



MANEO

ISSUE 37 • DECEMBER 2003

NEWSLETTER FROM THE PUBLIC ACCOUNTANTS' AND AUDITORS' BOARD
NUUSBRIEF VAN DIE OPENBARE REKENMEESTERS- EN OUDITEURSRAAD

REPORT FROM THE CHIEF EXECUTIVE OFFICER

The Ministerial Review Panel's recommendations on the Draft Accountancy Profession Bill (DAPB) was released on 17 October 2003 and can be accessed on the Treasury website www.treasury.gov.za.

It is indeed welcome news to end the year on a positive note after a prolonged period of uncertainty following the decision of the Minister of Finance in early 2002 to put the DAPB on hold pending its review in the light of the spate of corporate failures, both nationally and internationally, over the approximate eighteen month period from when it was finalized by the National Accountancy and Consultative Forum.

The Panel's report is a four part 152 page document that addresses each of the nine terms of reference posed by the Minister within the overall objective of restoring the trust and confidence of the investing public in the capital markets through improved corporate reporting and governance.

Section A of the report is an executive summary. Section B contains the recommendations of the Panel developed under each of the terms of reference as well as certain other relevant matters identified by the Panel as being pertinent to the DAPB that are not specifically dealt with in the terms of reference. Section C sets out the background and an analysis of

global trends that assists in contextualising the issues under debate. Section D contains the references and pertinent information relating to the Panel.

The Panel's report essentially provides a conceptual framework of recommended steps considered necessary to enhance the corporate governance and reporting practices applicable to all entities which impact upon the broader public interest. The recommendations inter alia deal with the regulation of auditors, independence of auditors, the inter-relationship between the auditor and management, the culpability of auditors and management and the appropriateness of accounting standards and reporting. A summary of some the major recommendations of the report pertaining to the regulation of auditors and accountants are:

- The new legislation should be specific to the regulation of auditors and should not attempt to regulate the broader accounting profession.
- Our existing PAAB should be subsumed by a new body emanating from the new legislation. However, the new body should not simply be the PAAB with a new name, but a significantly new body with a particular public interest, perspective and focus.
- The members of the new body should include all the relevant interested parties. The Minister should appoint the members from the ranks of practicing and retired auditors, government regulators, users and academia. Practicing and retired auditors should constitute a minority of the members, but

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Seasons Greetings

On behalf of the PAAB
we wish all our members and their families
a joyous festive season
and a happy and prosperous 2004.



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REPORT FROM THE CHIEF EXECUTIVE OFFICER

should be a significant minority of say 40%.

- Appropriate government funding will be required to ensure that the new body can properly fulfill its mandate. Funding should reflect a shared responsibility for the maintenance of the integrity within the financial markets.
- The functions of the new body will be essentially the same as those of the PAAB currently. However, see above concerning the particular public interest focus. The minority representations of auditors on the new body as well as independent funding of its operations are important features that will assist in

addressing the perception of self regulation by the profession. However, the reality of achieving a de facto oversight by government and other stakeholders will require active participation in the governance of the new body.

- The disciplinary powers of the new body should be enhanced and the structure and processes improved to address the perceived lack of independence and responsibility as a protector of the public.

The Panel draws attention to the considerable task that remains to ensure that the recommendations for improvements contained in the report are implemented through a redrafting of the DAPB and the changes that

require to be made to other legislation, mainly the Companies Act and the Financial Reporting Bill.

The PAAB is well prepared to give constructive input and assistance to achieve this.

In conclusion, the PAAB welcomes the Ministerial Review Panel's report and believes that it provides a sound conceptual framework as a basis for the improvements that are necessary to enhance the corporate governance and reporting practices applicable to all entities which impact upon the broader public interest. ■

– **CLAUDE O'FLAHERTY**
Chief Executive Officer

AUDITING STANDARDS

AUDITING STANDARDS COMMITTEE (ASC)

The following International Federation of Accountants (IFAC) exposure drafts (EDs) were issued for comment in South Africa:

- Fraud in Audit, and
- Audit Planning.

The due date for comments was 31 October 2003.

The Fraud in Audit ED represents a revision of ISA 240, *The Auditor's Responsibility to Consider Fraud and Error in an Audit of Financial Statements* and deals only with the auditor's responsibility to consider fraud in an audit of financial statements. Consequently, paragraphs providing specific guidance with respect to error have been removed to others ISAs. The proposed ISA incorporates the basic principles and

essential procedures contained in the US Statement on Auditing Standard (SAS) 99, *Consideration of Fraud in a Financial Statement Audit*. It also provides additional guidance related to earnings management and the audit of small entities.

The Audit Planning ED represents a revision of ISA 300, *Planning the Audit*. A project to revise ISA 300 was undertaken by the IAASB so as to align the guidance on audit planning with the proposed guidance on Audit Risk and to better reflect recent trends in audit practice. The proposed ISA also includes guidance on *preliminary planning activities*, revised documentation requirements, guidance on special planning considerations for initial audit engagements and guidance taken from IAPS 1005, *The Special Considerations in the Audit of Small Entities*.

AUDITING STANDARDS BOARD (ASB)

The ASB approved for issue South African Auditing Practice Statement (SAAPS) 1014, *Reporting by auditors on compliance with International Financial Reporting Standards*. The purpose of the SAAPS is to provide additional guidance when the auditor expresses an opinion on financial statements that are asserted by management to be prepared:

- Solely in accordance with International Financial Reporting Standards (IFRSs);
- In accordance with IFRSs and a national financial reporting framework; or
- In accordance with a national financial reporting framework with disclosure of the extent of compliance with IFRSs.

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AUDITING STANDARDS

The guidance provided in this SAAPS may be applied, adapted as necessary, to reporting on whether financial statements have been prepared in accordance with financial reporting frameworks other than IFRSs.

The SAAPS is available on the PAAB website under Auditing Standards.

PRONOUNCEMENTS ISSUED BY SAICA

The South African Institute of Chartered Accountants (SAICA) issued the following pronouncements for comment by **January 2004**:

- *Guidance for Auditors: Reporting On Attorney's Trust Accounts in terms of the Attorneys Act, no 53 of 1979.* The purpose of the pronouncement is to provide guidance on the audit of attorneys' trust accounts and to highlight the audit issues in this area. It also contains updated specimen reports on the attorneys trust account.
- *Corporate Governance Guide: Audit Committees for Medical Schemes.* The Guide has been prepared by the Medical Schemes Project Group of SAICA, primarily to provide guidance to assist boards of trustees in making suitable arrangements for their audit committees, and to assist members serving on audit committees in carrying out their role.

SAICA issued Circular 4/2003, *Guidance for Auditors Reporting in Terms of the Immigration Act.* The circular was prepared in consultation with the Department of Home Affairs and provides guidance for Chartered Accountants in understanding and complying with the relevant provisions of the Act.

The above documents are available on the SAICA website.

INTERNATIONAL AUDITING AND ASSURANCE STANDARDS BOARD (IAASB)

The IAASB met in Tokyo from 12 to 17 October 2003. The IAASB functions as an independent standard-setting body under the auspices of IFAC. The IAASB develops standards and guidance for financial statement audits and other assurance or related services pertaining to both financial and non-financial information, and establishes quality control standards covering the conduct and performance of such services. The IAASB issues International Standards on Auditing and International Auditing Practice Statements, which serve as the worldwide benchmark for high quality auditing standards and related guidance. In South Africa, the above role is presently fulfilled by the relevant structures at the Public Accountants' and Auditors' Board, which responsibilities include setting auditing standards for the local auditing profession.

Through SAICA's membership of IFAC, South Africa has been a member of the IAASB (formerly known as the International Auditing Practices Committee) for almost a decade. The current South African representative on the IAASB is Suresh Kana (centre). Seen with Suresh at the Tokyo meeting is Bernard Agulhas, Director: Auditing Standards at the PAAB and current technical advisor to the member, and Alta Prinsloo, Senior Technical Manager at the IAASB and former technical advisor to Suresh.



At the Tokyo meeting the IAASB approved for issue the following pronouncements:

- An International Standard Auditing (ISA) 315, *Understanding the Entity and its Environment and Assessing the Risks of Material Misstatement,*
- ISA 330, *The Auditor's Procedures in Response to Assessed Risks,*
- A revised ISA 200, *Objective and general principles governing an audit of financial statements, and*
- A revised ISA 500, *Audit Evidence.*

The above pronouncements form part of the Audit Risk Model.

- A revised International Auditing Practice Statement (IAPS) 1005, *The Special Considerations in the Audit of Small Entities.* The revised IAPS takes into account ISAs issued between March 1999 and March 2003.

At the above meeting the IAASB also considered the progress of task forces working on the following proposed pronouncements:

- A revised ISA 600, *Using the Work of Another Auditor,* plus an IAPS on Group Audits,
- A revised ED on *Assurance Engagements, and*
- An ED on the proposed revised ISA 700, *The Independent Auditor's Report on General Purpose Financial Statements,* and related conforming amendments to other existing ISAs. ■

– CINDY JONKER



PERSONALITY IN ACCOUNTING: IS IT A QUESTION OF DIVERSITY?

