

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

DISCIPLINE COMMITTEE

IN THE MATTER OF: A charge against **ROBERT ERNEST GREER, CA**, a member of the Institute, under **Rule 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 April 16, 2008)

1. This panel of the Discipline Committee of the Institute of Chartered Accountants of Ontario convened on April 16, 2008, to hear a charge of professional misconduct brought by the Professional Conduct Committee against Robert Ernest Greer, a member of the Institute.
2. Alexandra Hersak appeared as counsel for the Professional Conduct Committee. She was accompanied by Grant Dickson, the Director of Practice Inspection of the Institute and Patricia Roberts, formerly the Director of Standards Enforcement of the Institute.
3. Mr. Greer was present, without counsel. He confirmed that he understood he was entitled to be represented by counsel.
4. The decision of the panel was made known to the parties at the conclusion of the hearing on April 16, 2008. The written Decision and Order was sent to the parties on April 18, 2008. These reasons, set out in writing pursuant to Bylaw 574 include the charge, the decision, the order, and the reasons of the panel for the decision and the order.

Preliminary matter

5. When the hearing was called to order, and before the plea was taken, the Chair asked the parties if there were any preliminary matters to be addressed. Ms. Hersak asked that an email which Mr. Greer sent the day before the Assignment Hearing of February 7, 2008, which had been referred to at the Assignment Hearing, be marked as an exhibit. Mr. Greer did not object and his email addressed to Ms. Hersak dated February 6, 2008, at 8:56 P.M. was marked as Exhibit 3. Exhibit 1 was the Notice of Assignment Hearing for February 7, 2008. Exhibit 2 was the charge dated December 18, 2007.

The Charge and the Plea

6. The following charge was laid by the Professional Conduct Committee against Mr. Greer on December 18, 2007:

THAT the said Robert Ernest Greer, in or about the period July 30, 2007 to December 4, 2007, 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.

7. Mr. Greer entered a plea of not guilty to the charge.

8. The Chair made reference to the procedural outline which had been sent to the parties and indicated that the panel intended to follow it.

Case for the Professional Conduct Committee

9. Ms. Hersak gave a brief opening statement and filed a Document Brief which was marked as Exhibit 4. The Document Brief was organized with documents set out after two tabs. The documents following Tab 1 were documents from the practice inspection file. The documents following Tab 2 were documents from the standards enforcement file.

10. Mr. Dickson, the first witness called, testified that on May 1, 2007, Mr. Greer had been sent a notice that his practice had been selected for inspection during the 2007-2008 inspection year (Exhibit 4, Tab 1, page 101). Mr. Greer was asked to complete and return specified forms by May 31, 2007.

11. Mr. Dickson also testified that when Mr. Greer did not return the forms as requested, he sent Mr. Greer another letter, by regular and registered mail, dated June 5, 2007, which requested that he submit the requested materials by June 19, 2007 (Exhibit 4, Tab 1, page 102). Mr. Dickson made reference to the information received from Canada Post that the registered letter had been received (Exhibit 4, Tab 1, pages 103 and 104).

12. Mr. Dickson referred to notes made by a staff member on a form entitled "For Subsequent Follow Up". One note, dated June 14, 2007, indicated that Mr. Greer had been contacted and said that he would send the forms sometime the next week. Another note, dated June 22, 2007, said that "Mr. Greer will fax forms tomorrow" (Exhibit 4, Tab 1, page 105).

13. Mr. Greer responded with a letter faxed to the Institute on June 19, 2007. Mr. Greer also submitted the Desk Inspection – Planning Questionnaire – Part I and Part II and a listing of his clients (Exhibit 4, Tab 1, page 107 to 115). Mr. Greer's letter, which is found as Exhibit 4, Tab 1, page 106 reads as follows:

Please find enclosed the requested forms.

Please note that I hvae [sic] not used the "Desk Inspection – Practitioner's Client Listing" because I gave up after crashing twice while have [sic] it nearly completed.

