

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

DISCIPLINE COMMITTEE

IN THE MATTER OF: A charge against **JOHN WALTER JEFFERY**, a member of the Institute, under **Rule 201.1** of the Rules of Professional Conduct, as amended.

TO: Mr. John W. Jeffery, CA
295 Egremont Street South
Mount Forest, ON N0G 2L2

AND TO: The Professional Conduct Committee, ICAO

REASONS
(Decision And Order Made June 9, 2006)

1. This panel of the Discipline Committee of the Institute of Chartered Accountants of Ontario met on June 9, 2006, to hear a charge of professional misconduct against John Walter Jeffery, a member of the Institute.

2. Ms. Barbara Glendinning appeared on behalf of the Professional Conduct Committee and was accompanied by Ms. Kelly Khalilieh, CA, the investigator appointed by the Professional Conduct Committee. Mr. Jeffery attended and was represented by his counsel, Ms. Melissa A. Kehrer.

3. The decision of the panel was made known to the parties at the conclusion of the hearing on June 9, 2006, and the written decision and order sent to them on June 21, 2006. These reasons, given pursuant to Bylaw 574, include the charge, the decision, the order, and the reasons of the panel for its decision and order.

CHARGE

4. The following charge was laid against Mr. Jeffery on January 27, 2006:

1. THAT the said John Walter Jeffery, in or about the period June 1998 through June 2005, while engaged as the accountant for "B.M.", her professional practice and her husband, failed to conduct himself in a manner that will maintain the good reputation of the profession, contrary to Rule 201.1 of the rules of professional conduct, in that he failed to provide his services in a timely manner, particularly with respect to:
 - a) assisting B.M. with a Canada Revenue Agency audit of the 1999 and 2000 tax years;
 - b) preparing and filing GST returns for B.M.'s chiropody practice;
 - c) making RRSP contributions on behalf of B.M.'s son; and
 - d) making Workplace Safety and Insurance Board remittances on behalf of

B.M.'s husband.

PLEA

5. Mr. Jeffery entered a plea of guilty to the charge. He acknowledged that he understood that, on the basis of the plea and on that basis alone, he could be found guilty of the charge.

EVIDENCE

6. The evidence in this matter was presented by way of an Agreed Statement of Facts (Exhibit 4) and an accompanying Document Brief (Exhibit 5). Ms. Glendinning acknowledged that particulars (c) and (d) in and of themselves were not too egregious and asked the panel not to think of them in isolation. Neither party called any further evidence. The panel adjourned to read and consider the evidence.

7. The parties were asked to return to the Council Chamber to address what the client did vis-à-vis the delay, whether the client had complained about it and what, if any, financial injury or prejudice the client suffered as a result of the tardiness, and whether this was an isolated matter or part of a pattern of delay. The Agreed Statement of Facts did not, to the satisfaction of all members of the panel, address these matters. Counsel to the panel set out on the record the general concerns of the panel. Mr. Jeffrey responded to these and to specific questions from members of the panel.

8. Mr. Jeffrey informed the panel that he had taken on full time employment during the relevant period and tried to maintain his small practice in the evenings and weekends. He acknowledged that his failure to deal with the Canada Revenue Agency audit in a timely way resulted in a reassessment to his client, which he characterized as unfair. He further informed the panel that he had compensated for the penalties and interest assessed against his client for the failure to address matters on a timely basis by under-billing the client for the work performed, although he acknowledged that he did not inform the client of this.

9. Both counsel were given an opportunity to add whatever comments and submissions they wished. Ms. Glendinning explained that the investigation revealed that the client had sent emails to Mr. Jeffery outlining the concern about his delay and that two of these emails communicated to Mr. Jeffrey the client's contemplation of raising the issue with the regulator, which she eventually did. Copies of these emails were not included in the Document Brief nor were these emails referred to in the Agreed Statement of Facts.

