

Discipline Notice

On March 23, 2021, a panel of the Discipline Committee (the "Panel") of the Institute of Chartered Accountants of Manitoba ("ICAM"), now the Chartered Professional Accountants of Manitoba ("CPA Manitoba"), continued a hearing (the "Hearing") in relation to charges of professional misconduct against Mr. J. Randall Mavins, CPA, CA (the "Member"), a registered member of ICAM and now CPA Manitoba. The Hearing was held pursuant to the transitional provisions of *The Chartered Accountants Act*.

The Member appeared before the Panel with legal representation and pled guilty to re-amended charges dated January 20, 2021 (the "Re-Amended Charges").

The Re-Amended Charges identified that:

- In or about 1985, the Member provided analysis and advice to a political party (the "Party") regarding its obligations under *The Elections Finances Act* and assisted with the creation of a policy (the "Policy"), the goal of which was to carry out transactions in such a manner as to enable the Party and its candidates to characterize certain invoices (the "Invoices") as election expenses that qualified for reimbursement as opposed to election expenses in the form of donations in kind;
- The Member later audited (the "Audit") the election finances returns of the Party and its candidates for the 1999 Manitoba general election (collectively, the "Returns"). In the performance of the Audit, the Member knew of the Policy and applied it to the Returns, which allowed the Party and its candidates to apply for reimbursement of certain election expenses;
- At no point during the course of the Audit did the Member document the fact that an area of risk relating to his independence existed regarding the Invoices, the Policy and the Member's involvement in the creation of the Policy; and
- As a result of the foregoing, a reasonable observer, at the time of the conduct, would have perceived that the Member failed to hold himself free of all interests, which would impair his professional judgment or objectivity in respect of his audit engagement, contrary to Rule 204.1 of the Rules of Professional Conduct (the "Rules"), as that Rule was in effect at the time of the Audit.

This matter had a lengthy procedural history, which led to the Hearing:

- In or about 2009, the facts which ultimately resulted in the original charges of professional misconduct against the Member came to ICAM's attention and the Professional Conduct Committee of ICAM (now CPA Manitoba) (the "PCC") elected to investigate the matter (the "Investigation");
- Between 2009 and 2013, the PCC faced significant challenges in attempting to complete the Investigation, including issues with attempting to obtain documentation from the Member. Ultimately, the Investigation was concluded and the PCC elected to proceed with charges against the Member, which charges were referred to the Discipline Committee in 2015;
- In 2014, the PCC and the Member's then legal counsel agreed that the matter would be resolved by way of remediation agreement, however, negotiations of this agreement came to an end some months later without a resolution. This resulted in the PCC being required to prosecute the matter, retain an expert to opine on the Member's conduct and formally charge the Member. The original charges were subsequently amended in 2015;

- In 2016, the Member filed a Request for Review to be heard by a Panel of ICAM Council (the "Panel of Council") constituted under ICAM Bylaw 201;
- In 2017, the Member filed a Notice of Motion in relation to his Request for Review, which Motion and Request for Review were ultimately struck out by the Panel of Council in April 2017 on the basis that, among other things, the remedies requested by the Member were matters to be determined by the Panel;
- The Panel was then advised that the Member wished to raise certain preliminary issues relating to process and jurisdiction prior to a determination of the substantive charges against him. This Preliminary Motion was heard by the Panel in October 2017 and was subsequently dismissed (the "Preliminary Decision");
- In August 2018, the Member filed a Notice of Appeal of the Preliminary Decision returnable to the Panel of Council, which was dismissed on January 15, 2019;
- Subsequently, on or about January 20, 2021, an agreement was reached between counsel to the PCC and counsel to the Member with respect to the form of the Re-Amended Charges, to which the Member agreed to plead guilty, with the only remaining issue to be resolved by the Panel being the appropriate sanction; and
- Prior to the Hearing being held, the Member retired from practice and ceased providing Public Accounting or Other Regulated Services.

Analysis and Decision

At the Hearing, the parties were in agreement that an appropriate sanction would involve:

- publication of the Panel's decision;
- certain agreed-upon professional development courses should the Member return to practice; and
- a fine.

The parties disagreed, however, as to the appropriate amount of the fine and, accordingly, made submissions before the Panel regarding their respective positions.

In reaching its conclusion, the Discipline Panel took into account the nature of the Member's misconduct and its impact on the profession and the public at large. It is a fundamental principle of the profession that, in the context of an audit, Members hold themselves free of any influence, interest or relationship, in respect of their client's affairs and this independence is key to maintaining the public confidence in the profession.

While taking into consideration all of the relevant mitigating and aggravating factors raised by counsel, the Discipline Panel gave the following factors significant weight:

- the nature of the Member's misconduct as a breach of Rule 204.1 Independence and its impact on the reputation of the profession in the eyes of the public;
- while it is acknowledged that the Member appeared before the Discipline Panel to plead guilty to the Re-Amended Charges, this plea only came years after the misconduct came to light;
- the Member's response to the investigation of his misconduct and the manner in which he approached the charges against him, demonstrate a lack of accountability and insight;

- the need to deter other members of the profession from demonstrating a lack of accountability and insight for their misconduct; and
- maintaining the public's confidence in the integrity of the profession's ability to properly supervise the conduct of its members.

The Panel ordered that:

- the Member be reprimanded for his breach of Rule 204.1 Independence – Assurance and Specified Auditing Procedures Engagements of the Rules;
- the Member pay a fine in the amount of \$20,000;
- the Panel's decision, including the name of the Member, be made available to the public, subject to ICAM Bylaw 573; and
- should the Member wish to regain eligibility to provide Public Accounting or Other Regulated Services, he shall satisfactorily complete the following professional development courses and/or examinations (or their successor courses and/or examinations):
 - Audit Engagements – Review of the Standards;
 - Review Engagements – Review of the Standards; and
 - Compilation Engagements – Overview of the New Standard CSRS 4200.

Inquiries regarding this matter or the complaint process can be obtained from:

Ms. Anita Wilson, CPA, CA
Director, Ethics & Regulatory Affairs & Registrar
CPA Manitoba
Phone: 204.987.4567
Email: awilson@cpamb.ca