

Robert Herbert Greenwood: Summary, as Published in *CheckMark*

Robert Herbert Greenwood, of Mississauga, was found guilty by the discipline committee of four charges of professional misconduct, laid by the professional conduct committee, namely

- three charges, under Rule of Professional Conduct 201, of failing to conduct himself in a manner which maintains the good reputation of the profession and its ability to serve the public interest; and
- one charge, under Rule of Professional Conduct 204, of failing to hold himself free of any influence, interest or relationship in respect of his client's affairs which, in the view of a reasonable observer, had the effect of impairing his professional judgement or objectivity.

The discipline committee ordered that Mr. Greenwood

- be fined \$25,000 and assessed costs of \$1,500, to be paid within specified times; and
- be expelled from membership in the Institute.

CHARGE(S) LAID re Robert Herbert Greenwood

The Professional Conduct Committee hereby makes the following charges against Robert H. Greenwood, CA, a member of the Institute:

1. THAT, the said Robert H. Greenwood, CA, in or about the period December 1984 through March 1988, while a partner with the firm Greenwood Cook & Co., Chartered Accountants, and more particularly the member engaged and partner responsible for the expression of an audit opinion on the financial statements of National Business Systems Inc. (NBS) as at September 30, 1985, and September 30, 1986, failed to hold himself free of any influence, interest relationship, in respect of his client's, National Business Systems Inc.'s, affairs, which, ~~impaired his professional judgement or objectivity or which, in the view of a reasonable observer, had that effect,~~ (in the view of a reasonable observer, had the effect of impairing his professional judgment or objectivity) **(amended by agreement at hearing BWS)** contrary to Rule 204 of the rules of professional conduct, in that;
 - a) during the course of the said audit engagements he had an arrangement with E.A. Raymond, president and chief executive officer of NBS, whereby Mr. Raymond was holding on Greenwood's behalf 10,000 share warrants or options to purchase shares of National Business Systems Inc.;
 - b) in or about October 1985, Mr. Greenwood instructed E.A. Raymond to exercise certain of the share warrants or options of NBS being held for Greenwood and to pay to Greenwood the proceeds of sale, less sales commissions and taxes, which payment amounted to approximately \$162,000;
 - c) in or about July 1986, Greenwood instructed E.A. Raymond to exercise certain of the share warrants or options of NBS being held for Greenwood and to pay to Greenwood the proceeds of sale; at that time, although the share warrants or options could not be exercised, E.A. Raymond provided to Greenwood an advance payment in the amount of approximately \$100,000 against the share warrants or options.
2. THAT, the said Robert H. Greenwood, CA, in or about the period December 1984 through March 1988, failed to conduct himself at all times in a manner which maintains the good reputation of the profession and its ability to serve the public interest, contrary to Rule 201 of the rules of professional conduct, in that;
 - a) while a partner with the firm Greenwood Cook & Co., Chartered Accountants and more particularly the member engaged and partner responsible for the expression of an audit opinion on the financial statements of National Business Systems Inc. for the years ended September 30, 1985 and September 30, 1986, he had entered into an arrangement with E.A. Raymond, president and chief executive officer of National Business Systems Inc., whereby Mr. Raymond would hold on Greenwood's behalf 10,000 share warrants or options to purchase shares in the company.

3. THAT, the said Robert H. Greenwood, CA, in or about the month of October 1985, failed to conduct himself at all times in a manner which maintains the good reputation of the profession and its ability to serve the public interest, contrary to Rule 201 of the rules of professional conduct, in that;
 - a) while a partner with the firm Greenwood Cook & Co., Chartered Accountants and more particularly the member engaged and partner responsible for the expression of an audit opinion on the financial statements of National Business Systems Inc. for the year ended September 30, 1985, he received from E.A. Raymond, the president and chief executive officer of National Business Systems Inc., a payment, other than for ongoing professional services, in the amount of approximately \$162,000.
4. THAT, the said Robert H. Greenwood, CA, in or about the month of July 1986, failed to conduct himself at all times in a manner which maintains the good reputation of the profession and its ability to serve the public interest, contrary to Rule 201 of the rules of professional conduct, in that;
 - a) while a partner with the firm Greenwood Cook & Co., Chartered Accountants and more particularly the member engaged and partner responsible for the expression of an audit opinion on the financial statements of National Business Systems Inc. for the year ended September 30, 1986, he received from E.A. Raymond, the president and chief executive officer of National Business Systems Inc., a payment, other than for ongoing professional services, in the amount of approximately \$100,000.