We must not cease from exploration and the end of all our exploration will be to arrive where we began and to know the place for the first time.

T. S. ELIOT

Today's rapidly changing environment is one characterised by advances in information technology, globalization, concern for the environment and litigious societies. These challenges have forced professional accountants to become more responsible and accountable to the communities which they service. Accountants need to demonstrate more diversity in their thinking and decision making. Yet attracting and retaining accounting professionals with a broader range of capabilities appears to be a challenge in itself. Research by Wheeler (2001), which shows that accounting professionals exhibit very homogenous personality preferences, points directly to the need for greater diversity in the profession.

Numerous studies have found relationships between the Myers-Briggs Type Indicator (MBTI) personality preferences and various relevant professional skills.

In a recent study by Kovar, Ott and Fisher (using the MBTI) they found that despite significant amounts of research and practical guidance pointing to the need for diversity in accounting professionals and despite two decades of change in the accounting profession, the distribution of personality types among accountants is remarkably stable across time, location and firm size. Their results, if anything, suggest a shift towards less diversity in the student population exhibiting stereotypical accounting preferences. These results could imply either a need to further refine student recruiting processes or they indicate that, despite an increased variety of demands, certain requisite preferences are necessary to be successful in the accounting profession. Additionally, the results could also point to a need to consciously focus teaching and learning methods to utilize students' less preferred personality traits to help balance the lack of diversity in

the profession. In order to understand the results obtained from Kovar et al. (2001) an understanding of the MBTI is useful.

The MBTI is based on the theories of Carl Jung, Katherine C. Briggs and Isabel Briggs Myers. Carl Jung first developed the theory that individuals each had a psychological type. He believed that there were two basic kinds of "functions" which humans used in their lives: how we take in information (how we "perceive" things), and how we make decisions. He believed that within these two categories, there were two opposite ways of functioning. We can perceive information via 1) our senses, or 2) our intuition. We can make decisions based on 1) objective logic, or 2) subjective feelings. Jung believed that we all use these four functions in our lives, but that each individual uses the different functions with a varying amount of success and frequency. He believed that we could identify an order of preference for these functions within individuals.

The developed theory today is that every individual has a primary mode of operation within four categories:

1. Our flow of energy.
2. How we take in information.
3. How we prefer to make decisions.
4. The basic day-to-day lifestyle that we prefer.

Within each of these categories we prefer to be either:

1. Extraverted or Introverted
2. Sensing or Intuitive
3. Thinking or Feeling
4. Judging or Perceiving



EDUCATION AND TRAINING

We all naturally use one mode of operation within each category more easily and more frequently than we use other modes of operation. So, we are said to “prefer” one function over the other. The combination of our four “preferences” defines our personality type. Although everybody functions across the entire spectrum of the preferences, each individual has a natural preference which leans in one direction or the other within the four categories.

The MBTI therefore measures four aspects of a person’s personality. It indicates whether an individual prefers extraversion (E) or introversion (I), sensing (S) or intuition (N), thinking (T) or feeling (F), and perceiving (P) or judging (J). These four aspects of personality are combined to make up 16 personality types. The MBTI measures only individuals’ preferences for each of the four aspects of personality. As a result, it is not necessarily an indicator of individual abilities to utilize either their most or least preferred personality functions, only a measure of preference.

Kovar’s research suggests that accountants overwhelmingly favor sensing over intuition as a means of perception, thinking over feeling for making judgments and judgment over perception as a means of dealing with the outer world. Accordingly accountants tend to prefer the STJ personality type on average.

This typical accounting personality type is described by Frisbie (1988) as an individual who is “concerned with detail, careful about rules and procedures, orderly, precise and facts-orientated”. Frisbie further describes individuals with STJ preferences as “being good at observing and ordering, filing and recalling, and sequencing and categorizing”. Based on the above description individuals with STJ preferences may well be suited to many of the tasks performed by accountants. Traditionally individuals with the STJ personality type have been successful in accounting functions, yet the expanding demands and

challenges facing accountants may require a more varied approach. Because our preferred styles dictate how we look at problems and situations, a lack of diversity may result in failure to consider all aspects of a decision. As Otte states:

“With almost half of the profession being STJs, (CAs) must be careful to listen to their opposites, the intuition, feeling perceptive types to bring up new possibilities, read signs of coming change, to tackle difficulties with zest and to prepare for the future. Myers warned sensing, thinking, judging (STJ) types tend to need an intuitive to sell them on the value of new ideas. Thinkers need feeling types to forecast how others will feel, to conciliate and to persuade”.

Many accounting authors also advocate diversity because the ability to excel at different professional tasks differs by personality preference. Although ideally each person should possess these skills, this array of capabilities may be acquired more easily through employment of a whole variety of individuals with different capabilities.

However, in an attempt to create more diversity in the accounting workplace, proponents of diversity may have overlooked the possibility that the core personality preference – STJ – exhibited by accounting professionals may be a minimum requirement to successfully perform the tasks required by accountants. In spite of the demanding challenges facing accountants to be more knowledgeable about various aspects of business, the fact remains that collecting annual information, creating logical categorisations and aggregations and finding ways to communicate these in an organized fashion and to use it to facilitate effective decisions remains the accountants’ principal strength. Research in career development further indicates that the better the fit between environment and the person’s personality preferences, the greater the occupational stability, satisfaction, productivity and creativity.

Would it not therefore be better to assist accountants adapt to environments requiring use of their less-preferred skills than attempt to attract individuals with opposite personalities and train them to perform accounting tasks? ■

– LAINE KATZIN



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PRACTICE REVIEW

THE THIRD REVIEW CYCLE

The Public Accountants' and Auditors' Board (PAAB) has as its mission statement : "To protect the financial interests of the people of South Africa, and other stakeholders, through services rendered by registered accountants and auditors."

One of the tasks to achieve this goal is : "To strive constantly towards the maintenance and improvement of standards of registered accountants and auditors."

This task is the foundation of the practice review process.

The Practice Review Committee (PRC) of the PAAB has authorized the commencement of the third review cycle in January 2005. Major changes are to be implemented in the third review cycle and these are aimed essentially at placing greater emphasis on high risk assignments in order to address the concerns of the public interest.

The PRC confirmed that the primary objective of the practice review process should continue to be monitoring the compliance by registered accountants and auditors (RAAs) with appropriate levels of professional standards in the performance of the attest function. The secondary objective will continue to be to provide guidance to RAAs to assist them to improve their standards.

The third review cycle programme will be on a 3 and 6 year basis as opposed to the current 5 year basis. The third cycle reviews for practitioners responsible for any "public interest" audit assignments will be on a 3 year basis and for all other practitioners on a 6 year basis. The definition of "public interest" assignments is still to be finally determined but at this stage definitely includes the following: listed companies and their subsidiaries, public entities, unit trusts, asset managers, retirement, pension and provident funds and medical schemes.

The third review cycle will include two processes, namely a new process to review the overall systems of quality control in place for firms whose clients include audit assignments for public interest entities (referred to as the top down process) and the traditional assignment review for each attest practitioner. In this context a firm includes any sole practitioner or partnership where a public interest entity audit client is involved. The top down process will run on a 3 year basis.

The IFAC exposure draft ISQC1 "Quality control for audit, assurance and related services practices" will be incorporated in to the top down process. The IFAC exposure draft revised ISA 220 "Quality control for audit

engagements" will be included in the assignment review process.

For the third review cycle the review by the Practice Review Department of a practitioner's assignments will be carried out independently and not concurrently or in conjunction with the firms' internal reviews. The top down process will require attendance at selections of the firms' internal reviews to validate the effectiveness thereof.

The practice review staff complement will be increased by two people, one person to join the assignment review team and one person to carry out the top down programme.

Below is an overview of the new practice review cycles:

Practitioners with "public interest" attest assignments		Other attest practitioners
2005	One satisfactory third cycle assignment review PLUS One satisfactory top down firm review	2005
2006		2006
2007		One satisfactory third cycle assignment review 2007
2008	One satisfactory fourth cycle assignment review PLUS One satisfactory top down firm review	2008
2009		2009
2010		2010

The top down process and the third cycle review criteria for assignment reviews will be designed in the first half of 2004 for roll-out in the second half of 2004.

In addition, the PRC has decided that practitioners who are not responsible for public interest audit assignments are to be split in to two categories; these being on site reviews and in office reviews. The reason for this decision is to contain costs on very small reviews. On site reviews are the traditional assignment reviews carried out at the practitioner's premises. In office reviews will be performed at the PAAB's premises. The following practitioners will qualify for in office reviews: sole practitioners being subjected to either their first or second review in a cycle and whose audit assignments do not include any large audit assignments.

