

David William Gray: Summary, as Published in *CheckMark*

David William Gray, of Guelph, was found guilty of four charges under Rule 206 of failing to perform his professional services in accordance with generally accepted standards of practice of the profession, including the Recommendations set out in the CICA Handbook. In respect of work done on an audit and three review engagements, he failed to obtain sufficient appropriate audit evidence; failed to perform sufficient and appropriate enquiry, discussion and analysis; failed to properly document his work; and failed to properly present information. Mr. Gray was fined \$1,500 and ordered to complete three professional development courses. He was also required to have his practice supervised for a period of 12 months, and thereafter be reinvestigated by the professional conduct committee.

CHARGE(S) LAID re David W. Gray

The Professional Conduct Committee hereby makes the following charges against David W. Gray, CA, a member of the Institute:

1. THAT, the said David W. Gray, in or about the period February 29, 2000 to June 30, 2000, while engaged to perform an audit of the financial statements of the Waterloo North Condominium Corporation, No. 28 as at February 29, 2000, failed to perform his professional services in accordance with generally accepted standards of practice of the profession, including the Recommendations set out in the CICA Handbook, contrary to Rule 206 of the Rules of Professional Conduct, in that,
 - (i) he failed to obtain sufficient appropriate audit evidence to support the balance sheet item 'Toronto Dominion Bank loan...due 2009 290,390';
 - (ii) he failed to classify the current portion of the bank loan at February 29, 2000 of \$38,000 as a current liability;
 - (iii) he failed to properly document items important to support his auditor's report.
2. THAT, the said David W. Gray, in or about the period July 31, 1999 to October 31, 1999, while engaged to perform a review of the financial statements of Leitch Fuels Limited as at July 31, 1999, failed to perform his professional services in accordance with generally accepted standards of practice of the profession, including the Recommendations set out in the CICA Handbook, contrary to Rule 206 of the Rules of Professional Conduct, in that;
 - (i) he failed to perform sufficient and appropriate enquiry, discussion and analysis to satisfy himself as to the plausibility of the balance Sheet item 'Inventory 41,539';
 - (ii) he failed to properly document items important to support his report.
3. THAT, the said David W. Gray, in or about the period December 31, 1999 to April 30, 1999-2000 while engaged to perform a review of the financial statements of Tyler Transport Limited as at December 31, 1999 failed to perform his professional services in accordance with generally accepted standards of practice of the profession, including the Recommendations set out in the CICA Handbook, contrary to Rule 206 of the Rules of Professional Conduct, in that,
 - (i) he failed to classify the mortgage loan payable in the amount of \$130,000 as a current liability when the mortgage became due ~~three~~ five months after year end;
 - (ii) he failed to properly document items important to support his report.

4. THAT, the said David W. Gray, in or about the period May 31, 2000 to July 31, 2000, while engaged to perform a review of the financial statements of Cameron Industries Instruments Inc. as at May 31, 2000 failed to perform his professional services in accordance with generally accepted standards of practice of the profession, including the Recommendations set out in the CICA Handbook, contrary to Rule 206 of the Rules of Professional Conduct, in that,
- (i) ~~he failed to perform sufficient appropriate enquiry discussion and analysis to satisfy himself as to the plausibility of the balance sheet item 'Accounts receivable 138,445';~~
 - (ii) he failed to disclose in a note to the financial statements that assets of the business had been pledged as security for the bank loan;
 - (iii) He failed to properly document items important to support his report.

Dated at Toronto, this 19th day of June, 2001;

W. R. SCHMIDT, CA - DEPUTY CHAIR
PROFESSIONAL CONDUCT COMMITTEE

DISCIPLINE COMMITTEE re DAVID WILLIAM GRAY, CA

DECISION AND ORDER IN THE MATTER OF: Charges against **DAVID WILLIAM GRAY, CA**, a member of the Institute, under **Rule 206** of the Rules of Professional Conduct, as amended.

DECISION AND ORDER MADE NOVEMBER 8, 2001

DECISION

THAT, having seen and considered the evidence, including the agreed statement of facts, filed, particular (i) of charge No. 4 having been withdrawn, and charges Nos. 3 and 4 having been amended, and having heard the plea of guilty to charges Nos. 1, 2, 3 and 4, as amended, the Discipline Committee finds David William Gray guilty of charges Nos. 1, 2, 3 and 4, as amended.

