

John Stewart Gray: Summary, as Published in *CheckMark*

John Stewart Gray, of Barrie, was found guilty, under Rule 203.2, of failing to cooperate in the attempted inspection of his practice. He was fined \$1,000 and ordered to submit certain files to practice inspection within a specified time, failing which he would be expelled from the Institute. To a request made by Mr. Gray that he be permitted to resign from membership, the discipline committee stated: "While making no comment as to whether or not there may exist special cases to the contrary, as a general principle it is not appropriate for members or students facing charges of professional misconduct to avoid a determination of their culpability in respect of those charges by the simple expedient of resignation." Mr. Gray neither paid the fine nor submitted the files as ordered, and has been expelled from the Institute.

CHARGE(S) LAID re John Stewart Gray

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

1. THAT, the said John S. Gray, in the period May, 1993 through February, 1994 failed to co-operate with officers, servants or agents of the Institute who have been appointed to arrange or conduct a practice inspection, contrary to Rule 203.2 of the rules of professional conduct.

Dated at Toronto, this 15th day of February, 1994.

J.L.M. BADALI, FCA - CHAIR
PROFESSIONAL CONDUCT COMMITTEE

DISCIPLINE COMMITTEE re John Stewart Gray

DECISION AND ORDER IN THE MATTER OF: A charge against **JOHN STEWART GRAY**, a suspended member of the Institute, under **Rule 203.2** of the Rules of Professional Conduct, as amended.

DECISION AND ORDER MADE SEPTEMBER 20, 1994

DECISION

THAT, having seen and considered the evidence, and having determined to proceed with the hearing in the absence of Mr. Gray, pursuant to Institute Bylaw 87(2)(c), being satisfied that he had proper notice of the hearing, and having entered on his behalf a plea of not guilty to the charge, THE DISCIPLINE COMMITTEE FINDS John Stewart Gray guilty of the charge.

ORDER

IT IS ORDERED in respect of the charge:

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 \$1,000, to be remitted to the Institute within sixty (60) days from the date this Decision and Order becomes final under the bylaws.
3. THAT Mr. Gray produce the files for inspection requested in the letter of June 23, 1993 from the director of practice inspection, within sixty (60) days from the date this Decision and Order becomes final under the bylaws.
4. THAT notice of this Decision and Order, disclosing Mr. Gray's name, be given after this Decision and Order becomes final under the bylaws:
 - (a) by publication in *CheckMark*;
 - (b) to the Public Accountants Council for the Province of Ontario; and
 - (c) to the Canadian Institute of Chartered Accountants.
5. THAT in the event Mr. Gray fails to comply with any of the requirements of this Order within the time periods specified, he shall thereupon be expelled from the rights and privileges of membership in the Institute, and notice of his expulsion, disclosing his name, shall be given in the manner specified in paragraph 4 hereof.

DATED AT TORONTO THIS 22ND DAY OF SEPTEMBER, 1994
BY ORDER OF THE DISCIPLINE COMMITTEE

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

DISCIPLINE COMMITTEE re John Stewart Gray

REASONS FOR THE DECISION AND ORDER IN THE MATTER OF: A charge against **JOHN STEWART GRAY**, a suspended member of the Institute, under **Rule 203.2** of the Rules of Professional Conduct, as amended.

WRITTEN REASONS FOR THE DECISION AND ORDER MADE SEPTEMBER 20, 1994

These proceedings before this panel of the discipline committee of the Institute of Chartered Accountants of Ontario were convened on September 20, 1994.

Ms. Deborah McPhadden attended on behalf of the professional conduct committee. Mr. Gray was not present nor was he represented. Prior to the hearing he had indicated in correspondence to the discipline committee secretary that he would not be in attendance at the hearing and that it was his wish to resign from membership in the Institute. The committee secretary advised the member that due to the outstanding charge against him, he was not at liberty to resign from the Institute.

