himself if notice of the order was published in *CheckMark*. There was no suggestion of any moral turpitude or loss to a member of the public as a result of Mr. Doherty's failure to adhere to the required standard. While the panel has difficulty with Mr. Doherty's apparent attitude, we are prepared to accept that his failures reflected a misunderstanding of his obligations as a member and that he will not repeat this error. Further, the reinvestigation should confirm that Mr. Doherty has learned his lesson. If not, and Mr. Doherty is again found guilty of professional misconduct he can expect a very different result than this order.

DATED AT TORONTO THIS 12TH DAY OF OCTOBER, 2005
BY ORDER OF THE DISCIPLINE COMMITTEE

M. BRIDGE, CA – CHAIR
DISCIPLINE COMMITTEE

MEMBERS OF THE PANEL:

R.J. ADAMKOWSKI, CA
P.J. HOLT, CA
J.G. SEDGWICK, CA
J.R.G. STAPLETON, CA
V. INGLIS (Public representative)