DATED at St. Catharines this 20th day of April 1990.

H.W. HOBBS - DEPUTY CHAIRMAN
PROFESSIONAL CONDUCT COMMITTEE

DISCIPLINE COMMITTEE re Robert Herbert Greenwood

DECISION AND ORDER IN THE MATTER OF: Charges against ROBERT HERBERT GREENWOOD, a suspended member of the Institute, under Rules 201 and 204 of the Rules of Professional Conduct, as amended.

DECISION AND ORDER MADE SEPTEMBER 18, 1990

DECISION

THAT, having seen and considered the evidence, including the agreed statement of facts, filed, and having heard the plea of guilty to charges Nos. 1, as amended, 2, 3 and 4, THE DISCIPLINE COMMITTEE FINDS Robert Herbert Greenwood guilty of charges Nos. 1, as amended, 2, 3 and 4.

ORDER

IT IS ORDERED in respect of the charges:

1. THAT Mr. Greenwood be and he is hereby fined the sum of \$25,000, to be remitted to the Institute within six (6) months from the date this Decision and order becomes final under the bylaws.
2. THAT Mr. Greenwood be and he is hereby charged costs of \$1,500, to be remitted to the Institute within thirty (30) days from the date this Decision and Order becomes final under the bylaws.
3. THAT Mr. Greenwood be and he is hereby expelled from membership in the Institute.
4. THAT notice of this Decision and Order, disclosing Mr. Greenwood'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 Mr. Greenwood be and he is hereby ordered to surrender the certificate of membership in the Institute bearing his name to the registrar of the Institute within ten (10) days from the date this Decision and order becomes final under the bylaws.

DATED AT TORONTO, THIS 26TH DAY OF SEPTEMBER, 1990
BY ORDER OF THE DISCIPLINE COMMITTEE

B. W. STEPHENSSON - SECRETARY

THE DISCIPLINE COMMITTEE

DISCIPLINE COMMITTEE re Robert Herbert Greenwood

REASONS FOR THE DECISION AND ORDER IN THE MATTER OF: Charges against ROBERT HERBERT GREENWOOD a suspended member of the Institute, under Rules 201 and 204 of the Rules of Professional Conduct, as amended.

WRITTEN REASONS FOR THE DECISION AND ORDER MADE SEPTEMBER 18, 1990

These proceedings before the discipline committee of the Institute of Chartered Accountants of Ontario were convened on September 18, 1990.

Mr. Paul Farley attended on behalf of the professional conduct committee and Mr. Greenwood attended with, and was represented by, his counsel, Mr. Gordon Atlin. The professional conduct committee had laid one charge under Rule of Professional Conduct 204 and three charges under Rule of Professional Conduct 201. Following an amendment to one of the charges, made upon consent, Mr. Greenwood pleaded guilty to all four charges.

The member and his counsel both confirmed that they understood that on the plea of guilty, and on that basis alone, the member could be found guilty of the charges.

An agreed statement of facts, signed by the member and by counsel for the professional conduct committee, was filed as an exhibit.

Based upon the evidence, including the member's plea of guilty and the agreed statement of facts, the committee found Mr. Greenwood guilty of the charges. The committee then heard submissions as to sanction and, after deliberation, made the following order:

ORDER

IT IS ORDERED in respect of the charges:

1. THAT Mr. Greenwood be and he is hereby fined the sum of \$25,000, to be remitted to the Institute within six (6) months from the date this Decision and Order becomes final under the bylaws.
2. THAT Mr. Greenwood be and he is hereby charged costs of \$1,500, to be remitted to the Institute within thirty (30) days from the date this Decision and Order becomes final under the bylaws.
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4. THAT notice of this Decision and order, disclosing Mr. Greenwood'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 Mr. Greenwood be and he is hereby ordered to surrender the certificate of membership in the Institute bearing his name to the registrar of the Institute within ten (10) days from the date this Decision and Order becomes final under the bylaws.