In lieu of your form I enclose my spread sheet derived from my 2006 billing summary to which I have added the requested information

As a supplement I would advise that I am the only responsible person and I have no public companies as clients.

I would also advise that the balance of my work is for tax compliance and planning.

14. Olga Mathers, Coordinator, Practice Inspection, sent Mr. Greer a letter dated June 29, 2007 (Exhibit 4, Tab 1, page 116 and 117). The letter indicated that it had been determined that it was appropriate to proceed with a desk inspection of his practice. In this regard the letter requested that he courier to the Institute: a copy of his quality control manual; client working paper files for three specified clients; copies of his continuing professional development logs; and other documents such as engagement and representation letters (hereinafter all of which are referred to as the "requested materials") by July 30, 2007.

15. Mr. Dickson testified that as the requested materials had not been received by July 30, 2007, he sent Mr. Greer a letter on August 10, 2007, by regular and registered mail, which enclosed a copy of the letter of June 29, 2007, and again requested that he submit the requested materials on or before August 24, 2007 (Exhibit 4, Tab 1, page 118). Mr. Dickson referred to the information from Canada Post showing that the registered letter had been received (Exhibit 4, Tab 1, pages 119 and 120).

16. Mr. Dickson said that as Mr. Greer had not submitted the requested materials by August 24, 2007, he referred the matter to the Professional Conduct Committee by memorandum dated August 30, 2007 (Exhibit 4, Tab 1, pages 121 and 122).

17. Ms. Hersak drew Mr. Dickson's attention to a letter from Mr. Greer to Mr. Dickson dated May 11, 2007, which Mr. Greer sent to Ms. Roberts on October 18, 2007 (Exhibit 4, Tab 2, page 206). In this letter dated May 11, 2007, Mr. Greer said:

I am very concerned about your assistant Ms Olga Mathers handling any information about myself or my accounting practise. As I trust you are aware I was disciplined by the Discipline Committee earlier this year after I lost my cool when Ms Mathers told me on May 1, 2006 (the last day for the regular filing of 2005 T1 tax returns) that the Institute did not care if it was the last day to file client tax returns and I had to comply with her demands or else. When I confronted Ms Mathers at my hearing she blatantly lied and denied ever having said such a statement to me.

I would appreciate it if you would arrange that any information I will be submitting not pass Ms Mathers desk.

I am looking forward to your reply.

18. Mr. Dickson testified that he had not received the letter of May 11, 2007, on or about that date, but saw it for the first in October 2007, when Ms. Roberts forwarded a copy of it to him.

19. Mr. Greer cross-examined Mr. Dickson. In doing so he challenged the choice of May 1, 2007, as the date of the letter requesting the information. Mr. Dickson responded that the date was chosen because it was after the deadline for filing personal income tax returns and that it was thought inappropriate to make such requests of members during "tax season".

20. Mr. Greer challenged Mr. Dickson on the notation made with respect to a phone call to him on June 22, 2007, which noted that Mr. Greer said he "will fax forms tomorrow". Mr. Greer

pointed out that he had already sent the information by a letter transmitted by facsimile on June 19, 2007. Mr. Dickson acknowledged the apparent inconsistency.

21. The next witness called by Ms. Hersak was Ms. Roberts. She gave her evidence with reference to the exhibits found at Tab 2, of Exhibit 4.

22. Ms. Roberts sent a letter to Mr. Greer, by regular and registered mail, dated September 13, 2007. Her letter stated that the Professional Conduct Committee wished to commence an investigation into his apparent failure to respond in writing to letters from practice inspection or provide the documents relevant to his inspection. Ms. Roberts asked for a reply to her letter on or before September 28, 2007 (Exhibit 4, Tab 2, pages 201 and 202).