DECISION

10. The charge made against Mr. Jeffery is a charge under Rule 201.1 that he failed to maintain the good reputation of the profession and its ability to serve the public interest. The gravamen of the misconduct which falls within Rule 201.1 varies from theft to matters such as this one, concerning the failure to provide services on a timely basis, in which there are no allegations of moral turpitude. While the misconduct does not have to involve moral turpitude to amount to a breach of Rule 201.1, the misconduct must be a significant departure from the required standard and have a prejudicial impact on the member's client which causes damage to the good reputation of the profession and its ability to serve the public interest.

11. On the basis of the Agreed Statement of Facts, the Document Brief and the additional information provided by the parties in response to the panel's request for further clarification, the panel concluded that the client had suffered prejudice both in a monetary sense and with respect to

disruption, stress, and embarrassment on account of Mr. Jeffery's failure to provide services on a timely basis. The panel was satisfied that Mr. Jeffery's failure was a significant departure from the standard which members must meet and warranted a finding of professional misconduct.

12. The panel rendered the following decision:

THAT, having seen, and considered the evidence, including the agreed statement of facts, filed, and having heard the plea of guilty to the charge, the Discipline Committee finds Mr. John W. Jeffery guilty of the charge.

SANCTION

13. Ms. Glendinning entered the reasons for the decision and order made January 16, 2004, in the matter of charges against Mr. Jeffery under Rules 104 and 203.2 (Exhibit 6), as evidence on sanction. Neither party called any further evidence on sanction.

14. Ms. Glendinning, on behalf of the Professional Conduct Committee, submitted that a sanction of: a written reprimand; a fine in the range of \$2,000 – 3,000; an order to attend two specified professional development courses; publicity in the usual course; and divestment of any remaining public accounting clients within fifteen days would serve the principles of general and specific deterrence as well as rehabilitation. Ms. Glendinning also indicated she was seeking costs in the amount of \$6,000.

15. Ms. Glendinning noted as aggravating circumstances that the charge identified four separate areas of failure to provide timely services, and that Mr. Jeffery had been before the Discipline Committee in January 2004, at which time he informed the Discipline Committee that he was winding down his practice, because of tardiness during the Institute's practice inspection program and subsequent investigation by the Professional Conduct Committee. In mitigation, she noted his full cooperation with the Professional Conduct Committee in this matter, his plea of guilty, and the fact he has already registered for two professional development courses. Ms. Glendinning submitted that, in recognition of Mr. Jeffrey's strained financial circumstances, the Professional Conduct Committee sought a fine at the lower end of the fines ordered in precedent matters.

16. On behalf of Mr. Jeffery, Ms. Kehrer indicated that the member was in agreement with the sanction submitted by the Professional Conduct Committee, with the exception of the quantum of the fine and the costs. She informed the panel of Mr. Jeffery's personal circumstances, and submitted that a substantial monetary sanction would cause hardship not only to the member but to his family. She pointed out a number of mitigating circumstances, noting that: Mr. Jeffery acknowledged responsibility for the situation; he was remorseful and comprehended that the conduct was unacceptable; this matter arose at the same time as the previous disciplinary matter was being dealt with; he has only two, long-standing clients; he pleaded guilty at the first opportunity; and he had complied fully with the January 16, 2004 order of the Discipline Committee.

17. Mr. Jeffery and his counsel accepted the position of the Professional Conduct Committee that a term of the order should preclude Mr. Jeffery from accepting engagements from members of the public while he has full time employment.