Should practitioners have any queries concerning the matters discussed above, please contact the Practice Review Director.

– JILLIAN BAILEY



QUARTERLY REPORT FROM THE DIRECTOR: LEGAL

for the period 1 July 2003 to 30 September 2003

INVESTIGATION COMMITTEE

The Investigation Committee met twice during this period and disposed of 33 cases as follows:

- Ten matters were not proceeded with:
 - ♦ Six were withdrawn by the complainant;
 - ♦ In four matters the committee was unable to proceed because of an absence of evidence.
- Three cases in terms of Disciplinary Rule 3.9.1 (the accused having given a reasonable explanation for the conduct).
- Three cases in terms of Disciplinary Rule 3.9.2 (the conduct complained of not constituting unprofessional conduct).
- Three cases in terms of Disciplinary Rule 3.9.3 (there being no reasonable prospect of proving the accused guilty).
- ♦ another two also related to negligence (joint audit, two practitioners fined) (R10 000 each). These two practitioners also made a voluntary contribution to costs, jointly, of R20 000
- ♦ two related to failure to respond to correspondence (one R5 000 one R2 000).
- ♦ One related to signing a non attest affidavit while the practitioner did perform the attest function, albeit minimally (R10 000)
- ♦ Four related to practice review (1st cycle third review – R15 000 suspended on conditions; 2nd cycle third review – R10 000 with a further R10 000 suspended on conditions; 2nd cycle second review – R10 000 suspended on conditions because although this is in the 2nd cycle, it related to a new practitioner who had not been reviewed previously; 2nd cycle third review – R10 000 with a further R10 000 suspended on conditions).

Fourteen practitioners were found guilty and punished, by consent, as follows:

- Three practitioners was cautioned. The matters were as follows:
 - ♦ One related to an unauthorised setoff of fees from a refund from the Receiver
 - ♦ One related to a failure adequately to supervise staff in the tax division
 - ♦ One related to a failure to respond to correspondence
- One practitioner was reprimanded; the matter related to the failure to obtain a letter of engagement for a forensic engagement which lead to a dispute as to what the terms of engagement were.
- Ten practitioners were fined. The matters were as follows:
 - ♦ one related to negligence (inadequate audit procedure, including not reporting a Material Irregularity) (R20 000)

DISCIPLINARY COMMITTEE

The Disciplinary Committee met twice during this period, and heard three cases.

FIRST MATTER

On 22 August 2003 the Committee heard the case against Mr L. He was present and represented. There were three charges against him, to which he pleaded guilty and was found guilty. The matter related to an attorney's trust audit.

THE FIRST CHARGE

The practitioner was found guilty of contravening disciplinary rule 2.1.5 in that, without reasonable cause or excuse he failed to perform his duties as auditor of the attorney's firm, being work or duties commonly performed by a practitioner, with such a degree of care and skill as in the opinion of the Board may reasonably be expected, or he failed to perform the work or duties at all, in that -

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Audit working papers and audit evidence

In respect of the professional work done by him in the preparation, signature and issue of the 1997 report the practitioner failed to keep adequate audit working papers and/or obtain adequate audit evidence, in the following respects:

- there was inadequate documentation to indicate that the audit had been properly planned, as required by SAAS 300;
- there was inadequate documented evidence to indicate that the practitioner had assessed the audit risk in respect of his engagement, as required by SAAS 400;

Insufficient or inappropriate audit work

In respect of the professional work done by him in the preparation, signature and issue of the 1997 report the practitioner failed to carry out sufficient or appropriate audit work or audit procedures, commensurate with the high level of risk involved in an audit of that nature, in the following respects:

- there was no proper evaluation of internal control weaknesses in the attorneys' firm;
- adequate audit procedures were not conducted in respect of the following components of the audit:
 - ♦ fee journals and fee debits;
 - ♦ client trust and business ledgers;
 - ♦ an examination of client files and a comparison of financial information contained in those files with the financial information reflected in the accounting records;
- there were inadequate levels of testing of trust cheque payments and inadequate or inappropriate audit procedures were adopted in relation to the checks of payments from the trust account of the attorneys' firm;
- inadequate or inappropriate audit procedures were applied in relation to receipting processes adopted by the attorneys' firm, including specific receipting processes to account for remittances received by mail.

Law Society rules

In the 1997 report the practitioner reported that in respect

of the year ended on 28 February 1997 the attorneys' firm had complied, *inter alia*, with section 78(4) of the Attorneys Act and rule 13.13 of the Law Society rules. This report was incorrect and/or misleading in that the attorneys' firm issued trust cheques which were payable to bearer and it therefore failed to comply with rule 13.13.8 of the Law Society rules.

THE SECOND CHARGE

The practitioner was found guilty of contravening disciplinary rule 2.1.5 in that, without reasonable cause or excuse he failed to perform his duties as auditor of the attorney's firm, being work or duties commonly performed by a practitioner, with such a degree of care and skill as in the opinion of the Board may reasonably be expected, or he failed to perform the work or duties at all, in that -

Audit working papers and audit evidence

In respect of the professional work done by him in the preparation, signature and issue of the 1998 report the practitioner failed to keep adequate working papers and/or obtain adequate audit evidence, in the following respects:

- there was inadequate documentation to indicate that the audit had been properly planned, as required by SAAS 300;
- there was inadequate documented evidence to indicate that the practitioner had assessed the audit risk in respect of his engagement, as required by SAAS 400;

Insufficient or inappropriate audit work

In respect of the professional work done by him in the preparation, signature and issue of the 1998 report the practitioner failed to carry out sufficient or appropriate audit work or audit procedures, commensurate with the high level of risk involved in an audit of that nature, in the following respects:

- there was no proper evaluation of internal control weaknesses in the attorneys' firm;
- adequate audit procedures were not conducted in respect of the following components of the audit:
 - ♦ fee journals and fee debits;



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- ♦ client trust and business ledgers;
- ♦ an examination of client files and a comparison of financial information contained in those files with the financial information reflected in the accounting records;
- there were inadequate levels of testing of trust cheque payments and inadequate or inappropriate audit procedures were adopted in relation to the checks of payments from the trust account of the attorneys' firm;
- inadequate or inappropriate audit procedures were applied in relation to receipting processes adopted by the attorneys' firm, including specific receipting processes to account for remittances received by mail.

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THE THIRD CHARGE

The practitioner was found guilty of contravening disciplinary rule 2.1.5 in that, without reasonable cause or excuse, he failed to perform his duties as auditor of the attorney's firm, being work or duties commonly performed by a practitioner, with such a degree of care and skill as in the opinion of the Board may reasonably be expected, or he failed to perform the work or duties at all in that -

Audit working papers and audit evidence

In respect of the professional work done by him in the preparation, signature and issue of the 1999 report the practitioner failed to keep adequate working papers and/or obtain adequate audit evidence, in the following respects:

- there was inadequate documentation to indicate that the audit had been properly planned, as required by SAAS 300;

- there was inadequate documented evidence to indicate that the practitioner had assessed the audit risk in respect of his engagement, as required by SAAS 400;
- there was inadequate documented evidence identifying the composition of loans by clients to the practitioner totalling approximately R800000 or as to when and how repayments were or were to be effected.

Insufficient or inappropriate audit work

In respect of the professional work done by him in the preparation, signature and issue of the 1999 report the practitioner failed to carry out sufficient or appropriate audit work or audit procedures, commensurate with the high level of risk involved in an audit of that nature, in the following respects:

- there was no proper evaluation of internal control weaknesses in the attorneys' firm;
- adequate audit procedures were not conducted in respect of the following components of the audit:
 - ♦ fee journals and fee debits;
 - ♦ client trust and business ledgers;
 - ♦ an examination of client files and a comparison of financial information contained in those files with the financial information reflected in the accounting records;
- there were inadequate levels of testing of trust cheque payments and inadequate or inappropriate audit procedures were adopted in relation to the checks of payments from the trust account of the attorneys' firm;
- inadequate or inappropriate audit procedures were applied in relation to receipting processes adopted by the attorneys' firm, including specific receipting processes to account for remittances received by mail.

FINDING AND SENTENCE

The chairman (Adv A Dodson) delivered the sentence of the Committee. For the sake of good communication, this is published in its entirety.

Finding

"The committee has been assisted in its deliberations in

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the first instance by the evidence led on the part of each of the parties. Mr [L] himself testified in mitigation of sentence and gave evidence of his career, its background and the particular stage it has reached as well as the circumstances which prevailed at the time of the commission of the offences in respect of which he has admitted guilt.

The pro forma complainant also called the evidence of Mr [F]. He is a retired and highly experienced auditor and a person who has particular experience in the area of auditing the books of attorneys' firms and the performance of the attest function in relation to trust funds in attorneys' practices.

He referred to some of the problems which have arisen, both in the auditing profession and in the legal profession, arising from the failure on the part of auditors properly to perform the function that they are called upon to perform in terms of the provisions of the rules of the various Law Societies.

