

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

**DISCIPLINE COMMITTEE**

**IN THE MATTER OF:** A charge against **JAMES M. SLAVENS, CA** a member of the Institute, under **Rule 201.1** of the Rules of Professional Conduct, as amended.

**TO:** Mr. James M. Slavens

**AND TO:** The Professional Conduct Committee, ICAO

**REASONS**

**(Decision and Order made December 17, 2009)**

1. This panel of the Discipline Committee of the Institute of Chartered Accountants of Ontario met on December 17, 2009, to hear a charge of professional misconduct brought by the Professional Conduct Committee against James M. Slavens, a member of the Institute.
2. Paul Farley appeared on behalf of the Professional Conduct Committee.
3. Mr. Slavens was not present. He was represented by his counsel, Larry Banack.
4. The decision of the panel was made known at the conclusion of the hearing on December 17, 2009, and the written Decision and Order sent to the parties on December 21, 2009. These reasons, given pursuant to Bylaw 574, contain the charge, the decision, the order, and the reasons of the Discipline Committee.

**CHARGE**

5. The following charge was laid against Mr. Slavens by the Professional Conduct Committee on June 5, 2009:

THAT, the said James M. Slavens, in or about the period September 2007 through December 2007, while a senior partner of a Chartered Accounting firm, failed to conduct himself in a manner which will maintain the good reputation of the profession and its ability to serve the public interest, contrary to Rule 201.1 of the rules of professional conduct in that;

- a) He directed and participated in a scheme designed to reduce the value of the assets of his father in law through an artificial "gifting" plan and thereby improperly reduce the tax payable on the estate of his father in law upon his death;

- b) He involved professional and office staff of his Chartered Accounting firm in a scheme to improperly reduce the tax payable on the estate of his father in law upon his death.

## **PLEA**

6. Mr. Banack, on behalf of Mr. Slavens, entered a plea of guilty to the charge. Mr. Banack also confirmed he had been instructed by Mr. Slavens to attend on his behalf and enter the plea of guilty.

## **EVIDENCE**

7. The evidence of the Professional Conduct Committee was entered by way of an Agreed Statement of Fact (Exhibit 2). Neither party called any further evidence. The Professional Conduct Committee relied on the Agreed Statement of Fact in its submissions on guilt. Mr. Banack made no submissions.

## **FACTS**

8. Based on the evidence, the panel finds that Mr. Slavens, while a senior partner with a large public accounting firm, devised and executed a gifting scheme to reduce the net worth of an elderly relative and thereby reduce the estate taxes that would otherwise be payable on that relative's death.

9. Mr. Slavens prepared cheques written on the relative's bank account. The payees were partners, employees and staff of his accounting firm. He instructed the payees to endorse and return the cheques to him. He then deposited the cheques into his bank account and paid out the amounts to the ultimate beneficiaries of the relative's estate.

10. In the period September to January 2008, Mr. Slavens prepared and had endorsed a total of sixty cheques, with a value of over \$700,000. More than half of those cheques were deposited before the scheme was uncovered. Mr. Slavens utilized forty-two professional and office staff at his firm to endorse the cheques. He held a position senior to the vast majority of those staff, and was in a position to affect the career and compensation of many of those.

## **DECISION**

11. After deliberating, the panel made the following decision:

THAT, having heard the plea of guilty to the charge, and having seen and considered the evidence, including the agreed statement of facts, filed, the Discipline Committee finds James M. Slavens guilty of the charge.

## **SANCTIONS**

12. Neither party called any evidence on sanction. The parties made a joint submission on sanction for the consideration of the panel: a reprimand in writing; expulsion from membership; a fine in the amount of \$25,000; and full publicity, including

newspaper notice. The submission also included a reimbursement of costs incurred in the amount of \$15,000.

13. Mr. Farley, on behalf of the Professional Conduct Committee, characterized the scheme as an attempt by Mr. Slavens to obtain a benefit to which he was not entitled. He submitted that the primary principle of sanctioning to be considered was that of general deterrence, and summed up the conduct as dishonest.

14. Mr. Farley noted a number of factors aggravating the matter, including the fact that Mr. Slavens, as a senior partner, was in a position of trust, influence and power, and abused that position to induce a number of other persons to assist him. He also noted the number of persons involved by Mr. Slavens, the number of cheques, the significant amount involved, and the fact that Mr. Slavens did not stop until he was caught. In mitigation, Mr. Farley observed that Mr. Slavens had no discipline history, no tax was ultimately evaded, and Mr. Slavens had cooperated fully with the discipline process.

15. Mr. Banack, for Mr. Slavens, apologized to the profession for his actions. He submitted that Mr. Slavens is contrite and remorseful, and had accepted full responsibility for his actions, as evidenced by his pleading guilty at the earliest possible opportunity and by his executing an agreed statement of facts to obviate the necessity of any witnesses. Mr. Slavens acknowledges that he has brought shame to himself, his family, his firm, and the profession, and that he has lost his designation.