23. Ms. Roberts testified that she had not received a reply from Mr. Greer and followed up with telephone calls to Mr. Greer on October 1, 2007, October 9, 2007, October 15, 2007, October 16, 2007 and October 17, 2007. She made reference to notes that she made of the conversations (Exhibit 4, Tab 2, page 203).

24. On October 9, 2007, Mr. Greer advised Ms. Roberts that he had sent a reply by regular mail and suggested that she should have it in the next day or two. In response to her request that he fax a copy of it to her, he said he preferred not to.

25. Ms. Roberts testified that she received an email from Mr. Greer dated October 18, 2007, and that two letters were attached to the email. One letter, addressed to Mr. Dickson, was dated May 11, 2007. The other letter, addressed to Ms. Roberts, was dated October 5, 2007 (Exhibit 4, Tab 2, pages 204 to 207).

26. Mr. Greer cross-examined Ms. Roberts. He asked her whether there was a protocol for interaction between the Institute staff and the members. He referred to specific correspondence with other members of the staff of which Ms. Roberts was not aware.

27. Mr. Greer also asked Ms. Roberts about her failure to contact him after her letter of October 19, 2007. The letter said the matter would be referred to a subcommittee of the Professional Conduct Committee "and we shall be in further contact with you at the committee's direction". Ms. Roberts pointed out that the Professional Conduct Committee decided to charge Mr. Greer and that he was served with the charge. Ms. Roberts agreed that the first contact with Mr. Greer after her letter of October 19, 2007, had been when he was served with the charge.

28. Ms. Hersak advised the panel that the evidence of Mr. Dickson and Ms. Roberts, together with the documents contained in the document brief, constituted the case for the Professional Conduct Committee.

29. Mr. Greer made an opening statement. He said that he had asked Ms. Hersak for copies of documents which he had sent to the Institute, but she declined to produce them. Mr. Greer acknowledged that he had not sent the requested files or information and said it was because he did not trust Ms. Mathers. He also said that it was his intention to resign, but he had not heard from the Institute, in a timely way, with respect to his inquiry about resigning.

30. Mr. Greer testified about a phone conversation he had with Ms. Mathers on May 1, 2006; the phone conversation referred to in his letter dated May 11, 2007. He testified he found it peculiar that the letter he had received advising him that his practice had been selected for

inspection in the 2007 – 2008 year was dated May 1, 2007. He testified that the fact the letter was written one year after the previous discussion caused him to stew for a week or two before he finally replied to the request.

31. He testified that even after Ms. Roberts became involved, he was concerned that he had not received a response concerning his request that the information which he provided not pass Ms. Mathers' desk.

32. Ms. Hersak cross-examined Mr. Greer. He acknowledged that he had not provided the requested materials set out in the letter from practice inspection of June 19, 2007. He also acknowledged that he had received and understood the letters which were sent to him. He agreed that he had told Ms. Roberts that he preferred not to send the responses to her by facsimile and added that he thought he said he preferred to send them via email.

33. Mr. Greer made it clear during his cross-examination that he had found the Institute unhelpful when dealing with a dispute with an international firm which had employed him and later with respect to a dispute with a partner. He said that he had lost faith in the Institute and said that it did not really matter to him whether he had the CA designation or not.

34. In response to a question from a member of the panel, Mr. Greer stated he became a CA student in 1967, wrote the UFE in 1970, and received his CA designation in late 1970 or the spring of 1971. He also indicated that he had a practice inspection in the 1990's and that he had been lax in getting the materials in and was told one of his files was sloppy. He said that he had two further practice inspections after the year 2000, which had been satisfactory. He had been employed by an international accounting firm until 1989 and had practised in partnership for a short period of time in 1989. He had been a sole practitioner since 1990.

Submissions on the charge

35. Ms. Hersak submitted that the evidence was clear, cogent and convincing that Mr. Greer had not cooperated and had not sent the requested materials despite having many months to do so.

36. In his submissions, Mr. Greer again acknowledged that he did not send in the requested materials. He submitted that he had tried to communicate his intention to resign and asserted that if the Institute staff had assisted him, he would not have been a member and not subject to practice inspection.