In addition we have had the benefit of very helpful argument from both the pro forma complainant, and from the advocate who appeared on behalf of Mr [L] and I am indebted to them for the assistance which they have provided to us in arriving at a sentence.

The pro forma complainant was particularly fair in his assessment of the situation and it had the result that the representatives of each side, as it were, were largely in agreement as to, in broad terms, the type of sanction that was appropriate in the circumstances.

Their joint views have strongly influenced us in the decision to which we have come.

The committee has viewed the question of an appropriate sentence from three different perspectives. Firstly the particular nature of the offences which were involved. Secondly, the particular position of the offender himself, and thirdly, the impact which the offence has had on the broader community, both professional and the wider community.

In so far as the offence is concerned, we have taken into account the following. There was three separate charges

involved. Each charge on its own, and this is not disputed by either of the sides, we considered to be of a serious nature. The function which is required to be performed by an auditor is particularly important when dealing with the appointment in terms of the Law Society rules. We heard evidence about how the system works in terms of its being the basis upon which a certificate is issued which in fact allows attorneys to practise from year to year. So the Law Society and the law profession as a whole looks to this particular report, this document, as a guide to the acceptability of a legal practitioner to continue in practice.

The report is also important because it concerns trust funds which are entrusted to the care of attorneys and the report is also important because it directly affects the viability of the attorneys' fidelity fund, who end up picking up the tab, as it were, when there are lapses and failures on the part of attorneys, and specifically those lapses which this function is meant to prevent and identify.

If we look at the offence in this particular instance, there has in each case been a failure, an acknowledged and admitted failure, to follow both the requirements of the Law Society rules which on their own provide a clear guideline as to what is to be considered, as well as the profession's own long established guidelines.

In addition the admission of guilt in each instance, in each offence, reflects a serious lapse of judgment on the part of Mr [L], viewed from the perspective of the kind of scepticism, the kind of sceptical judgment, that should be brought to bear in order to approach a task of this nature, particularly if one had regard to the nature of the practice which was involved in this instance.

The committee is also concerned that the three offences were committed in sequential years, which suggested a failure to improve practise over time. It is so that a qualification was expressed in respect of the final year, but this in some ways works both ways in the sense that the information which was available to Mr [L] should have put him all the more on guard to ensure in that year strict compliance with the Law Society rules and his own profession's guidelines in performing this function.



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From the point of view of the offender himself, there are a number of positives, as the pro forma complainant put it. He has no previous convictions. His integrity *per se* has not been challenged in these proceedings and it is not an offence which has involved dishonesty on his part. He has testified to a successful career on his part, despite his having started off with a disadvantaged background and with the odds against him. In addition he has co-operated in the course of the investigation and the prosecution of these complaints.

The committee had some concern as to whether appropriate remorse was shown by Mr [L]. He had the opportunity to testify. He had the opportunity to show remorse in this instance. However, on the other hand, we must take into account the fact that he has pleaded guilty and the committee gives him the benefit of the doubt from that point of view and we accept that his admission of guilt is an appropriate indication of remorse on his part.

We have also taken into account Mr [L]'s current situation in so far as he has testified that his involvement in the performance of the attest function will be more limited and will take place in the context of scrutiny from and support by colleagues. At the same time we cannot treat it as a case where he is no longer performing the attest function. He will be working with another partner on particular audits and he will still be required to exercise his professional judgment in this regard. And the committee must take that into account.

From the point of view from the community which is impacted upon by the offences concerned, we have taken into account that the standing of two separate professions is negatively affected by the failure to perform these functions properly, both the legal profession and the auditing profession.

In this particular instance the type of conduct in respect of which Mr [L] has been found guilty has contributed to the potential removal of this area of work from the auditing profession, which would be a most serious and unfortunate black mark against the name of that profession. The mere fact that it is been placed in question is a problem.

As far as the broader community is concerned, it is clearly placed at risk by the failure on the part of auditors to perform this function appropriately. In this particular case, it may be, as argued by Mr [L]'s counsel, that there is no proven direct causal link between the offences on the part of Mr [L] and the losses suffered by the members of public who were affected. It does serve as an illustration of the importance of the type of function that is being performed here and of the type of losses that can potentially be avoided if the function is performed with the proper degree of judgment and scrutiny.

In so far as the level of increased public scrutiny on the auditing profession as a whole is concerned, we have taken this into account as a factor, but only as a background factor and we accept the submissions which were made by Mr [L]'s counsel in this regard.

We have taken all of these considerations into account in arriving at the appropriate sentence. There was acceptance from all sides that the offences involved in this case do not require that Mr [L] be prevented from continuing to practice. At the same time that does not detract from the acknowledged seriousness of the offences involved. We have accordingly decided upon the following sanction.

Sentence

In respect of the first charge, a fine of R25 000.

In respect of the second charge, a fine of R25 000.

In respect of the third charge, a fine of R50 000.

On the question of publication we order that the facts as admitted in the plea of guilty as well as the penalty imposed be published in *Maneo*, but that Mr [L]'s name and the name of the firm of which he is partner, should not be published.

In so far as the question of costs is concerned, the practice of the committee in the past has been to assign a figure to the costs order, but this has always been a matter of some difficulty, because the costs aren't quantified at this stage. We therefor consider it to be fair to all of the parties involved, that we order that 65% of the costs directly attributable to this hearing as ascertained by the Public Accountants' and Auditors' Board be paid by Mr [L]."

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SECOND MATTER

On 22 August 2003 the committee also heard the case against Mr H. He was present but un-represented. He was found guilty of 6 of the 7 charges brought against him. The other charge was withdrawn as the complainant was not present to give evidence.

THE FIRST CHARGE

The practitioner was found guilty of contravening disciplinary rule 2.1.5 in that, without reasonable cause or excuse he failed to perform work or duties commonly performed by a practitioner with such a degree of care and skill as in the opinion of the Board may reasonably be expected, or he failed to perform such work or duties at all, in that -

- At all times relevant hereto the practitioner acted as accounting officer of [PP] CC and as accounting and tax adviser of [PP] CC and of Mr [R]. In that capacity the practitioner was engaged, amongst other duties, to attend to the tax affairs of [PP] CC and of Mr [R] and in particular to render tax returns to the Commissioner for the South African Revenue Service on behalf of [PP] CC and of Mr [R].
- The practitioner failed in the following respects to perform his duties in terms of his engagement:
 - ♦ he failed to submit income tax returns for [PP] CC and for Mr [R] (alternatively, he failed to submit income tax returns timeously) for the financial years ended in 1999, 2000, 2001 and 2002;
 - ♦ he failed to deal with queries from Mr [R] in relation to his tax affairs and/or those of [PP] CC;
 - ♦ he failed to inform Mr [R] that arrear tax amounts were payable by him.

THE SECOND CHARGE

The practitioner was found guilty of contravening disciplinary rule 2.1.14 in that he failed to answer or to deal with appropriately within a reasonable time or at all, 11 written and 6 telephonic communications from, or on behalf of, Mr [R].

THE THIRD CHARGE

This charge was withdrawn due to the absence of the complainant to give evidence.

THE FOURTH CHARGE

The practitioner was found guilty of contravening disciplinary rule 2.1.5 in that, without reasonable cause or excuse he failed to perform work or duties commonly performed by a practitioner with such a degree of care and skill as in the opinion of the Board may reasonably be expected, or he failed to perform such work or duties at all, in that -

- At all relevant times hereto the practitioner acted as accounting officer of [TT] CC and as accounting and tax adviser of [TT] CC. In that capacity the practitioner was engaged, amongst other duties –
 - ♦ to attend to the VAT affairs of [TT] CC and in particular to render VAT returns to the Commissioner for the South African Revenue Service on behalf of [TT] CC;
 - ♦ to prepare annual financial statements for [TT] CC.
- The practitioner failed in the following respects to perform his duties in terms of his engagement:
 - ♦ he failed, from June 1999 to the date of termination of his services in June 2001 to render VAT returns;
 - ♦ he failed to prepare annual financial statements of [TT] CC in respect of the years ended on 29 February 2000 and 28 February 2001.

THE FIFTH CHARGE

The practitioner was found guilty of contravening disciplinary rule 2.1.5 in that, without reasonable cause or excuse he failed to perform work or duties commonly performed by a practitioner with such a degree of care and skill as in the opinion of the Board may reasonably be expected, or he failed to perform such work or duties at all in that - ;

- At all times relevant hereto the practitioner acted as accounting and tax adviser of Mr [T]. In that capacity the practitioner was engaged, amongst other duties, to attend to the tax affairs of Mr [T] and in particular to render tax returns to the Commissioner for the South African Revenue Service on behalf of Mr [T].
- The practitioner failed to submit income tax returns for Mr [T] (alternatively, the practitioner failed to submit



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income tax returns timeously) for the financial year ended in 2001.