ORDER

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

IT IS ORDERED in respect of the charges:

1. THAT Mr. Jeffery be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Jeffery be and he is hereby fined the sum of \$3,500 to be remitted to the Institute within twenty-four (24) months from the date this Decision and Order becomes final under the bylaws.
3. THAT Mr. Jeffery be and he is hereby charged costs fixed at \$3,000 to be remitted to the Institute within twenty-four (24) months from the date this Decision and Order becomes final under the bylaws.
4. THAT Mr. Jeffery be and he is hereby required to pay for and complete, in their entirety, within twenty-four (24) months from the date this Decision and Order becomes final under the bylaws, the following professional development courses made available through the Institute, or, in the event a course listed below becomes unavailable, the successor course which takes its place:
 - (a) *Staying Out of Trouble*; and
 - (b) *Time Management: Surviving Your Schedule*.
5. THAT Mr. Jeffery shall, within fifteen (15) days of the date of this order, cease acting for any client and, further, that he shall not, while employed full time, accept any other engagement, unless and until the Discipline Committee orders otherwise.
6. THAT notice of this Decision and Order, disclosing Mr. Jeffery'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. Jeffery fails to comply with the requirements of this Order, he shall thereupon be expelled from the membership in the Institute, and notice of his expulsion, disclosing his name, shall be given in the manner specified above, and in a newspaper distributed in the geographic area of Mr. Jeffery's employment and/or residence.

REASONS FOR THE ORDER

Reprimand

19. The panel orders that Mr. Jeffery be reprimanded in writing by the Chair to emphasize that a failure to serve clients in a timely manner is an unacceptable breach of the standards of practice of the profession.

Fine

20. A fine is required to act as both a specific and general deterrent. On either basis, the fine should not be at the very low end of the range, given that the member has previously been sanctioned by the Discipline Committee for tardiness. Recognizing that the imposition of a fine will cause financial hardship to Mr. Jeffery, the Discipline Committee ordered that Mr. Jeffrey have longer than usual to pay.

Costs

21. It is appropriate that the member charged, as opposed to the membership as a whole, bear part of the cost of the investigation and hearing necessitated by his conduct. Again, the quantum of the costs bears in mind the mitigating and financial circumstances of the member, and is less than usually ordered on a partial indemnity basis for a one-day hearing. Further, Mr. Jeffery has been given an extended time to pay the costs.

Professional Development

22. The panel notes with approval that Mr. Jeffery has already registered for two professional development courses, and considers education in this matter to be the most effective means of rehabilitating the member and ensuring he does not find himself again before the Discipline Committee.

Divestment of Clients

23. The panel concluded that presently Mr. Jeffery is not capable of providing services to the public on a timely basis while he has full-time employment obligations. Given Mr. Jeffrey's present circumstances, the public interest requires that Mr. Jeffery be precluded from maintaining a practice as well as employment, and this order accomplishes that.

24. The panel did not think this term of the order should be permanent. While the panel cannot anticipate the circumstances, in the future if Mr. Jeffery thinks that he is in a position, even with full-time employment obligations, to provide services to members of the public, he should be able to apply to the Discipline Committee, with notice to the Professional Conduct Committee, to vary this term of the order. In such an application, Mr. Jeffrey would have to establish that he could manage his time properly and explain how his circumstances had changed in a material way from the circumstances which prevailed during the period of his misconduct. In this regard, the misconduct commenced in September, 2003, according to the reasons for the decision and order made January 16, 2004.

Notice

25. Publishing the names of members found guilty of professional misconduct is frequently the most effective sanction available to the Discipline Committee for general deterrence, education of the profession and protection of the public. Only in the most exceptional of circumstances will these principles give way to the member's interest in privacy. No such circumstances having been suggested in this case, the usual order for publication has been made.

Failure to Comply

26. An order of the Discipline Committee would be meaningless if it did not provide a consequence for failure to comply with its terms. Accordingly, a provision for the ultimate expulsion for failure to comply was included in the order.

DATED AT TORONTO THIS 20TH DAY OF NOVEMBER 2006
BY ORDER OF THE DISCIPLINE COMMITTEE

B.L. HAYES, CA – DEPUTY CHAIR
DISCIPLINE COMMITTEE

MEMBERS OF THE PANEL:

P.M. CLEVELAND, FCA
S.M. DOUGLAS, FCA
M.S. LEIDERMAN, CA
D.O. STIER, CA
R.H. CARRINGTON (PUBLIC REPRESENTATIVE)