

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

DISCIPLINE COMMITTEE

IN THE MATTER OF: Charges against **ROBERT ERNEST GREER**, a member of the Institute, under **Rules 104** and **203.2** of the Rules of Professional Conduct, as amended.

TO: Mr. Robert Ernest Greer, CA
26 Golfview Place
Kitchener, ON N2M 2Y2

AND TO: The Professional Conduct Committee, ICAO

REASONS

(Decision and Order made January 19, 2007)

1. This panel of the Discipline Committee of the Institute of Chartered Accountants of Ontario met on January 19, 2007 to hear charges of professional misconduct against Robert Ernest Greer, a member of the Institute.
2. Mr. Paul Farley appeared on behalf of the Professional Conduct Committee. He was accompanied by Ms. Olga Mathers, Coordinator, Practice Inspection, and Ms. Patricia Roberts, Director of Standards Enforcement, both of the Institute of Chartered Accountants of Ontario.
3. Mr. Greer attended and was not represented by counsel. He acknowledged he understood that he had the right to be represented by counsel. Mr. Greer indicated that he wished to proceed on his own behalf.
4. The decision of the panel was made known to the parties at the conclusion of the hearing on January 19, 2007, and the written Decision and Order sent to them on January 30, 2007. These reasons, given pursuant to Bylaw 574, include the charges, the decision, the order, and the reasons of the panel for its decision and order.

CHARGES

5. The following charges were laid against Mr. Greer on October 26, 2006:
 1. THAT the said Robert Ernest Greer, in or about the period January 31, 2006 to October 17, 2006, 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.

2. THAT the said Robert Ernest Greer, in or about the period June 1, 2006 to October 17, 2006, failed to promptly reply in writing to a letter from the Institute in which a written reply is specifically required, in that he failed to reply to a letter dated May 26, 2006 from Mr. Grant Dickson, Director of Practice Inspection at the Institute, contrary to Rule 104 of the rules of professional conduct.

PLEA

6. Mr. Greer entered a plea of guilty to both charges. He acknowledged that he understood that, on the basis of the plea of guilty and that basis alone, he could be found guilty on each of the charges. He further indicated to the panel that he wished to provide an explanation.

EVIDENCE

7. The evidence for the Professional Conduct Committee in this matter was presented by way of an Affidavit of Grant Dickson, FCA, Director of Practice Inspection (Exhibit 3).

8. Mr. Greer did not testify. However, he stated that he did not dispute any of the evidence put forward by the Professional Conduct Committee. He read into the record and filed a letter he had written to the Discipline Committee dated December 13, 2006 (Exhibit 4) containing his explanation of his actions.

9. In reply, the Professional Conduct Committee called Ms. Mathers, who testified with respect to the allegation in Mr. Greer's letter that she had contacted him on the last day of tax season and, when he had protested the timing, she had informed him that she didn't care. She confirmed that she had contacted Mr. Greer on May 1, 2006. She testified that she was not aware at the time that the tax deadline had been extended to that date and that, had she known of the tax deadline extension, she would not have made contact on that date. She denied telling Mr. Greer that she or the Institute did not care if it was the last day of tax season. Ms. Mathers also testified that none of the forms requested of Mr. Greer have been filed to date. Mr. Greer did not cross-examine Ms. Mather.

10. The evidence of the Professional Conduct Committee, which is not disputed by Mr. Greer, indicates that Mr. Greer was contacted by the Practice Inspection Department of the Institute and was required to fill out some forms preliminary to a practice inspection being conducted. Despite a number of subsequent contacts by the Institute (no less than 6 telephone calls and 4 emails), and promises by Mr. Greer, Mr. Greer did not fill out the forms and return them. Nor did he respond to the letter from Mr. Dickson of May 26, 2006, clearly marked "Final Request" and advising that if Mr. Greer did not respond in writing by June 12, 2006, the matter would be referred to the Professional Conduct Committee for action.