- The practitioner further failed to deal with queries from Mr [T] in relation to his tax affairs.

THE SIXTH CHARGE

The practitioner was found guilty of contravening disciplinary rule 2.1.14 in that he failed to answer or to deal with appropriately within a reasonable time correspondence or other communications from Mr [C] which required a reply or other response, in that - .

- During or about 2001 his firm was appointed by [L] Medical Scheme to act as auditor of the scheme and, for that purpose, to verify the status of the savings accounts and category benefits of the members of the scheme.
- In terms of a letter dated 1 February 2001 [L] Medical Scheme invited its members, including Mr [C], to contact the practitioner's firm if they were not in agreement with any of the balances reflected in the letter.
- Mr [C] was not in agreement with the balances reflected in the letter and wrote to the practitioner's firm on 7 February 2001 to indicate the respects in which he was not in agreement with the letter.
- Mr [C] telephoned the practitioner on 6 March 2001 and on numerous occasions thereafter requesting a response from him, but no response or acknowledgement was forthcoming.

THE SEVENTH CHARGE

The practitioner was found guilty of contravening disciplinary of rule 2.1.14 in that he failed to answer or to deal with appropriately within a reasonable time 12 items of correspondence from the Board which required a reply or other response.

FINDING AND SENTENCE

The chairman (Adv A Dodson) delivered the finding and sentence of the Committee. For the sake of good communication these are published in their entirety.

Finding

The committee has considered the evidence in relation to

the sixth charge [*this is the charge to which the practitioner pleaded not guilty*].

The committee's view is that it would be understandable were an auditor not to respond, personally, to what is known in the profession as a "debtor's circ", and that it would be understandable for an auditor, in the circumstances in which Mr [H] found himself, when flooded with a large number of responses, to refer these to the client, as he did with a request that they be responded to by the client.

However, in the case of Mr [C], he followed up his receipt of that circular with a number of inquiries, which included a sequence of correspondence which began on 7 February 2001, and which was followed with a number of subsequent specific inquiries, specifically addressed to Mr [H].

The committee's view is that that sequence of events put the matter into a different category and that the proper professional response was then to deal with the inquiry that was addressed to him, and to deal with it properly. All that that would have required, to satisfy the requirements of professional conduct, would have been to address a letter to Mr [C], pointing out that the appropriate avenue for the inquiry was with the client and referring him, by way of a letter and by way of a professional courteous response, to the client.

In those circumstances the committee is satisfied that guilt has been proved in respect of the sixth charge.

The committee accepts the guilty plea in respect of the other charges, which has been explained in the letter dated 21 August 2003, addressed by Mr [H] to the Disciplinary Committee, subject to the explanations contained therein, which the pro forma complainant has very fairly agreed to accept.

Sentence

The committee has considered, at some length, the submissions which have been made. We have taken into account the evidence which was led, in particular the evidence which was led before the findings in relation to Mr [H]'s guilt. We have taken into account the written

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statement which Mr [H] has prepared, which explains his position in relation to the charges, including those charges in respect of which he admitted guilt. We have also taken into account the argument that has been presented in relation to the question of sentence, both that of the pro forma complainant, which we think was very fairly presented, and the evidence of Mr [H].

The committee considers the question of sanction from three perspectives; we look at the offence, we look at the offender and we look at the community that the offence impacts upon. As far as the offence is concerned, Mr [H] had been found guilty of six of the charges brought against him. It is so that some of these charges are less serious; some, on the other hand, are a lot more serious and to some extent they have, in some instances, had less attention because of the fact that at this stage of the proceedings Mr [H] has co-operated with the Board and has pleaded guilty where he did not have a defence.

So, for example, one of the components of the fourth charge was a failure, from June 1999 to the date of termination of the services in June 2001, to render VAT returns. That type of conduct the committee views in a very serious light. If we take all of the charges together they reveal a pattern of conduct which shows a very serious departure from the standards of conduct expected of a professional in the auditing profession. That seriousness does not appear to be in dispute and Mr [H] himself, as we understand his evidence and his argument, acknowledges that.

As was pointed out by the pro forma complainant, if we look at his conduct coldly and in the absence of his own explanations, which I am coming to next, they reveal an indifference, bordering on contempt, towards his clients. There was a completely unacceptable lack of willingness to respond to legitimate inquiries from his own clients.

Turning to Mr [H] himself; he has no previous convictions, the offences do not essentially involve dishonesty, and, most importantly, his evidence is accepted that he suffers from a condition described as manic depression, and unfortunately, and probably because Mr [H] was not represented in these proceedings,

we did not have the opinion of a medical expert which might have given us some assistance in assessing what the likely impact of that medical condition is going to be, but we accept it as in part an explanation of the way that he conducted himself.

In Mr [H]'s favour we take into account the fact that he has taken steps to deal with the situation. He eventually, and belatedly, sought treatment. He has taken steps to reduce his work load. He appears to have brought in his father to assist him in the practice, and he appears to have given some thought and planning to how he might remedy the situation which gave rise to the charges of which he was found guilty. His evidence is that his treatment is complete and he appears to have been given a more or less clean bill of health from the psychiatrist who was treating him. He does, however, continue to visit the psychiatrist from time to time. As was pointed out by the pro forma complainant, when he gave evidence he was articulate and he appeared to have a level of competence as far as professional matters were concerned. When he, eventually and again very belatedly, provided a response to the Board, in fact today, he was open. He did not seek to avoid responsibility for his conduct, and admitted it where it was appropriate for him to do so. He showed remorse and he apologised.

Viewing the matter from the perspective of the community, as was pointed out by the pro forma complainant, the offences were committed against the backdrop of dramatically increased public scrutiny by the public of the profession, and that is something which has to be taken into account, and it is a scrutiny which is justified. Professions are there to serve the public and to serve the public competently, and that is why institutions such as the Board and this Disciplinary Committee exist and have to do what they have to do. The committee disagrees with Mr [H] in so far as he suggests that the impact of his offences was really a matter that was individual and as between him and his clients. The committee views his conduct as indeed impacting upon the reputation of the profession at large and that is all too plain to see when one hears from the very witnesses and members of the public who testified before the committee this morning.



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The question of determining an appropriate sentence has been an extremely difficult one. Mr [H] has testified that he will have difficulty in relation to his ability to pay a fine, although he did indicate that he would try to “make a plan” as he put it in order to deal with such a situation if it were imposed.

Taking into account all of the various factors to which I have referred, the committee has decided upon the following sentence:

Mr [H]’s name is removed from the Register of Accountants and Auditors. This sentence is suspended from coming into effect on condition that Mr [H] is not convicted of a similar offence again, during the next three years, from today’s date. This sentence is imposed in terms of rules 2.3.5 and 2.5.2 of the Board’s Disciplinary Rules.

The committee orders publication of the facts admitted and the facts found, as well as the penalty imposed in *Maneo*, however Mr [H]’s name and that of his firm will not be published.

On the question of costs, Mr [H] is to pay 50% of the costs directly attributable to this hearing, as ascertained by the Public Accountants’ and Auditors’ Board.

Mr [H], there is nothing more to say except that I think this sentence amounts to a lifeline which has been thrown to you; my advice to you is to take it.”

THIRD MATTER

On 15 September 2003 the committee heard the case against Mr J L Beinash. He was present and represented. There were six charges against him, to which he pleaded guilty to five. The remaining charge was withdrawn.

THE FIRST CHARGE

The practitioner was found guilty of contravening disciplinary rule 2.1.5 in that, without reasonable cause or excuse, he failed to perform his duties as auditor to [MJ] (Pty) Ltd, being work or duties commonly performed by a practitioner, with such a degree of care and skill as in the opinion of the Board may reasonably be expected, or he failed to perform the work or duties at all, in that

Audit working papers and audit evidence

In respect of his audit of the [MJ] (Pty) Ltd financial statements the practitioner failed to keep audit working papers and audit evidence, alternatively he failed to keep adequate working papers and audit evidence, in the following respects:

- there was no documented evidence that the practitioner had attended the stocktaking, nor were there documented valuation tests or any documented assessment of the material general obsolescence provision in the [MJ] (Pty) Ltd financial statements;
- although a sample of accounts receivable had been agreed to statements, there was no documentation of any other verification procedures;
- although there were schedules on file for local and overseas creditors –
 - ◆ no verification procedures were documented;
 - ◆ no completeness tests, particularly in regard to goods in transit, were documented;
 - ◆ the verification of provisions for bonuses and Y2K issues were not documented;
- there was no documented evidence -
 - ◆ that transaction tests had been performed on sales, purchases and other expenses;
 - ◆ whether analytical review procedures had been conducted;
 - ◆ whether completeness of income and validity of expenses had been addressed;
- there was no documented confirmation of the year-end balances of instalment sale agreements;
- although there were schedules of fixed assets on file there was no documentation of verification procedures;
- the practitioner’s assessment of the recoverability of the loans to associated companies was not documented;
- there was no documented evidence of tests conducted on the movement of the director’s loan, nor had loan certificates been obtained;
- there was no documented evidence of verification of

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the amount of the overdraft, nor of confirmation of the security for the overdraft.