16. Mr. Banack noted that Mr. Slavens has had a 35 year unblemished career, and had been a partner in a major firm for 25 of those years, that he had paid the ultimate price for an error in judgment, and that it was a "tragic end to an exemplary professional career."

## **ORDER**

17. After deliberating, the panel made the following order:

IT IS ORDERED in respect of the charge:

1. THAT Mr. Slavens be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Slavens be and he is hereby fined the sum of \$25,000 to be remitted to the Institute within one (1) month from the date this Decision and Order becomes final under the bylaws.
3. That Mr. Slavens be and he is hereby expelled from membership in the Institute.
4. THAT notice of this Decision and Order, disclosing Mr. Slavens' name, be given after this Decision and Order becomes final under the bylaws:
  - (a) to all members of the Institute;
  - (b) to all provincial institutes/Ordre,and shall be made available to the public.

5. THAT notice of the expulsion, disclosing Mr. Slavens' name, be given by publication on the Institute's website and in the *Globe and Mail*. All costs associated with the publication shall be borne by Mr. Slavens and shall be in addition to any other costs ordered by the committee.
6. THAT Mr. Slavens surrender his certificate of membership in the Institute to the discipline committee secretary within ten (10) days from the date this Decision and Order becomes final under the bylaws.

AND IT IS FURTHER ORDERED:

7. THAT Mr. Slavens be and he is hereby charged costs fixed at \$15,000 to be remitted to the Institute within one (1) month from the date this Decision and Order becomes final under the bylaws.

**FURTHER SUBMISSIONS**

18. When the summary of the order was read orally at the hearing, Mr. Banack asked the panel to reconsider the order making Mr. Slavens responsible for the payment of the newspaper notice, on the basis that there had been a joint submission for the payment of costs, and the joint submission did not include that amount.

19. As it appeared the parties, despite their best intention, were not, in fact, completely agreed as to the appropriate sanction, the panel heard further submissions on the point of costs and payment of the newspaper notice. After hearing submissions, the panel declined to amend its order.

**REASONS**

20. It is almost beyond belief that a senior, well-respected member of the profession would conceive and carry out a scheme he knew to be tax evasion, a scheme he indirectly stood to benefit from, and that he would induce others into assisting with its execution. The fact that the people who participated in Mr. Slavens' scheme included members of the profession who reported to him is an aggravating factor. The blow this has struck to the integrity of the entire profession is severe. Public trust can only be rehabilitated and retained by denouncing such conduct in the strongest possible terms and removing Mr. Slavens from the profession. Nothing less than expulsion will serve this purpose.

21. Mr. Slavens' professional demise must also act as a cautionary tale for other members of the profession and, in particular, those members one might otherwise believe least in need of such a caution – the senior, exemplary role models for others. The fine and publicity, as well as the expulsion itself, will serve this purpose.

22. Finally, and most importantly, the public interest must be protected and public trust earned and maintained. Not only must the Institute act swiftly to remove one found unworthy of the designation, it must be seen to so act. Thus, newspaper notice is crucial.

23. With respect to the cost of the notice, the panel understands this is an additional financial burden Mr. Slavens did not anticipate. However, payment of such notice is a requirement of the bylaws, not of negotiation between the parties, and has been considered a matter separate and apart from the calculation of costs. Further, the panel considers the costs of publication are reasonable, and finds no circumstances sufficient to excuse him from the bylaw obligation to pay for the newspaper notice.

24. Turning to the quantum of costs to be ordered, the panel notes that no outline or other itemizing of the costs was presented, leaving the panel with nothing but the joint submission of the parties on which to rely. The submissions made on costs revealed that the actual costs of the investigation, without even considering the hearing costs, were far greater than the amount sought. The panel has decided to accept the joint submission, but is uncomfortable with the lack of information or evidence provided. Regardless of the submissions of the parties, any award of costs is solely within the jurisdiction and discretion of the Discipline Committee, and the panel must have an adequate basis upon which to exercise that jurisdiction and discretion.

25. In conclusion, the panel is shocked by the actions of Mr. Slavens. It is incomprehensible that a member of his stature and reputation would risk and, in the end, forfeit his name, his designation, and his standing in the profession and the community, by such conduct.

DATED AT TORONTO THIS 22<sup>ND</sup> DAY OF FEBRUARY, 2010  
BY ORDER OF THE DISCIPLINE COMMITTEE

*ORIGINAL SIGNED*

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J.A. CULLEMORE, FCA – DEPUTY CHAIR  
DISCIPLINE COMMITTEE

MEMBERS OF THE PANEL:

G. KROFCHICK, CA  
M.S. LEIDERMAN, CA  
P. MCBURNEY (PUBLIC REPRESENTATIVE)  
A.B. MINTZ, CA