SUBMISSIONS

11. On behalf of the Professional Conduct Committee, Mr. Farley has submitted that the Affidavit of Mr. Dickson (Exhibit 3) is clear, cogent and convincing evidence of professional misconduct as set out in the charges, particularly when considered along with Mr. Greer's plea of guilty to both charges. He submits that the letter of December 13, 2006 from Mr. Greer (Exhibit 4) should be given little or no weight by the panel, as the comment ascribed to Ms. Mather was denied by her under oath, and there is no evidence under oath to support it being made, and, further, as its contents are irrelevant to the issue of guilt.

12. Mr. Greer advised that he did not dispute any of the facts submitted by Mr. Farley. Mr. Greer has admitted that he did not respond as required to the Institute. The explanation he provides is that he has developed a negative attitude towards the Institute in recent years, which attitude was exacerbated by the contact from the Institute on the last day of tax season.

DECISION

13. The panel finds that the evidence as presented in Exhibit 3 is clear, cogent and convincing, and supports the allegations of professional misconduct set out in the charges. The panel further finds that those allegations have been proven and that the nature and extent of the breaches of the rules are so significant as to constitute professional misconduct. The panel's decision is stated as follows:

THAT, having seen, heard and considered the evidence, and having heard the plea of guilty to charge Nos. 1 and 2, the Discipline Committee finds Mr. Robert Ernest Greer guilty of charge Nos. 1 and 2.

SANCTION

14. Counsel for the Professional Conduct Committee submits that a sanction of: a reprimand; a fine in the amount of \$4,000; and full publicity of the matter would adequately serve to rehabilitate the member and to provide both general and specific deterrence. He also seeks costs in the amount of \$4,000.

15. Mr. Farley points to a number of aggravating factors in this matter. Mr. Greer was before the Professional Conduct Committee in 1996 under similar circumstances and was, at that time, admonished by that Committee (Exhibit 6). Such an admonishment is presumed to be a powerful tool for rehabilitation and specific deterrence. Further, Mr. Greer was given a number of opportunities to comply with the requirements of the Institute, and did promise to provide the information on several occasions. On each of those occasions he breached that professional undertaking, thereby causing the Institute to waste both time and resources.

16. The fine sought, which Mr. Farley acknowledges is at the higher end of the range for such conduct, is justified, in his submission, by those aggravating factors. With respect to costs, Mr. Farley has provided a costs outline (Exhibit 8), and submits that the costs sought have been reduced considerably from those incurred, in consideration of the totality of the financial impact on Mr. Greer.

17. In conclusion, Mr. Farley notes that Mr. Greer has come dangerously close to ungovernability, in his disregard for his professional obligations to the Institute.

18. Mr. Greer, on his own behalf, asks the panel to consider that the form he was required to complete, while not itself lengthy, called for considerable detail and would have taken many hours (he estimated 20 – 35) to fill out. He further submits that the sanction sought by the Professional Conduct Committee is onerous.

ORDER

19. After consideration, the panel made the following order:

IT IS ORDERED in respect of the charges:

1. THAT Mr. Greer be reprimanded verbally and in writing by the chair of the hearing.
2. THAT Mr. Greer be and he is hereby fined the sum of \$4,000 to be remitted to the Institute within ninety (90) days from the date this Decision and Order becomes final under the bylaws.
3. THAT Mr. Greer be and he is hereby charged costs fixed at \$4,000 to be remitted to the Institute within ninety (90) days from the date this Decision and Order becomes final under the bylaws.
4. THAT notice of this Decision and Order, disclosing Mr. Greer'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 all members of the Institute;
 - (b) to the Public Accountants Council for the Province of Ontario; and
 - (c) to all provincial institutes/Ordre,
and shall be made available to the public.
5. THAT in the event Mr. Greer fails to comply with any of the requirements of this Order, he shall thereupon be suspended from the rights and privileges of membership in the Institute until such time as he does comply, provided that he complies within ninety (90) days from the date of his suspension, and in the event he does not comply within the ninety day period, he shall thereupon be expelled from 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. Greer's practice, employment and/or residence. All costs associated with the publication shall be borne by Mr. Greer and shall be in addition to any other costs ordered by the committee.
6. THAT in the event Mr. Greer fails to comply with any of the requirements of this Order, his public accounting licence shall thereupon be suspended until such time as he does comply, provided that he complies within ninety (90) days from the date of his suspension, and in the event he does not comply within the ninety day period, his licence shall thereupon be revoked. Notice of his licence suspension and revocation, disclosing his name, shall be given in the manner specified above, and in a newspaper distributed in the geographic area of Mr. Greer's practice, employment and/or residence. All costs associated with the publication shall be borne by Mr. Greer and shall be in addition to any other costs ordered by the committee.