ORDER

IT IS ORDERED in respect of the charges:

1. THAT Mr. Gray be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Gray be and he is hereby fined the sum of \$1,500, to be remitted to the Institute within three (3) months from the date this Decision and Order becomes final under the bylaws.
3. THAT Mr. Gray be and he is hereby required to complete, by paying for and attending in their entirety, within twelve (12) months from the date this Decision and Order becomes final under the bylaws, the following professional development courses made available through the Institute:

1. Auditing Refresher;
2. The Essentials of Review Engagements; and
5. Financial Statement Presentation & Disclosure: A Small Practitioner's Workshop,

or, in the event a course listed above becomes unavailable, the successor course which takes its place.

4. THAT Mr. Gray be and he is hereby required to have his practice supervised for a period of twelve (12) months, in that all audit and review engagements for year-ends which fall within the twelve (12) month period, and a sample of compilation engagements and T1 income tax returns to be released within the twelve (12) month period, shall be approved by a supervisor. In particular:
 - (a) Mr. Gray shall, within thirty (30) days from the date this Decision and Order becomes final under the bylaws, file with the secretary of the

discipline committee a supervised practice plan, which has been reviewed and approved by the director of standards enforcement, and which sets out the name and the detailed responsibilities of the supervisor.

- (b) With respect to audits and review engagements, the responsibilities of the supervisor shall include, at a minimum, the review and approval of:
 - i. the client acceptance review, detailed planning memorandum and budget, prior to Mr. Gray's commencement of the audit or review engagement; and
 - ii. the working papers and financial statements prior to Mr. Gray's issuance of the audit or review report.
 - (c) With respect to the sample of compilation engagements and T1 income tax returns, the responsibilities of the supervisor shall include, at a minimum, the review and approval of the file before the compilation report or T1 income tax return is released.
 - (d) In the event the professional conduct committee finds Mr. Gray's choice of supervisor unacceptable, or there is any other issue relating to the supervised practice plan about which Mr. Gray and the professional conduct committee cannot agree, either may apply to the chair of the panel or to the chair of the discipline committee at an assignment hearing for directions.
 - (e) The twelve (12) month period of supervised practice shall commence on the day that Mr. Gray files the approved supervised practice plan in accordance with paragraph 4(a) above, or on the day the supervised practice plan is settled by the chair pursuant to paragraph 4(d) above, whichever day is later.
5. THAT Mr. Gray be reinvestigated by the professional conduct committee, or by a person retained by the professional conduct committee, on one occasion, within twelve (12) months of the expiry of the period of supervised practice, the cost of the reinvestigation, up to \$2,000, to be paid by Mr. Gray within thirty (30) days of receiving notification of the cost of the reinvestigation.
6. THAT notice of this Decision and Order, disclosing Mr. Gray's name, be given after this Decision and Order becomes final under the bylaws, in the form and manner determined by the discipline committee:
- (a) to the Public Accountants Council for the Province of Ontario;
 - (b) to the Canadian Institute of Chartered Accountants; and
 - (c) by publication in *CheckMark*; and
7. THAT in the event Mr. Gray fails to comply with any of the requirements of this Order, he shall thereupon be expelled from membership in the Institute, and notice of his expulsion, disclosing his name, shall be given in the manner specified above, and in *The Guelph Mercury*.

DATED AT TORONTO THIS 21ST DAY OF NOVEMBER, 2001
BY ORDER OF THE DISCIPLINE COMMITTEE

BRYAN W. STEPHENSON, BA, LLB
SECRETARY – DISCIPLINE COMMITTEE

DISCIPLINE COMMITTEE re David William Gray, CA

REASONS FOR THE DECISION AND ORDER IN THE MATTER OF: Charges against **DAVID WILLIAM GRAY, CA**, a member of the Institute, under **Rule 206** of the Rules of Professional Conduct, as amended.