The practitioner accordingly failed to comply with statements of auditing standards SAAS 230 and/or SAAS 500, which provide as follows:

- **SAAS 230**

- .02 The auditor should document matters that are important in providing evidence to support the audit opinion and evidence that the audit was carried out in accordance with statements of South African Auditing Standards.
- .05 The auditor shall prepare working papers that are sufficiently complete and detailed to provide an overall understanding of the audit.
- .06 The auditor should record in the working papers information on planning, the nature, timing and extent of the audit procedures performed, the results thereof, and the conclusions drawn from the audit evidence obtained.

- **SAAS 500**

- .02 The auditor should obtain sufficient appropriate audit evidence to be able to draw reasonable conclusions on which to base the audit opinion.

THE SECOND CHARGE

The practitioner was found guilty of contravening disciplinary rule 2.1.5 in that, without reasonable cause or excuse, he failed to perform his duties as auditor to [DP] (Pty) Ltd, being work or duties commonly performed by a practitioner, with such a degree of care and skill as in the opinion of the Board may reasonably be expected, or he failed to perform the work or duties at all, in that

Audit working papers and audit evidence

In respect of his audit of the [DP] (Pty) Ltd financial statements the practitioner failed to keep audit working papers and audit evidence, alternatively he failed to keep adequate working papers and audit evidence, in the following respects:

- although the working papers contained a note to the effect that the stock count had been attended and that a

10% provision had been agreed on, there was no documented evidence of the practitioner's observations at the stock count, the test counts performed, valuation tests conducted, cut-off tests conducted and verification of the provisions for defective materials and obsolescence;

- although the inventory reflected a decrease of 68% as compared with the previous year, the practitioner's investigations of the causes of the decrease were not documented;
- in relation to the director's loans:
 - ♦ verification of the amounts had not been documented;
 - ♦ the nature of one of the loans had not been explained;
 - ♦ loan certificates had not been obtained;
- there was no documented verification of the overseas shipments included in accruals;
- there were no documented completeness tests in respect of accounts payable;
- there was no documentation relating to the verification of a journal adjustment to the associated company loan, nor was there any documentation of the practitioner's assessment of the recoverability of the loan;
- there were no documented transaction tests or analytical review procedures in relation to income and expenditure;
- there was no documented evidence of the verification of the interest rates and securities for the instalment sale agreements;
- there was no documentation of the evidence which was examined for the testing of subsequent receipts from debtors, nor was there any documentation relating to the conclusion in relation to the extent of testing. The assessment of the bad debt provision was similarly not fully documented.

The practitioner accordingly failed to comply with statements of generally accepted auditing standards SAAS 210 and/or SAAS 230 and/or SAAS 500, which provide as follows:



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• SAAS 230

- .02 The auditor should document matters that are important in providing evidence to support the audit opinion and evidence that the audit was carried out in accordance with statements of South African Auditing Standards.
- .05 The auditor shall prepare working papers that are sufficiently complete and detailed to provide an overall understanding of the audit.
- .06 The auditor should record in the working papers information on planning, the nature, timing and extent of the audit procedures performed, the results thereof, and the conclusions drawn from the audit evidence obtained.

• SAAS 500

- .02 The auditor should obtain sufficient appropriate audit evidence to be able to draw reasonable conclusions on which to base the audit opinion.

THE THIRD CHARGE

The practitioner was found guilty of contravening disciplinary rule 2.1.21 in that he conducted himself in a manner which was improper or discreditable or unprofessional or dishonourable or unworthy on the part of the practitioner or which tended to bring the profession of accounting into disrepute, in that

- The firm, of which the practitioner was the sole proprietor, acted as auditors of [trade union] until about 1995, at which time the appointment was terminated.
- At the termination of the firm's appointment [trade union] was indebted to the firm in an amount of R14 638,41 in respect of professional services.
- By agreement between the firm and [trade union] the amount was to be paid in monthly instalments of R2 500, which instalments were paid by way of debit orders on the bank account of [trade union].
- The payments under the debit order arrangement should have terminated when the full amount of the indebtedness had been repaid, but because of an oversight on the part of [trade union] and of the practitioner the amount of R2 500 continued to be

debited to the bank account of [trade union] over succeeding months, with the consequence that the firm has been overpaid by an amount of R65 283. The firm is not entitled to this amount.

- Notwithstanding the overpayment and the fact that the firm is not entitled thereto, the practitioner has failed and/or refused to repay the amount overpaid otherwise than by means of monthly instalments of R2,500, thereby causing [trade union] prejudice through the incurring of interest on [trade union]'s overdraft.
- The practitioner knew or must have known –
 - ♦ that [trade union] had overpaid and was continuing to overpay the amount due to the firm;
 - ♦ that the firm was not entitled to receive and retain the instalments of R2,500 from [trade union] after [trade union]'s indebtedness to the firm had been settled but he continued to accept and retain the amount so overpaid.
- The practitioner was not entitled to require [trade union] to accept repayment of the amount overpaid in error by means of instalments.

THE FOURTH CHARGE

This charge was withdrawn

THE FIFTH CHARGE

The practitioner was found guilty of contravening disciplinary rule 2.1.5, in that, without reasonable cause or excuse, he failed to perform his duties as the agent of the executor of the estate of the late [HC], being work or duties commonly performed by a practitioner, with such a degree of care and skill as in the opinion of the Board may reasonably be expected, or he failed to perform the work or duties at all, in that

- During or about June 1998 the practitioner accepted appointment as agent of the executrix of the estate of the late [HC] to wind up the estate.
- At or about the same time the practitioner accepted appointment to administer certain of the financial affairs in South Africa of Mrs [C].
- The practitioner failed to perform these duties with the

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required degree of care and skill, in that:

- he failed to inform the executrix Mrs [C] of the progress in the winding of the estate, despite verbal and written requests to do so by her, or her daughter on her behalf;
- he failed to provide explanations (alternatively, he failed to provide adequate explanations) to the executrix in relation to questions from her relating to the estate;
- he failed to provide explanations (alternatively, he failed to provide adequate explanations) to [Mrs C] in relation to questions from her relating to her financial affairs;
- without adequate notice he cancelled appointments arranged by the executrix to discuss the affairs of the estate and relating to her financial affairs, despite the fact that the practitioner knew that she had travelled from Australia for the purpose of finalising the matters in question;
- he failed to provide Mr [M], who had been appointed by the executrix to assist her in relation to the affairs of the estate, with adequate information to enable the queries of the executrix to be resolved; in particular, the practitioner failed to supply Mr [M] with details of the opening balance of the assets of the estate and details of income and expenditure from the estate.

THE SIXTH CHARGE

The practitioner was found guilty of contravening disciplinary rule 2.1.21 in that he conducted himself in a manner which was improper or discreditable or unprofessional or dishonourable or unworthy on the part of a practitioner or which tended to bring the profession of accounting into disrepute, in that

- During or about the period from August 2000 to October 2000 the practitioner represented [A] (Pty) Ltd, an Australian registered company (alternatively, the practitioner held out that he represented [A] (Pty) Ltd) in negotiations pursuant to which shares in [DDS] (Pty) Ltd would be acquired by [A] (Pty) Ltd and [CH] Ltd from [AV] (Pty) Ltd.
- Pursuant to his mandate (alternatively, pursuant to his

purported mandate) the practitioner undertook to [AV] (Pty) Ltd to pay to them, on behalf of [A] (Pty) Ltd, the purchase price payable by [A] (Pty) Ltd for the shares in [DDS] (Pty) Ltd acquired by [A] (Pty) Ltd from [AV] (Pty) Ltd. The amount involved was R2 250 000 which amount had been deposited into the practitioner's account on 9 September 2000.

- On or about 28 September 2000 the practitioner made arrangements with [AV] (Pty) Ltd to deposit the amount concerned directly into the account of [CCA] Ltd, the holding company of [AV] (Pty) Ltd, on that day. Despite this undertaking, the amount was not paid into the account of [CCA] Ltd.
- On or about 29 September 2000 the practitioner, on being reminded of his undertaking, undertook to send a messenger with a cheque in respect of the amount concerned. This undertaking was not complied with.
- On or about 2 October 2000 the practitioner undertook verbally to [CCA] Ltd to arrange for the funds in question to be transferred electronically to [CCA] Ltd's account. Upon [CCA] Ltd's on-line banking system reflecting a deposit from the practitioner for that amount, and on the strength of the representation that payment had been received, [CCA] Ltd made delivery of the share certificates and signed securities transfer forms in respect of the shares in question.
- On or about 10 October 2000 [CCA] Ltd was informed by its bankers that a cheque in respect of the amount purportedly deposited on 3 October 2000 had not been paid, payment having been countermanded.
- On or about 11 October 2000 the practitioner informed [CCA] Ltd that he had effected a further transfer of funds into their account in payment of the shares purchased. The cheque in respect of that payment was also returned unpaid, payment also having been countermanded.
- On or about 13 October 2000 the practitioner undertook once again to deposit a new cheque into the account of [CCA] Ltd, which cheque similarly was returned unpaid by the bank on 23 October 2000, on the grounds that there were insufficient funds to meet the cheque.