37. When the parties had finished their submissions, they withdrew while the panel deliberated.

Decision with respect to the charge

38. The panel concluded, as Mr. Greer acknowledged, that he had not cooperated with practice inspection in the period July 30, 2007 to December 4, 2007, as alleged in the charge.

39. The panel also concluded that Mr. Greer's alleged concern about Ms. Mathers could not justify a failure to provide the requested materials. Further, the panel did not accept Mr. Greer's explanation that concern about Ms. Mathers was the reason he failed to provide the requested materials.

40. If Mr. Greer did send the letter dated May 11, 2007, on or about that date, and was not satisfied because he did not receive a reply or confirmation, he could and should have contacted Mr. Dickson directly to discuss his concern.

41. Mr. Greer's letter of June 19, 2007, the letter which was sent with his client list and other information, made no mention of a failure to reply to his letter of May 11, 2007, or confirmation from practice inspection that information would not pass Ms. Mathers' desk. The letter and information sent showed a willingness to comply with the practice inspection as of June 19, 2007.

42. As set out above, the panel concluded that the allegation set out in the charge had been proven. Further, as the panel concluded his failure to provide the requested materials was not justified, it found that his refusal to cooperate constituted professional misconduct and he was found guilty of the charge. When the hearing reconvened, the Chair read the following decision for the record:

THAT, having seen, heard and considered the evidence, and having heard the plea of not guilty to charge No.1, the Discipline Committee finds Mr. Robert Ernest Greer guilty of the charge.

SANCTION

Evidence

43. The Professional Conduct Committee filed documentary evidence entitled "Document Brief – Sanction" (Exhibit 5). This document brief included a letter of admonishment written by the Chair of the Professional Conduct Committee to Mr. Greer dated May 9, 1996. The admonishment related to his failure to cooperate on a timely basis with practice inspection contrary to Rule 203.2. Mr. Greer acknowledged receipt of the admonishment letter by a letter dated May 14, 1996 (Exhibit 5, Tab 1).

44. The Document Brief also included a transcript of the conclusion of the proceedings before the Discipline Committee on January 19, 2007, (Exhibit 5, Tab 2) and a copy of the reasons of the panel of the Discipline Committee for its decision and order made on January 19, 2007, which reasons were dated February 23, 2007 (Exhibit 5, Tab 3).

45. Ms. Hersak reviewed the letter of reprimand, the transcript, and the reasons of the Discipline Committee for its decision of January 19, 2007.

46. Mr. Greer indicated that he did not intend to call evidence with respect to sanction, but would make submissions.

Submissions as to sanction

47. Ms. Hersak asked for an order which included: a fine of \$5,000; costs of \$3,000; expulsion from membership in the Institute; revocation of Mr. Greer's public accounting licence; and publication in the usual form for such orders including publication of a notice disclosing Mr. Greer's name in *CheckMark*, to the CICA, to the Public Accountants Council for the Province of Ontario, to the other provincial Institutes and in a newspaper published and distributed in Kitchener, Waterloo, where Mr. Greer carries on practice.

48. Ms. Hersak submitted that as Mr. Greer was ungovernable, the principles of specific deterrence and rehabilitation, two of the three general principles which are normally considered when sanction is imposed, were not relevant in this case. Ms. Hersak submitted that the third general principle, general deterrence, was relevant and required that Mr. Greer be expelled.

49. Ms. Hersak submitted that expulsion was required given the aggravating circumstances of this case which included: the many months during which Mr. Greer had not responded to practice inspection or standards enforcement; and Mr. Greer's earlier failures to cooperate with practice inspection as evidenced by the admonishment of May 1996, and the decision of the Discipline Committee of January 19, 2007. Ms. Hersak also emphasized that at the hearing Mr. Greer made it clear that he did not take responsibility for his own misconduct, did not apologize or show any remorse for the misconduct and instead blamed others for his circumstances.