REASONS

20. The practice inspection system, while it makes demands on the time and resources of members, is both necessary and important for protecting the public interest and ensuring members practise in compliance with the standards and requirements of the profession. It is essential that all members cooperate with and facilitate practice inspections. Mr. Greer appears to believe that he has been targeted and treated unfairly by his governing body. That is simply not so. The demands made of him are the same as are made of all members, of all firms, whether large or small.

21. Mr. Greer was given many opportunities to comply with practice inspection. He chose not to do so. It is that choice which brings him before the Discipline Committee. Compliance with the oversight of a governing body is required of every member of every self-regulated profession. If Mr. Greer is not prepared to subject himself to that oversight, he should reconsider his membership in the profession.

Reprimand

22. It must be made clear to Mr. Greer that his actions are unacceptable and risk the public trust and the reputation of the profession. He cannot pick and choose which requirements he will comply with, nor when he will comply. So strongly does the panel feel about this that we have ordered both a verbal and a written reprimand. The verbal reprimand has been administered at the hearing itself, and a copy appended to these reasons.

Fine

23. This is Mr. Greer's first appearance before a Discipline Committee and the fine imposed might, therefore, seem harsh. However, it is not the first time the Institute has attempted to deter Mr. Greer from failing to comply with practice inspection. He was put on notice in 1996 that the requirements he disregarded were essential. He appears to have paid little attention to that warning. Further, he misled Institute staff by making promises he had no intention of keeping. In his own words, he was "trying to make the problem go away" by making "rash statements that should never have been made." Such a cavalier attitude is anathema to a self-regulated profession and the quantum of the fine is necessary to express our disapprobation.

Costs

24. It was completely unnecessary that this matter progress so far that it came before the Discipline Committee. Mr. Greer could have easily satisfied the requirements and avoided the expending of resources to investigate and prosecute him. He should bear at least a portion of the costs occasioned by his conduct, and the amount sought by the Professional Conduct Committee is modest.

Notice

25. The Professional Conduct Committee seeks the usual notice to be published, an order not opposed by the member. Chartered accountancy is a self-governing profession. It is essential that it not only discipline its members effectively, but that it be seen to do so. Publishing the names of members found guilty of misconduct is one of the best mechanisms for so doing. It also serves to counsel other members of the profession and to emphasize to the member found guilty the unacceptability of his conduct. For these reasons, publication is only withheld in rare and unusual circumstances. No such circumstances having been urged upon us, the usual order for notice is

made.

Failure to Comply

26. To encourage compliance with this order, and to provide an immediate sanction should the member not comply, the panel orders that if the member fails to comply, he shall be suspended for a period of time and then, should the lack of compliance continue, be expelled.

DATED AT TORONTO THIS 23RD DAY OF FEBRUARY, 2007
BY ORDER OF THE DISCIPLINE COMMITTEE

M.B. MARTENFELD, FCA – DEPUTY CHAIR
DISCIPLINE COMMITTEE

MEMBERS OF THE PANEL:

A. HANSON, CA
R.H. CARRINGTON (PUBLIC REPRESENTATIVE)

VERBAL REPRIMAND GIVEN BY CHAIR ON JANUARY 19, 2007

Mr. Greer, this is another situation that should never have come to the Discipline Committee. You had lots of opportunity to comply with the requests of the Institute. These are requests that are made to all members of the Institute, to all firms large and small, and it's not "am I prepared to comply with the requests?" It's a requirement under the bylaws of the Institute that you do comply with the requirements of the Institute, and it's important for all self-regulating professions to have their members comply.

If you're not prepared to comply with the requirements of the Institute, then you should reconsider whether you're prepared to be a member of this Institute, and that is a very strong admonishment from this panel, and consider that to be a reprimand from the chair verbally, and you will receive it in writing.