Counsel for the professional conduct committee filed with the discipline committee the affidavit of Lee Selwood to prove service on Mr. Gray of the charge and Notice of Assignment Hearing, and the affidavit of Bryan Stephenson to prove service of the Notice of Hearing. The affidavits were marked as Exhibits Nos. 1 and 2, respectively. The discipline committee satisfied itself that Mr. Gray had been given proper notice of the hearing, and, accordingly, decided to proceed in his absence, pursuant to Bylaw 87(2)(c).

The charge against Mr. Gray was that he failed to cooperate with officers, servants or agents of the Institute appointed to arrange or conduct a practice inspection, contrary to Rule 203.2 of the rules of professional conduct.

Since Mr. Gray was neither present nor represented at the hearing, the chair entered a plea of not guilty on the member's behalf.

Counsel for the professional conduct committee introduced evidence in the form of a document brief consisting of correspondence between the Institute and Mr. Gray, which was filed as Exhibit No. 5. Affidavits from the director of practice inspection and the associate director of standards enforcement were entered as Exhibits Nos. 6 and 7, respectively, in support of the document brief. Ms. McPhadden advised the committee that the deponents of these affidavits were in the building and could be called and sworn as witnesses to answer questions if the committee had any.

After deliberation, the discipline committee found the member guilty of the charge. The evidence clearly proved Mr. Gray's lack of cooperation with the Institute in this matter.

After hearing and deliberating upon the professional conduct committee's submissions in respect of sanction, the discipline committee made the following order:

ORDER

IT IS ORDERED in respect of the charge:

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 \$1,000, to be remitted to the Institute within sixty (60) days from the date this Decision and Order becomes final under the bylaws.
3. THAT Mr. Gray produce the files for inspection requested in the letter of June 23, 1993 from the director of practice inspection, within sixty (60) days from the date this Decision and Order becomes final under the bylaws.
4. THAT notice of this Decision and Order, disclosing Mr. Gray's name, be given after this Decision and Order becomes final under the bylaws:
 - (a) by publication in *CheckMark*;
 - (b) to the Public Accountants Council for the Province of Ontario; and
 - (c) to the Canadian Institute of Chartered Accountants.
5. THAT in the event Mr. Gray fails to comply with any of the requirements of this Order within the time periods specified, he shall thereupon be expelled from the rights and privileges of membership in the Institute, and notice of his expulsion, disclosing his name, shall be given in the manner specified in paragraph 4 hereof.

The reasons for the committee's order as to sanction are set out below.

Reprimand

The committee is of the view that a reprimand is necessary as a specific deterrent to the member, to stress to him the unacceptability of his lack of cooperation with the Institute.

Fine

The committee felt that a fine was necessary to make clear to Mr. Gray and to other members of the profession that cooperation with the Institute in the area of practice inspection is essential. The committee took into account Mr. Gray's financial situation in setting the amount of the fine.

Publicity

The committee ordered notice of its decision and order in the manner specified, including disclosure of the member's name, as a specific and general deterrent.

Production of the Files for Practice Inspection

The committee considered and rejected Mr. Gray's request that he be allowed to resign. While making no comment as to whether or not there may exist special cases to the contrary, as a general principle it is not appropriate for members or students facing charges of professional misconduct to avoid a determination of their culpability in respect of those charges by the simple expedient of resignation.

The committee concluded that Mr. Gray should be given one last opportunity to comply with the request to produce files for inspection. Since Mr. Gray is already a suspended member, and as his production of the files can be easily accomplished, it was decided that non-compliance with this term of the order within the more than adequate period of time specified should result in Mr. Gray's immediate expulsion from the Institute.

DATED AT TORONTO, THIS _____ DAY OF DECEMBER, 1994
BY ORDER OF THE DISCIPLINE COMMITTEE

P.A. CAMPOL, CA - CHAIR
THE DISCIPLINE COMMITTEE

MEMBERS OF THE PANEL:

C.J. BURKE, FCA

B.L. STEPHENS, CA

W.L. WOOD, CA

B.A. YOUNG, P.Eng. (Public representative)