50. Ms. Hersak filed a cost brief (Exhibit 6), which outlined the costs of investigating and prosecuting Mr. Greer which exceeded \$6,000.

51. Ms. Hersak submitted that in this case there were no rare and unusual circumstances which would justify withholding Mr. Greer's name from the notice of his expulsion including the notice to be published in the *Kitchener - Waterloo Record*.

52. Ms. Hersak reviewed six authorities which were included in the Document Brief – Sanction (Exhibit 5). These authorities were: *Bunte, Carroll, Ciolfe, Kelley, Perris, and Winick*.

53. Mr. Greer submitted that his case was clearly distinguishable from the authorities referred to by Ms. Hersak. In his view, he had started the process to resign, and if the Institute staff had cooperated, he would have been able to resign in the summer of 2007. In effect, he was still subject to practice inspection because of the failure of the Institute staff to respond appropriately.

54. He said that the fine and costs requested were acceptable to him, and that he was not adverse to publication, but it should be publication of his resignation.

55. In reply, Ms. Hersak referred to three cases in which resignation had been considered, namely: *Rellinger, Inglis, and Pyne* (Exhibit 7). Ms. Hersak submitted that Mr. Greer's conduct required expulsion, there was nothing which had prevented him from providing the requested materials, but he had refused to do so and refused to take responsibility for his actions.

56. By way of rebuttal, Mr. Greer reiterated he was not functioning as a Chartered Accountant and that if the staff had responded appropriately he would have been allowed to resign. He submitted that with respect to protecting the public there would be no difference whether he was allowed to resign or was expelled.

57. When the parties had concluded their submissions, they withdrew while the panel deliberated with respect to sanction.

Conclusion with respect to Sanction

58. As there was no issue with respect to fine, costs or publication, the essential issue which the panel had to determine was whether or not Mr. Greer should be allowed to resign or should be expelled.

59. It is acknowledged that a resignation from membership, with the appropriate undertakings not to reapply for membership, not to hold oneself out as a member or to practise as a Chartered Accountant, would maintain the standards of the profession and protect the public the same as if a member were expelled.

60. In *Inglis*, a May 1993 decision of the Discipline Committee, the reasons make it clear that the misconduct involved a pervasive failure to observe the standards of the profession and association with financial statements which were false and misleading. In those circumstances, the Discipline Committee thought as a matter of general deterrence, despite his previously unblemished record and the fact that he was 70 years of age, that Mr. Inglis should be expelled rather than permitted to resign.

61. Mr. Inglis' appeal to the Appeal Committee was dismissed. In the course of their reasons the Appeal Committee said, "Neither was the appeal committee convinced that the member's resignation rather than expulsion was a sufficient or appropriate specific and general deterrent in the circumstances of this case, notwithstanding the age or untarnished record of the member."

62. In *Pyne*, a decision of the Discipline Committee on September 11, 2007, the member was permitted to resign because the underlying cause of his professional misconduct, a pervasive failure to comply with the standards of the profession, was mental illness. The Discipline Committee noted that the misconduct did not involve moral turpitude and that there was no sanction which could deter other members from misconduct which resulted from mental illness.

63. While Mr. Greer's misconduct did not involve moral turpitude, as Mr. Inglis' misconduct did, it is also clear that unlike Mr. Pyne, Mr. Greer's misconduct was a result of a conscious, deliberate decision on his part. Mr. Greer did not have a previously untarnished record. The panel concluded that in the absence of a satisfactory explanation for the misconduct, the principle of general deterrence required that Mr. Greer be expelled.

64. Mr. Greer's position was that he wanted to resign and only inappropriate responses from the Institute staff precluded his resignation. The panel concluded that there was no creditable evidence that Mr. Greer decided to resign or had taken reasonable steps to do so.

