



Founded 1879

# THE INSTITUTE OF CHARTERED ACCOUNTANTS OF ONTARIO

DISCIPLINE COMMITTEE - ICAO

RE: DONALD MACKENZIE SMITH

EX. 1 FILED MARCH 6 2008

*TDW*

**IN THE MATTER OF:**

**CHARGES AGAINST DONALD M. SMITH,  
CA, A MEMBER OF THE INSTITUTE,  
BEFORE THE DISCIPLINE COMMITTEE**

## **SETTLEMENT AGREEMENT**

*made pursuant to Bylaw 510 (7.1) of the Bylaws of the  
Institute of Chartered Accountants of Ontario*

### **Introduction**

1. The Professional Conduct Committee, at their meeting of September 25, 2007, approved draft charges against Donald M. Smith, CA ("Smith") **Tab 1**.
2. The charges pertain to professional work done by Smith with respect to the review of financial statements of Palmateer & Muise Partnership ("P & M") for the year ended December 31, 2006.
3. The charges also pertain to professional work done by Smith with respect to the review of financial statements of Total Crane Erectors Ltd. ("T.C. Erectors") for the year ended May 31, 2006.
4. The documents referred to in this agreement are found in the Document Brief under **TAB 2**.
5. The Professional Conduct Committee and Smith agree with the facts and conclusions set out in this settlement agreement for the purpose of this proceeding only, and further agree that this agreement of facts and conclusions is without prejudice to Smith in any other proceedings of any kind, including, but without limiting the generality of the foregoing, any civil or other proceedings which may be brought by any other person, corporation, regulatory body or agency.

### **Background**

6. Smith is a partner with the accounting firm Wedgbury Smith Monteith LLP Chartered Accountants Bolton Ontario. He graduated from the University of Western Ontario in 1964 and received his Chartered Accountancy designation in 1967. He currently practices with two partners. Smith does not perform any audit engagements. Smith's stated intention is to permanently cease performing any assurance engagements if and when the health of one of the other partners of the firm improves, allowing that partner to take over Smith's remaining assurance practice.

### **Charge One - The Review of Financial Statements of P & M (a partnership) as at December 31, 2006**

8. P & M is a two-partner law firm and has been a client of Smith since 1989. It is a review engagement.
9. Smith signed the Review Engagement Report and presented it and the financial statements to the partners **DOC 011**.
10. The balance sheet contained under the heading "Assets", the item "Property, Plant and Equipment (note 2) 129,912" **DOC 012**.
11. Note 1 to the financial statements under the heading "Property, Plant and Equipment" **DOC 016** disclosed that "Land and Building, were based on an appraisal by Appraisal Services Limited on January 31, 1997". It is agreed that the assets "Land and Building" should be recorded at cost to meet the requirements of the CICA Handbook, Section 3061.16. **Tab 3**.
12. It is further agreed that the description found under Property, Plant and Equipment in Note 1 to the financial statements was contradictory in that the second paragraph of Note 1 which disclosed that Property, Plant and Equipment are recorded at cost, is inconsistent with the first paragraph, which described accurately the manner in which the asset "Land and Building" was valued, by appraisal.

13. Smith failed to ensure that the nature of Measurement Uncertainties that are material to the financial statements were disclosed as required by the CICA Handbook, Section 1508.06 **Tab 4**. Such uncertainties relate to the estimates that were necessarily made by management in the valuation of accounts receivable and work in progress.

**Charge Two - Review of the financial statements of TC Erectors for the year ended May 31, 2006**

14. TC Erectors is a corporation incorporated under the provisions of the Ontario Business Corporations Act, and it is in the business of erecting heavy equipment throughout Ontario. It has been a client of Smith since 1997.
15. Smith signed the Review Engagement Report **DOC 022**, and presented it and the financial statements to the president of the company.
16. Attached to the Review Engagement Report, is a Statement of Cash Flows **DOC 026**.
17. Under the heading "Investing Activities" is the item "Property and equipment (1,163,405)". The additions to Property and equipment in 2006 were made by means of capital leases, which did not require the use of cash, and therefore should not have been disclosed in the Statement of Cash Flows, but elsewhere in the financial statements as required by the CICA Handbook Section 1540.46. **Tab 5**.
18. Also included in the Statement of Cash Flows **DOC 026** are the items "Loan receivable (314,753)", "Due from related parties 260,219", and "Increase in long-term debt 138,708". All of these items are presented on a net basis whereas the gross cash inflow and outflow related to each item should have been presented as required by the CICA Handbook Section 1540.23. **Tab 6**.
19. Included in the Statement of Cash Flows **DOC 026** in the year ended May 31, 2005 column is the item "Interest Paid 51,377". Smith failed to ensure the disclosure of the interest paid on short-term debt which had been included in the item "Bank charges and interest 16,403" in the Statement of Earnings.