REASONS FOR THE DECISION AND ORDER MADE NOVEMBER 8, 2001

1. These proceedings before this panel of the discipline committee of the Institute of Chartered Accountants of Ontario were convened on November 8, 2001 to hear the charges laid by the professional conduct committee against David W. Gray, a member of the Institute.
2. Mr. Paul Farley represented the professional conduct committee, and Mr. Ian Macmillan represented Mr. Gray, who was present.
3. The panel's decision and order was issued on November 21, 2001. These reasons, issued in writing pursuant to Bylaw 574, contain the decision and the charges, as amended, as well as the reasons of the panel.

THE AMENDED CHARGES AND THE PLEA

4. After the Notice of Assignment Hearing, Notice of Hearing and charges were marked as Exhibits 1, 2 and 3, respectively, and prior to the member being asked to plead to the charges, counsel for the professional conduct committee indicated that particular (i) of charge No. 4 was being withdrawn, and asked that charges Nos. 3 and 4 be amended.
5. Counsel for the member consented to the amendments, and the chair directed that the amendments be made, and that particular (i) of charge No. 4 be withdrawn.
6. The charges, dated June 19, 2001, as amended, read:
 1. THAT, the said David W. Gray, in or about the period February 29, 2000 to June 30, 2000, while engaged to perform an audit of the financial statements of the Waterloo North Condominium Corporation, No. 28 as at February 29, 2000, failed to perform his professional services in accordance with generally accepted standards of practice of the profession, including the Recommendations set out in the CICA Handbook, contrary to Rule 206 of the Rules of Professional Conduct, in that,
 - (i) he failed to obtain sufficient appropriate audit evidence to support the balance sheet item 'Toronto Dominion Bank loan...due 2009 290,390';
 - (ii) he failed to classify the current portion of the bank loan at February 29, 2000 of \$38,000 as a current liability;

(iii) he failed to properly document items important to support his auditor's report.

2. THAT, the said David W. Gray, in or about the period July 31, 1999 to October 31, 1999, while engaged to perform a review of the financial statements of Leitch Fuels Limited as at July 31, 1999, failed to perform his professional services in accordance with generally accepted standards of practice of the profession, including the Recommendations set out in the CICA Handbook, contrary to Rule 206 of the Rules of Professional Conduct, in that;

(i) he failed to perform sufficient and appropriate enquiry, discussion and analysis to satisfy himself as to the plausibility of the balance Sheet item 'Inventory 41,539';

(ii) he failed to properly document items important to support his report.

3. THAT, the said David W. Gray, in or about the period December 31, 1999 to April 30, 2000, while engaged to perform a review of the financial statements of Tyler Transport Limited as at December 31, 1999 failed to perform his professional services in accordance with generally accepted standards of practice of the profession, including the Recommendations set out in the CICA Handbook, contrary to Rule 206 of the Rules of Professional Conduct, in that,

(i) he failed to classify the mortgage loan payable in the amount of \$130,000 as a current liability when the mortgage became due five months after year end;

(ii) he failed to properly document items important to support his report.

4. THAT, the said David W. Gray, in or about the period May 31, 2000 to July 31, 2000, while engaged to perform a review of the financial statements of Cameron Instruments Inc. as at May 31, 2000 failed to perform his professional services in accordance with generally accepted standards of practice of the profession, including the Recommendations set out in the CICA Handbook, contrary to Rule 206 of the Rules of Professional Conduct, in that,

(ii) he failed to disclose in a note to the financial statements that assets of the business had been pledged as security for the bank loan;

(iii) he failed to properly document items important to support his report.

7. Mr. Gray entered a plea of guilty to each of the four charges, and confirmed for the record his understanding that on the basis of his plea, and on that basis alone, he could be found guilty of the charges.

THE CASE FOR THE PROFESSIONAL CONDUCT COMMITTEE

8. Mr. Farley filed an agreed statement of facts, and a document brief which contained the four financial statements referred to in the charges as well as some of the relevant working papers.

9. Mr. Farley summarized the case for the professional conduct committee. Mr. Macmillan confirmed that he would not be calling evidence with respect to the issue of guilt or innocence. The hearing adjourned to permit the panel to review the agreed statement of facts and document brief. The hearing reconvened and the parties made submissions with respect to the issue of whether or not Mr. Gray should be found guilty. Thereafter the panel deliberated.