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

EXPULSION & FINE

The ultimate sanction which the discipline committee can order is expulsion. This sanction along with a minimum fine of \$40,000 was sought by the professional conduct committee. Mr. Greenwood's submission as to sanctions focused on the inappropriateness of the fine suggested by the professional conduct committee and accepted that expulsion would likely be ordered. However, questioning by the panel revealed that, if he had a choice, Mr. Greenwood would prefer to resign from the Institute. Resignation under such circumstances is unacceptable to the discipline committee.

Counsel for the professional conduct committee quoted from the Foreword to the Rules of Professional Conduct one of the principles around which the rules of professional conduct center. It states:

A member who is engaged in an attest function such as an audit or review of financial statements shall hold himself or herself free of any influence, interest or relationship, in respect of his or her client's affairs, which impairs his or her professional judgment or objectivity or which, in the view of a reasonable observer, would impair the member's professional judgment or objectivity.

The agreed statement of facts clearly indicates that Mr. Greenwood entered into an arrangement that did, in the view of a reasonable observer, have the effect of impairing his professional judgment or objectivity. The evidence indicates that:

- Mr. Greenwood's firm was the sole auditor of the client company from 1981 through to its appointment as joint auditor with Price Waterhouse in 1984, 1985 and 1986.
- In or about the month of November 1984, the president of the client company offered Mr. Greenwood employee stock options and warrants, and indicated that he was prepared to hold them on Mr. Greenwood's behalf.
- In October 1985, Mr. Greenwood received \$162,000 from the sale of some of the stock options, \$12,600 of which he paid to one of his partners.
- In July 1986, Mr. Greenwood received \$100,000 from the president of the client company to apply against the profits expected on the individual sale of the stock. Of this amount \$20,000 was given to Mr. Greenwood's partner.

Mr. Greenwood stated that the options did not affect his judgment or objectivity while performing his responsibilities as the auditor of the client company. The committee doubted this as the total after tax sum received by Mr. Greenwood amounted to \$229,400. This is a large amount by any standard.

In any case, Mr. Greenwood, a seasoned chartered accountant, should have understood that, whether or not he considered his judgment and objectivity unaffected, the test was how a reasonable observer would see it.

The discipline committee ordered expulsion and a fine of \$25,000. This type of conduct goes to the very heart and soul of what the profession represents. Impairment of independence cannot be tolerated by the profession, and all its members and the public must know this.

Mr. Greenwood, by accepting the stock options, shattered his independence. He accepted two very large sums of money. The time between his accepting the options and receiving the money was lengthy. It was not a single spur of the moment action. In addition, the committee sensed that had the client company not gotten into its current troubled position, Mr. Greenwood might never have come to understand the seriousness of his actions.

An order of expulsion expresses rejection of a member by his peers, and will require, in most *instances, that* changes be made in both the professional and personal life of the former member. Mr. Greenwood testified as to the impact of this sanction on him.

The amount of the fine is appropriate in this case, but we do not think it is a maximum against which all other fines should be measured. The facts of each case will determine the appropriate amount.

The testimony of Mr. Greenwood's character witness was impressive. However, the nature and seriousness of the offence was such that the committee felt it was necessary for it to levy this large fine even when expelling the member. Without Mr. Greenwood's cooperation in this matter, the fine would have been substantially higher.

OTHER SANCTIONS

Because of Mr. Greenwood's cooperation throughout this matter, the costs incurred have been minimal. The levy of \$1,500 simply represents the costs of a one day hearing generally charged a guilty member.

As to the issue of notice, the usual notification and publication of the decision and order, disclosing Mr. Greenwood's name, is necessary in order to inform the public and our members of the outcome of the disciplinary process. The most important principle of sanctioning in this case is that of general deterrence. It is therefore essential, if this case is to have any meaningful deterrent impact, that the result and the offending member's name be made known. It is hoped that such publicity will serve to dissuade other like-minded members of this profession from following a path similar to that of Mr. Greenwood's. It is hoped, as well, that the public will gain a measure of assurance that this profession is committed to keeping its house in order.

DATED AT TORONTO, THIS 15th DAY OF NOVEMBER, 1990.
BY ORDER OF THE DISCIPLINE COMMITTEE

R.C.H. ANDREWS, CA - DEPUTY CHAIRMAN
THE DISCIPLINE COMMITTEE

MEMBERS OF THE PANEL:

P.J. FITZPATRICK, CA
P. RAYSON, CA
J.B. SCOTT, CA
L.L. WORTHINGTON, CA
A. CRANSTON (Public Representative)