65. In light of the remarks of the Chair and the verbal reprimand which he was given on the record at the conclusion of the hearing of January 19, 2007, Mr. Greer should have known that he had the choice of either continuing to be a member and complying with the requirements of his governing body or finding out what he had to do to resign and resigning. He had ample time to resign before he received the letter from practice inspection in May 2007. He did not file any correspondence to or from the Institute about resigning in the three months between January and May 2007.

66. According to his letter of October 5, 2007, to Ms. Roberts, after the hearing in January 2007, he had written to the Institute "concerning the issue of whether I should voluntarily surrender my designation". While this is some evidence that he was thinking about resigning, there is no evidence that he actually decided to resign or took reasonable steps to do so before the letter from practice inspection of May 1, 2007.

67. It is noteworthy that his letter of June 19, 2007, to practice inspection, made no reference to a desire to resign, but rather it provided the information necessary to proceed with the practice inspection.

ORDER

68. After considering the submissions and precedents, the panel decided for the reasons set out above that Mr. Greer should be expelled and should not be allowed to resign, and made the following order:

IT IS ORDERED in respect of the charge:

1. THAT Mr. Greer be and he is hereby fined the sum of \$5,000 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. Greer be and he is hereby charged costs fixed at \$3,000 to be remitted to the Institute within six (6) months from the date this Decision and Order becomes final under the bylaws.
3. THAT Mr. Greer be and he is hereby expelled from membership in the Institute.
4. THAT the public accounting licence of Mr. Greer be and it is hereby revoked.
5. 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.
6. THAT notice of the expulsion and revocation of Mr. Greer's public accounting licence disclosing his name be given by publication on the Institute's website and in the *Kitchener-Waterloo Record*. 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.
7. THAT Mr. Greer surrender his certificate of membership in the Institute and public accounting licence to the discipline committee secretary within ten (10) days from the date this Decision and Order becomes final under the bylaws.

Fine

69. As is set out above, there was no dispute between the parties with respect to the requested fine. The panel concluded that a fine of \$5,000 was required as a general deterrent to other members. While there was no suggestion that Mr. Greer was unable to pay the fine, the panel allowed for a period of six months within which the fine is to be paid.

Costs

70. As with the fine, there was no dispute between the parties with respect to the requested costs. The panel concluded that it was appropriate for Mr. Greer to indemnify the Institute for part of the costs of the investigation and proceedings which were incurred solely because of his misconduct. As with the fine, the panel allowed Mr. Greer six months to pay the costs.

Public accounting licence

71. As Mr. Greer is to be expelled, his public accounting licence must be revoked as provided in the bylaws and he should return his public accounting licence to the Discipline Committee Secretary.

Certificate of Membership

72. As Mr. Greer is to be expelled from membership in the Institute, he should return the certificate of membership to the Discipline Committee Secretary.

Publication

73. It was not suggested there are any rare or unusual circumstances which would make it inappropriate to publish Mr. Greer's name. As he will be expelled and no longer have a licence to practise public accounting, the public interest and the principle of general deterrence require that notice of his expulsion and revocation of his public accounting licence should be given to the profession and to the public. Accordingly, as is normal, notice should be given in *CheckMark* as well as to the Public Accountants Council for the Province of Ontario, the other provincial Institutes and the Canadian Institute of Chartered Accountants. A notice, disclosing Mr. Greer's name should also be published in the *Kitchener-Waterloo Record*, a newspaper published where he resides and practiced. All costs associated with the publication of the notice shall be borne by Mr. Greer and shall be in addition to any other costs ordered.

DATED AT TORONTO THIS 21ST DAY OF AUGUST, 2008
BY ORDER OF THE DISCIPLINE COMMITTEE

D.W. DAFOE, FCA – DEPUTY CHAIR
DISCIPLINE COMMITTEE

MEMBERS OF THE PANEL
J.B. BARRACLOUGH, FCA
P.W. WONG (PUBLIC REPRESENTATIVE)