20. Note 7 to the financial statements "Long-term Debt" did not disclose the portion of the debt obligation payable within one year in the amount of 364,516. Instead, the note contained the following description "Less: Current portion 306,019".
21. Smith failed to ensure that the nature of Measurement Uncertainties that are material to the financial statements were disclosed as required by the CICA Handbook Section 1508.06 **Tab 4**. Such uncertainties relate to the estimates that were necessarily made by management in the valuation of accounts receivable.
22. Note 4 to the financial statements "Related Party Transactions" disclosed inter-company advances and management fee charges but did not disclose (classified by financial statement category) the many inter-company transactions and the measurement basis used with respect to them as required by the CICA Handbook Section 3840.46 (c) and (d) **Tab 7**. In addition, the amount payable to "Total Crane Rental Ltd. (1,037,429)" and the amount receivable from "Total Crane and Erection Services Ltd. 1,234,629" were netted whereas there was no evidence to support that netting as required by the CICA Handbook Section 3861.27. **Tab 8**.
23. Note 10 to the financial statements headed "Financial Instruments" **DOC 031** did not properly disclose loans receivable, due from related parties, and long-term debt as financial instruments for which fair value is not readily obtainable as required by the CICA Handbook Section 3861.89. **Tab 9**.

**Failure to Comply with Generally Accepted Standards of Practice of the Profession**

25. It is agreed that, with respect to the review of the financial statements of Palmateer & Muise Partnership for the year ended December 31, 2006 and the review of the financial statements of Total Crane Erectors Ltd. for the year ended May 31, 2006, Smith 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, in the manner described above.

### Terms of Settlement

26. Smith and the Professional Conduct Committee agree to the following Terms of Settlement:

- a) A reprimand in writing by the Chair of the Discipline Committee;
- b) A payment by way of fine in the amount of \$3,000;
- c) Full publicity in CheckMark Magazine of the terms of this Settlement;
- d) Notice to the Public Accountants' Council and to the CICA of the terms of this Settlement;
- e) Smith will attend, within eighteen months, three professional development courses related to assurance standards including:
  - Accounting Refresher;
  - Financial Statement Presentation & Disclosure – A Practitioner's Workshop;
  - Review engagements.
- f) Smith will enter into a Supervision Agreement approved by the Director of Standards Enforcement ("the Director") with a Supervisor approved by the Director who will review all assurance engagements undertaken by Smith for a period of one year from the time the Discipline Committee accepts this Settlement Agreement.
- g) The Professional Conduct Committee will reinspect Smith at the end of the period of supervised practice with the costs of the reinspection, up to \$2000, to be borne by Smith. Should Smith file a written undertaking to the Discipline Committee prior to the expiry of the period of supervision to forever restrict his professional practice to non-assurance work then he need not continue to engage a Supervisor pursuant to this paragraph from that point forward and need not be reinspected by the professional conduct committee.
- h) Smith will be allowed six months from the time the Discipline Committee accepts this Settlement Agreement to pay the fine referred to herein.

27. Should the Discipline Committee accept this Settlement Agreement, Smith agrees to waive his right to a full hearing, judicial review or appeal of the matter subject to the

settlement agreement. The charges approved by the Professional Conduct Committee and dated ~~October~~ 2007 shall be forever stayed.

*November*

28. If, for any reason, this Settlement Agreement is not approved by the Discipline Committee, then;
- a) This Settlement Agreement and its terms, including all Settlement Negotiations between the Professional Conduct Committee and Smith leading up to its presentation to the Discipline Committee, shall be without prejudice to the Professional Conduct Committee and Smith;
  - b) The Professional Conduct Committee and Smith shall be entitled to all available proceedings, remedies and challenges, including proceeding to a hearing on the merits of the allegations set out in the charges, or negotiating a new Settlement Agreement, unaffected by this Settlement Agreement or the Settlement Negotiations;
  - c) The terms of this Settlement Agreement will not be referred to in any subsequent proceeding, or disclosed to any person, except with the written consent of the Professional Conduct Committee and Smith or as may be required by law.

#### **Disclosure of Settlement Agreement**

29. This Settlement Agreement and its terms will be treated as confidential by the Professional Conduct Committee and Smith, until approved by the Discipline Committee, and forever if, for any reason whatsoever, this Settlement Agreement is not approved by the Discipline Committee, except with the written consent of the Professional Conduct Committee and Smith, or, as may be required by law.
30. Any obligations of confidentiality shall terminate upon approval of the Settlement Agreement by the Discipline Committee.

All of which is agreed to for the purpose of this proceeding alone this <sup>13<sup>th</sup></sup> ~~October~~ <sup>November</sup> day of ~~October~~ <sup>2007</sup> 2007.



DAVID LOGAN, CA  
DEPUTY CHAIR,

PROFESSIONAL CONDUCT COMMITTEE



DONALD M. SMITH, CA  
on his own behalf