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FINDING AND SENTENCE

The chairman (The Hon Judge C Plewman) delivered the finding and sentence of the Committee. For the sake of good communication these are published in their entirety.

“The Board views the charges, as particularized in the main counts, as very serious. It has decided that all the charges should be taken together for the purpose of sentence so there will be one sentence.

It has listened to the submissions made in relation to the period of suspension but it has formed the view which is reflected in the order I am about to make.

The order which this Board then makes is:

That the accused is suspended from practice for a period of 12 months from today.

That his name will be removed from the Register of Accountants and Auditors but this order is suspended on two conditions; the first is that within 12 months he repay [trade union] an amount of R50 000 together with interest thereon which we have fixed at the rate of 15% per annum and that proof of such payment be provided to the Director: Legal of the Board; the second is that he not be found guilty of any other offence under rules 2.1.5 or 2.1.21 of the Board’s disciplinary rules for a period of three years as from today.

That his name, but not that of his firm, the facts, the findings and the punishment be published in “*Maneo*”.

That he pay the Board’s costs in an amount of R97 000 and make arrangements for the payment thereof with the Director: Legal.

That then will bring these proceedings to an end.”

ADDENDUM TO ISSUE 34

I refer to page 7 of the March 2003 issue (issue 34) of *Maneo*. The Mr Walker referred to therein is Mr R.L. Walker.

THE PROCESS AND PROCEDURES OF THE BOARD IN INVESTIGATING ALLEGED UNPROFESSIONAL CONDUCT

From time to time it is important to remind readers of our

processes, particularly in the light of the common criticism (most recently highlighted in the Report of the Ministerial Review Panel – consideration 5.1.1, page 32) that the process takes too long, particularly in the case of ‘high profile’ matters. What follows is a summary of how we investigate possible improper conduct, and why.

Most investigations are prompted by a complaint. However, many of these are informally resolved by the staff of the PAAB because the complainant is less concerned about the RAA being punished, than about having his problem resolved. We believe we are unsurpassed in rendering assistance to the public in a practical and helpful manner, whenever this is possible and appropriate.

When a complaint which will clearly need to proceed to the Investigation Committee is received, it is allocated to a committee member to assess and advise the directorate of any particular questions which should be put to the accused at the same time that he is asked to reply to the allegations, and also if there is any further information needed from the complainant.

Complaints are not always articulated as clearly as one might wish, particularly where the complaint follows protracted legal proceedings, such as a Companies Act section 417 investigation. Furthermore, in these so-called ‘high profile’ cases, there is frequently no complaint as such at all, and the investigation is initiated by the directorate.

In such instances, the PAAB’s legal staff are required to do a considerable amount of work to formulate a complaint in a manner in which it can properly be understood by the Investigation Committee and the person whose conduct is complained of, or otherwise under investigation.

The complaint is then put to the accused to answer, should he so wish. The accused’s answer is usually forwarded to the complainant to give him the opportunity to reply and the matter is then tabled for discussion by the whole committee. The ‘allocated member’ will also often contact either the accused or (more often) the complainant, personally.

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If a matter is highly complex, or high profile, or extremely bulky, an expert is engaged at the outset to undertake a detailed investigation. This expert will be the PAAB's witness should the matter prove incapable of resolution by the Investigation Committee, and proceed to a disciplinary hearing.

If, after investigation, the matter cannot be discharged in terms of the Disciplinary Rules, or finalised because the accused practitioner pleads guilty and the matter is resolved by means of a consent order and the appropriate punishment is within the limits of the jurisdiction of the Investigation Committee, the matter must proceed to a hearing before the Disciplinary Committee.

The Investigation Committee may, in terms of the Disciplinary Rules, discharge a matter if it is satisfied that:

- 1) the accused practitioner has given a reasonable explanation with regard to the conduct; or
- 2) the conduct does not constitute improper conduct; or
- 3) there is no reasonable prospect of proving that the accused practitioner has been guilty of the conduct.

The Investigation Committee also has the power to invite the accused practitioner to appear before it to discuss the matter on a "without prejudice" basis, and the Committee indeed makes use of this provision in the Disciplinary Rules on a regular basis, especially in cases where it is more practical to raise questions with the accused practitioner face to face rather than by lengthy and protracted correspondence.

The Committee does, on occasion, also invite the complainant to attend its meeting, either for the same reason, or to explain to the complainant the reasons for its findings. Indeed, complainants sometimes specifically request a meeting with the Committee for this reason, and the Committee is happy to accommodate these complainants.

A disciplinary hearing is a formal procedure and the Board appoints a senior lawyer to prosecute the matter. Until 1 January 2003, the Board also appointed a senior lawyer to sit with the disciplinary committee and advise them. As from the beginning of 2003, and in accordance with the

recommendations of the Myburgh Commission, the Committee is now chaired by an independent legal chairman, and the necessity for a senior lawyer to advise the Committee therefore no longer exists. The accused is entitled to legal representation, but this is not essential and many RAAs present their own cases.

With reference to the Myburgh Commission, the PAAB decided, as far back as April 2000 as part of its strategic plan to see if and how the disciplinary process could be improved. This was part of a much larger strategic plan to "overhaul" and where possible improve all the processes at the PAAB.

As a result of discussions between the Chief Executives of both the PAAB and SAICA it was agreed that a joint investigation should be conducted. The investigating commission was headed by advocate John Myburgh SC. That commission endorsed the PAAB's proposed amendments to the P.A.A. Act. The full report of the Myburgh Commission is available on our website under "NEWS", "*Report of the Joint Disciplinary Task Team*".

As a direct result of the report of the Myburgh Commission, the following changes were made to the disciplinary process:

- 1) The South African Institute of Chartered Accountants have identified and nominated members to serve on both the Investigation and Disciplinary Committees.
- 2) The Disciplinary Committee is now chaired by an independent legal chairman.
- 3) Disciplinary Hearings are now heard in public, unless there are compelling reasons why the hearing should be heard in camera. This is a decision made by the Chairman of the Committee on consultation with the Committee at the commencement of the hearing.

The question also arises as to what retribution can be exacted against auditors who *are* found guilty of unprofessional conduct. The PAAB has the power to do the following, if the auditor is found guilty:

- caution
- reprimand
- fine



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- suspend from practice
- remove from the register – permanently, temporarily or conditionally

It is important to note that the Investigation Committee may not impose all of the above penalties. It is limited to the imposition of a caution, a reprimand or a fine not exceeding R75 000. The Disciplinary Committee may impose all of the above penalties and the level of its fining capability is R150 000.

The PAAB specifically does not have the power to order the auditors to repay monies lost by, for example, creditors of a company. This is within the realm of our Courts.

The adequacy of the Board's powers to discipline its members is frequently also questioned. We believe that the PAAB has adequate disciplinary powers and that these are exercised in a competent manner. We believe that the turn-around time of our investigations equals that of any disciplinary authority and far exceeds that of our Courts. There are however certain areas for improvement that we ourselves have identified. These would be:

- that evidence given at disciplinary proceedings may not be used by or against an RAA who is the subject of those proceedings in any subsequent civil or criminal proceedings;
- that in disciplinary proceedings, copies of documentary evidence can be used without having to produce the originals, subject to the safeguard that a witness is able to lead evidence as to the validity of the evidence;
- that the PAAB be given the specific right to attach, *inter alia*, the working papers of an RAA whom it believes might be guilty of improper conduct, and to inspect those working papers and make extracts therefrom and copies thereof, notwithstanding any duty of confidentiality owed by the RAA to his client

These were identified by us as long ago as May 1998 when we gave evidence before the Nel Commission. An amendment to the PAA Act making provision for these changes would greatly speed up our processes particularly where there is a likelihood of other civil or criminal action against the RAA, as one of the main reasons for requests

for postponements is that transcripts of disciplinary hearings can later be used in evidence against them. It is cold comfort to the affected RAA to be told that a finding of unprofessional conduct by the Board does *not* equate either criminal or delictual behaviour.

The issues are different and so are the standards of proof. Nevertheless many people understand a guilty finding against an auditor as meaning that the auditor is consequently responsible (and liable) for any losses suffered as a result of a collapse.

These are the issues particularly which cause the long delays in disciplinary action in 'high profile' cases.

During 2002 we drafted an amendment to the PAA Act to incorporate these provisions until the new statutory dispensation is agreed on. We had hoped that these amendments would receive the support which we believe they deserved, but we were advised in July 2002 that Treasury would not support any amendments to our current legislation at this stage, pending the new dispensation, so these were not persisted with.