10. On the evidence before the panel, it was clear that the member was guilty of each of the charges, and that the departure from the required standard of practice constituted professional misconduct. Accordingly, the member was found guilty of each of the charges. When the hearing resumed, the chair advised the parties of the panel's decision, which reads as follows:

DECISION

THAT, having seen and considered the evidence, including the agreed statement of facts, filed, particular (i) of charge No. 4 having been withdrawn, and charges Nos. 3 and 4 having been amended, and having heard the plea of guilty to charges Nos. 1, 2, 3 and 4, as amended, the Discipline Committee finds David William Gray guilty of charges Nos. 1, 2, 3 and 4, as amended.

ORDER AS TO SANCTION

11. Mr. Farley did not call evidence with respect to sanction. Mr. Macmillan filed a book of documents and authorities on behalf of Mr. Gray, and both counsel made submissions.

12. Mr. Farley requested on behalf of the professional conduct committee that the order include a reprimand in writing from the chair; a fine of \$3,000; three professional development courses; and a requirement that Mr. Gray practise under supervision for a period of eighteen months, following which his practice should be reinvestigated, with Mr. Gray bearing the costs of such reinvestigation up to a maximum of \$2,000. Mr. Farley also asked that notice of the decision and order disclosing Mr. Gray's name be given to the Public Accountants Council, the Canadian Institute of Chartered Accountants, and by publication in *CheckMark*.

13. Mr. Macmillan did not take issue with the reprimand or the professional development courses, and while he indicated he did not think a reinvestigation was necessary, he also said he would not quarrel with its inclusion in the order.

14. Mr. Macmillan submitted that there was no need for a fine, for a requirement that Mr. Gray practise under supervision, or for publication of these proceedings. With respect to a fine, Mr. Macmillan took the position that a fine was not necessary but that if one were ordered any amount greater than \$1,000 would be excessive. With respect to

a requirement that Mr. Gray practise under supervision, Mr. Macmillan pointed out that Mr. Gray had entered into an arrangement with a reputable firm of chartered accountants to have his financial statements and files reviewed with respect to documentation, presentation and disclosure, and that accordingly supervised practice was not required or appropriate. With respect to disclosure of the member's name, Mr. Macmillan submitted that publication of notice should not include Mr. Gray's name, and in particular submitted that there were rare and unusual circumstances justifying the withholding of his name from publication similar to those that existed in the case of Mr. Laurie Greenidge, in which the discipline committee made no publication order.

15. As appeared from the evidence in support of the charges which had been proven, Mr. Gray's misconduct was a failure to adhere to the appropriate standards of the profession with respect to an audit and three review engagements. His failure to obtain sufficient and appropriate audit evidence; failure to perform sufficient and appropriate enquiry, discussion and analysis; failure to properly document his work; and failure to properly present information; were basic failures.

16. As a result of deficiencies found upon a practice inspection, Mr. Gray's practice was reinspected in March 2000. In January 2000, between the original inspection and the reinspection, he attended a professional development course on review and compilation engagements and purchased a book on the subject that had been recommended to him. Nevertheless, the reinspection of March 2000 was not satisfactory, and the practice inspection committee referred the issue of Mr. Gray's conduct to the professional conduct committee.

17. While the second charge related to a review engagement which was completed on August 12, 1999, prior to the reinspection, the other three charges all related to work completed after the reinspection. Thus for three of the four charges, the deficiencies persisted after both the practice inspection and the reinspection.

18. In these circumstances, counsel for the professional conduct committee submitted that the three general principles which apply when the discipline committee imposes a sanction, namely rehabilitation, specific deterrence and general deterrence, were all important, and that Mr. Gray had to be specifically deterred from continuing to practise as he had in the past.

19. Mr. Farley submitted that the professional development courses, supervised practice and reinspection would help Mr. Gray rehabilitate himself; that the reprimand, fine, reinvestigation and publicity would deter Mr. Gray from continuing to practise as he had, and would promote his rehabilitation; that the fine and publicity would act as a general deterrent to other members; and that supervised practice would afford a measure of protection to the public.

20. Mr. Macmillan submitted that there was no evidence of a need for general deterrence, and that while even following the reinspection of March 2000 Mr. Gray had needed to rehabilitate himself, he had now begun to do so. Not only had he arranged for a firm of chartered accountants to review his files, he had more recently moved his office so as to share space with the firm. Accordingly, Mr. Macmillan submitted there was no specific need to prompt or compel Mr. Gray to continue and complete the rehabilitation he has started.

21. Mr. Macmillan pointed out that the fine in the 1991 case of James Grant and the 1995 case of Woldemar Kroeker had been \$1,000, and that in the case of Colin Brooker there had been no fine at all. [The panel noted in deliberation that both Messrs. Grant and Kroeker were later found guilty of new charges of professional misconduct, and that more onerous sanctions orders, which included higher fines, were made against them. Mr Kroeker was expelled under his subsequent order].

22. Mr. Macmillan submitted that the rare and unusual circumstances which had been present in the Greenidge case were present in this case, and that there should be no publication.

23. When the panel had finished its deliberations, the hearing reconvened and the terms of the order were read into the record. The formal order which was sent to Mr. Gray on November 21, 2001, reads as follows:

ORDER

IT IS ORDERED in respect of the charges:

1. THAT Mr. Gray be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Gray be and he is hereby fined the sum of \$1,500, to be remitted to the Institute within three (3) months from the date this Decision and Order becomes final under the bylaws.
3. THAT Mr. Gray be and he is hereby required to complete, by paying for and attending in their entirety, within twelve (12) months from the date this Decision and Order becomes final under the bylaws, the following professional development courses made available through the Institute:
 1. Auditing Refresher;
 2. The Essentials of Review Engagements; and
 3. Financial Statement Presentation & Disclosure: A Small Practitioner's Workshop,or, in the event a course listed above becomes unavailable, the successor course which takes its place.
4. THAT Mr. Gray be and he is hereby required to have his practice supervised for a period of twelve (12) months, in that all audit and review engagements for year-ends which fall within the twelve (12) month period, and a sample of compilation engagements and T1 income tax returns to be released within the twelve (12) month period, shall be approved by a supervisor. In particular:
 - (a) Mr. Gray shall, within thirty (30) days from the date this Decision and Order becomes final under the bylaws, file with the secretary of the discipline committee a supervised practice plan, which has been reviewed and approved by the director of standards enforcement, and which sets out the name and the detailed responsibilities of the supervisor.

- (b) With respect to audits and review engagements, the responsibilities of the supervisor shall include, at a minimum, the review and approval of:
 - (i) the client acceptance review, detailed planning memorandum and budget, prior to Mr. Gray's commencement of the audit or review engagement; and
 - (ii) the working papers and financial statements prior to Mr. Gray's issuance of the audit or review report.
 - (c) With respect to the sample of compilation engagements and T1 income tax returns, the responsibilities of the supervisor shall include, at a minimum, the review and approval of the file before the compilation report or T1 income tax return is released.
 - (d) In the event the professional conduct committee finds Mr. Gray's choice of supervisor unacceptable, or there is any other issue relating to the supervised practice plan about which Mr. Gray and the professional conduct committee cannot agree, either may apply to the chair of the panel or to the chair of the discipline committee at an assignment hearing for directions.
 - (e) The twelve (12) month period of supervised practice shall commence on the day that Mr. Gray files the approved supervised practice plan in accordance with paragraph 4(a) above, or on the day the supervised practice plan is settled by the chair pursuant to paragraph 4(d) above, whichever day is later.
5. THAT Mr. Gray be reinvestigated by the professional conduct committee, or by a person retained by the professional conduct committee, on one occasion, within twelve (12) months of the expiry of the period of supervised practice, the cost of the reinvestigation, up to \$2,000, to be paid by Mr. Gray within thirty (30) days of receiving notification of the cost of the reinvestigation.
6. THAT notice of this Decision and Order, disclosing Mr. Gray's name, be given after this Decision and Order becomes final under the bylaws, in the form and manner determined by the discipline committee:
- (a) to the Public Accountants Council for the Province of Ontario;
 - (b) to the Canadian Institute of Chartered Accountants; and
 - (c) by publication in *CheckMark*.
7. THAT in the event Mr. Gray fails to comply with any of the requirements of this Order, he shall thereupon be expelled from membership in the Institute, and notice of his expulsion, disclosing his name, shall be given in the manner specified above, and in *The Guelph Mercury*.