We have just received the report of the Ministerial Review Panel, and we are confident that the recommendations contained in the report will, when implemented, contribute to the enhancement of our disciplinary process. We are still working through all the implications of the report, but we welcome them. The full report is available on our website under "NEWS", "*Ministerial Review Panel Report*".

TRUST ACCOUNTS

We receive a number of queries regarding the format and naming of trust accounts, held by RAAs. A worrying number of RAAs do not appear to be aware of the fact that they are *not permitted to hold trust accounts*.

Your attention is drawn to Circular number B.1/1997 in the Manual of Information, which is reproduced here for your convenience.

23 April 1997

B.1/1997
Reference L1/1/42

TRUST MONIES

The question of so-called "trust accounts" being utilised by

CONTINUED ►



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RAAs for the retention of clients' monies or "trust monies" as they are sometimes called, is beginning to cause concern to the Board. The major reason for this concern is that the term "trust account" is misleading. Clients and members of the public in general tend to assume that the term "trust account" connotes a statutory trust account (such as those utilised by estate agents and attorneys, and regulated in terms of the Estate Agents and Attorneys Acts) which are underpinned by statutory fidelity funds. This assumption is not unreasonable; however, it is inaccurate.

So-called "trust accounts" operated by persons, including accountants, which do not enjoy statutory protection, do not afford the sort of protection which the public (and I suspect many practitioners as well) believe that they do enjoy. The immediate effects of this are twofold:

- 1 In the event of the practitioner absconding with the funds in the so-called "trust account" the owner of the funds is left with nothing but a personal action against the individual (who might or might not himself carry fidelity insurance);
- 2 In the event of the practitioner's insolvency, the funds will in all probability fall into the insolvent estate at the expense of the true owner and also at the expense of the image of the profession as a whole.

Some practitioners are also under the impression that these monies are protected by the provisions of the Trust Property Control Act, 1988: This is not the case.

Accordingly the Board requests that any practitioners who operate so-called "trust accounts" or who refer to "trust accounts" in their dealings with their clients, desist from this practice immediately.

The Board is, however, fully aware of the fact that practitioners do periodically hold funds for or on behalf of clients, for a variety of reasons.

This fact is recognised in both the *Disciplinary rules* and the *Code of conduct* which respectively state the following:

Disciplinary rules

- 2.1 ... any practitioner shall be guilty of improper conduct if he/she –
 - 2.1.7 fails
 - 2.1.7.1 to maintain in an account or accounts with an institution or institutions registered in terms of the *Banks Act*, 1990 (Act 94 of 1990), separate from his/her own account and appropriately

designated (which account or accounts may be a general account in his/her name or specific accounts operated in the names of the relevant clients or any other person to whom he/she is accountable), all moneys which shall come into his/her possession or under his/her control in the course of his/her professional practice and for which he/she is liable to account to a client or any other person;

Code of conduct

- 10.15 A practitioner entrusted with monies belonging to others, in the course of his/her professional work, should –
 - 10.15.1 keep such monies separate from personal or firm monies;
 - 10.15.2 use such monies only for the purpose for which they are intended; and
 - 10.15.3 at all times be ready to account for those monies to any person entitled to such accounting.
- 10.16 A practitioner should maintain one or more bank accounts appropriately designated for clients' monies.
- 10.17 Clients' monies received by a practitioner should be deposited without delay to the credit of a client account, or – if in the form of documents of title to money and documents of title which can be converted into money – be safeguarded against unauthorised use.

Keeping clients' monies totally separate in specifically designated client accounts (rather than so-called "trust accounts") will go some way towards solving the problem and is probably acceptable in a number of cases, for example where a practitioner receives funds on behalf of a client and has to bank them for a short period before transferring them to the client.

Where the account is opened in the name of the client but is operated by the practitioner, the practitioner acts in the capacity of mandatory of the client. In other words, this is nothing more than a contract of mandate for the rendering of certain services coupled with the power to represent the client in operating the account. The practitioner acts as the client's agent. If the practitioner goes insolvent the money in the account will not form part of his insolvent estate but remains the property of the client.

The same considerations do not apply where the account is opened in the name of the practitioner, but with a reference to a client. Unless the client is able to show that the mandate



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given to the practitioner was for limited purposes only, the client will not be successful in claiming the money in the account if the practitioner does become insolvent.

Furthermore, this would in any event not afford the client any protection against theft by the practitioner.

However, in the case of trust monies in the conventional sense (frequently funds held pending the outcome of some dispute, the ownership of such funds being uncertain at the time), the Board suggests that these rather be placed in the

statutory trust account of an attorney where they will be beyond attack.

The Board welcomes comment from practitioners on this subject. If necessary, the profession could consider the introduction of statutory trust accounts, but this would obviously involve fairly major legislative amendment, additional administration (by practitioners and by the Board) and additional costs. ■

– JANE O' CONNOR

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Clur *Gregory Niall (resigned)*
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Fine *Hyman (deceased)*
Humphris *Bevil Blundell (resigned)*

Jackson *Francis Edward (resigned)*
Janse Van Rensburg *Andre (deceased)*
Langford *John Edward Moore (resigned)*
Liebisch *Sarel Walter (resigned)*
Lumley *Roy Llewellyn (resigned)*

Petyt *Peter James (resigned)*
Sadler *Oliver Paul (resigned)*
Swailles *Ronald Edward (resigned)*
Treisman *David (emigrated)*
Wolffe *Hyman (deceased)*



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IN MEMORIAM

Owen Sherry

Owen Sherry, the first chairman and senior partner of Ernst & Whinney (now Ernst & Young) recently passed away. The PAAB and its staff extend our condolences to his family on their loss.

Owen joined James Stewart & Steyn in 1937, qualifying as a CA shortly afterwards. He worked as a senior clerk until he joined the armed services in 1940. Owen was admitted as a partner in 1949 and, with responsibility for the audit of the then Johannesburg Municipality, he became an acknowledged expert on municipal affairs. He was elected senior partner of Stewart, Steyn & Co. in 1972 after the death of Guy Moore. Owen acted as convener of the pre-merger negotiations and was then elected as senior partner of the firm Steyn, Douglas & Co. after the merger in 1975 of Stewart, Steyn & Co., Douglas, Low & Co. and Strachan and Dowling – later to include Gibson, Heyslop & Winearls in 1977. The association with Ernst & Ernst in the US and Whinney Murray of the UK grew in strength and it was Owen who attended the meeting in London in December 1978 at which it was agreed to become part of the worldwide partnership in January 1979 and practice in South Africa as Ernst & Whinney from July that year.

Owen was a director of the local board of the UBS for 11 years (chairman for three) and of Edgars Consolidated Investments. Owen was president of the Royal Johannesburg Golf Club, and was a member of the Johannesburg Catholic Diocesan Board. In 1976 he received The Benemerenti ('well deserved') Papal Award that described him as most worthy, singularly dedicated and diligent in upholding Christianity. Owen was succeeded as senior partner of the South African firm of Ernst & Whinney by Douglas Woods.

PLEASE SEND ALL CORRESPONDENCE TO:

The Editor/Die Redakteur,
PO Box 751595, Garden View 2047,
Johannesburg.

TELEPHONE: (011) 622-8533

DOCEX: 158 Johannesburg

FAX: (011) 622-4029

E-MAIL: board@paab.co.za

WEB: www.paab.co.za

PERSONNEL OF THE BOARD

EXECUTIVE

sbuddan@paab.co.za

Claude O'Flaherty – Chief Executive Officer
Sirus Budan – Secretary

LEGAL DEPARTMENT

legal@paab.co.za

Jane O'Connor – Director: Legal
Caroline Garbutt – Professional Assistant
Mandy Kirwin – Secretary
Pamela de Klerk – Membership Administrator
Carmen Walters – Membership Administrative Assistant

AUDITING STANDARDS DEPARTMENT

audit@paab.co.za

Bernard Agulhas – Director: Auditing Standards
Cindy Jonker – Professional Assistant
Cherise Bertasso – Secretary

EDUCATION AND TRAINING DEPARTMENT

edutrain@paab.co.za

Angela Vest Louw – Director: Education and Training
Laine Katzin – Researcher
Lucille Pickersgill – Assistant
Christelle van der Merwe – Examinations Administrator
Tshepo Maganedisa – Administrative Assistant
Amanda Harris – Administrative Assistant

PRACTICE REVIEW DEPARTMENT

pracrev@paab.co.za

Jillian Bailey – Director: Practice Review
Paul van Helden – Reviewer
Helena Reid – Reviewer
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Andre Swart – Reviewer
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ADMINISTRATION DEPARTMENT

board@paab.co.za

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Michelle Myburgh – Accounts Clerk
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Clive Landsdown – Maintenance Supervisor
Jerome Mvelase – Printer
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