Reprimand

24. The panel was of the view that reprimand is necessary as a specific deterrent to the member, to stress to him the importance of maintaining the standards of the profession, and the unacceptability of his conduct as a chartered accountant.

Fine

25. The panel concluded that the appropriate fine would be \$1,500. Although Mr. Gray had breached the rules of professional conduct in his performance of the audit and reviews in this case [s](#), there was no moral turpitude and many of his deficiencies stemmed from his lack of documentation. In assessing the quantum of the fine, the panel took into account that the member, as a result of this order, will be incurring expenses for legal fees and courses, as well as the costs of supervised practice and reinvestigation.

Professional Development Courses

26. With a view to rehabilitation, the panel ordered that Mr. Gray complete three professional development courses in an effort to upgrade his audit and review skills to the standards required of a chartered accountant. The discipline committee believes that one of the purposes of the disciplinary process, in appropriate cases, is to encourage rehabilitation. This is of benefit to both the member and the public which the member serves. The panel determined that completing these professional development courses would help Mr. Gray to update his skills and assist in his rehabilitation.

Supervised Practice

27. The panel felt that Mr. Gray's practice, which includes audit, review, compilation and personal tax return engagements, would benefit from temporary supervision to ensure that he meets the Institute's professional standards, and that such supervision was also appropriate for the protection of the public.

28. The panel recognized Mr. Gray's own initiative of self-imposed supervision which commenced in January 2001, approximately ten months prior to the date of this hearing. In addition, the panel noted that Mr. Gray had now physically moved his office and was sharing space with a reputable accounting firm. The panel hoped this arrangement would give Mr. Gray access to colleagues who could provide him with guidance and input.

29. Mr. Macmillan submitted the fact that Mr. Gray dismissed one of his technicians whose work he found unsatisfactory was another indication that he did not need supervised practice. The panel did not agree. As the chartered accountant responsible for giving the opinion or releasing the compilation or tax return, Mr. Gray had the obligation to properly supervise the work being done. While the panel did not doubt Mr. Gray's good intentions, the arrangement he has entered into with the CA firm is a voluntary one, and the panel concluded that the provision for supervision had to be mandatory and formalized. As a result, the order was made that Mr. Gray's practice be supervised for a period of twelve months.

Reinvestigation

30. In order to ensure that the public will be served by a member who has demonstrated the required of practice, the panel ordered reinvestigation to take place after Mr. Gray completes most, if not all, of the courses prescribed, and after the mandatory supervision period expires.

31. The expectation of the panel is that, with the benefit of the supervised practice period, and the prescribed courses, as well as the experience of the disciplinary process itself, Mr. Gray will be able to demonstrate the required standard upon his reinvestigation.

Notice

32. The panel ordered notice of its decision and order in the manner specified, including disclosure of the member's name, as a specific and general deterrent. The panel considered such notification also necessary to demonstrate to the public that the profession is regulating itself, so as to retain public confidence in the profession's ability to self-govern.

Possible Consequential Expulsion

33. This order, as all orders of the discipline committee, provides for expulsion in the event the member does not comply with its terms. In setting the time within which a disciplined member must comply, discipline panels weigh the importance of particular provisions of an order against the possible consequences of non-compliance. In this case, the panel was primarily concerned with the public's right to receive service at an appropriate professional standard. Accordingly, the period of time within which Mr. Gray must comply with the requirements for supervised practice is a relatively short one. In setting the time within which Mr. Gray must take the courses required, the panel's order provides adequate time for him to comply.

34. If the member fails to comply, in addition to the notice provisions set out above, his expulsion is to be published in *The Guelph Mercury*.

DATED AT TORONTO THIS 20TH DAY OF DECEMBER, 2001
BY ORDER OF THE DISCIPLINE COMMITTEE

B.A. TANNENBAUM, FCA – DEPUTY CHAIR
THE DISCIPLINE COMMITTEE
MEMBERS OF THE PANEL:
P.A. GOGGINS, CA
A. HANSON, CA
M.L. MACKAY, FCA
D.O. STIER, CA
B.A. YOUNG (Public representative)