

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

**DISCIPLINE COMMITTEE**

**IN THE MATTER OF:** Charges against **RONALD EDWARD DAY, CA** a member of the Institute, under **Rules 201.1 and 205** of the Rules of Professional Conduct, as amended.

**TO:** Mr. Ronald E. Day  
1070 Lithium Drive  
THUNDER BAY, ON P7B 6G3

**AND TO:** The Professional Conduct Committee, ICAO

**REASONS**  
**(Decision and Order Made March 19, 2009)**

1. This panel of the Discipline Committee of the Institute of Chartered Accountants of Ontario, convened on March 19, 2009, to hear charges of professional misconduct brought by the Professional Conduct Committee against Mr. Ronald Edward Day, a member of the Institute.
2. The Professional Conduct Committee was represented by Mr. Brian Bellmore. He was accompanied by Mr. Andrew Shin, CA, CA-IFA, MACC, the investigator appointed by the Professional Conduct Committee.
3. Mr. Day was not present. He was represented by his counsel, Ms. Amy Parker.
4. The decision and the terms of the order were made known at the hearing on March 19, 2009. The written Decision and Order was sent to the parties on March 25, 2009. 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. Day by the Professional Conduct Committee on November 4, 2008:

1. THAT the said Ronald E. Day, while a partner with the firm "DVBK Chartered Accountants" in or about the period June 14, 2004 through June 30, 2007, failed to conduct himself in a manner that will maintain 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. he prepared cash-flow projections on behalf of a client, "GEDC" using firm

resources, and charged, in the name of Ronald E. Day Consulting, fees to that client in the amount of \$4,185, and collected same outside of the partnership and in contravention of the partnership agreement without informing his partners;

- b. he failed to disclose on his personal income tax return fees charged by him to "GEDC," for professional services rendered in the amount of \$4,185 and did thereby evade the payment of tax properly payable; and
  - c. he charged fees to "GEDC" in the amount of \$4,185 but failed to collect and remit Goods and Services Tax on that sum and did thereby evade the payment of tax properly payable.
2. THAT the said Ronald E. Day, while a partner in the firm "DVBK Chartered Accountants" in or about the period June 26, 2004 and August 31, 2007 failed to conduct himself in a manner that will maintain 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. he failed to bill a client, "S&C" for professional services rendered by "DVBK" for the fiscal year of "S&C" ended August 31, 2004 in view of the fact that he owed "S&C" for decorating services which were subject to a "contra arrangement" and did thereby deprive "DVBK" of income in contravention of the partnership agreement without informing his partners;
  - b. he failed to disclose on his personal income tax return a benefit in the amount of \$2,280 received by him from a client, "S&C" in exchange for professional services rendered by "DVBK" and did thereby evade the payment of tax properly payable; and
  - c. he failed to bill a client, "S&C" for professional services rendered by "DVBK" for the fiscal year of "S&C" ended August 31, 2004 and therefore failed to collect and remit GST in respect of those services. and did thereby evade the payment of tax properly payable.

### **The plea**

6. Ms. Parker entered a plea of guilty to both charges and confirmed that she did so on the instructions of Mr. Day.

### **The proceedings with respect to the charges**

7. Mr. Bellmore made an opening statement. He then called Mr. Shin, his first and only witness. In giving his evidence, Mr. Shin referred to a Document Book (Exhibit 2) which included: Mr. Day's partnership agreement; time sheets from "DBVK" (Mr. Day's then firm); an invoice Mr. Day sent to the client of his firm identified as "GEDC" in charge 1; Mr. Day's income tax return for the year 2004; an invoice to the client identified in charge 2 as "S&C" dated 1/31/07; and an invoice from the client "S&C" to Mr. Day dated 9/1/07.

8. Mr. Shin testified about what he found while conducting the investigation, including and, in particular, the admissions Mr. Day made when he was interviewed.

9. Ms. Parker had no questions for Mr. Shin. Members of the panel did have some questions for Mr. Shin. At the conclusion of the questions, Mr. Bellmore closed the case for the Professional Conduct Committee. He then made submissions with respect to the charges. Ms. Parker did not make submissions

## **DECISION**

10. After deliberating, the panel made the following decision:

THAT, having seen, heard and considered the evidence, and having heard the plea of guilty entered by Mr. Day's counsel on his behalf to charge Nos. 1 and 2, the Discipline Committee finds Mr. Ronald E. Day guilty of charge Nos. 1 and 2.

## **Reasons for the Decision**

11. The panel accepted Mr. Shin's unchallenged evidence. The facts, as the panel finds them to be and the conclusions which follow, are set out below.

### **Charge No. 1**

12. Mr. Day was the partner of the firm Day Viherjoki Busniuk & Kelly (DVBK), who was responsible for the audit of a client in 2004. The audit was done and an invoice was rendered by the firm for the audit. Mr. Day also did some consulting work for this client. However, he billed for the consulting work with an invoice from "Ronald E Day Consulting", an entity, which he created for the purpose of collecting the consulting fee of \$4,185 outside of the partnership. This was done in contravention of the partnership agreement and without the knowledge of his partners.

13. Mr. Day received the \$4,185 from the client. He did not disclose the receipt of this money to his partners. He did not report the money on his income tax return and thereby avoided the payment of the tax payable. Mr. Day also failed to remit goods and services tax on the money he received. While Mr. Day might have been entitled to an exemption from GST if the income had been earned by Ronald E Day Consulting, the fact is the income was properly earned by the partnership and Mr. Day's conduct evaded the payment of GST when it should have been paid. In 2007, when Mr. Day's partners found out about the fictitious invoice, the money was paid to the firm, the revenue was reported and GST was paid. This does not excuse Mr. Day's misconduct in 2004.

14. The panel concluded that charge 1 had been proven and Mr. Day was found guilty of the charge.

### **Charge No. 2**

15. Mr. Day entered into an agreement with a client in 2004, whereby he agreed not to charge the client for the accounting services provided by his firm, and the client agreed not to charge Mr. Day for services it provided for his wedding.

16. Mr. Day did not disclose this agreement to his partners. The value of the services provided to Mr. Day for the wedding was \$2,280. Mr. Day did not report the value of the benefit he received (\$2,280) on his income tax return and thereby evaded payment of income tax properly payable. As neither the wedding services nor the offsetting accounting services were invoiced, no GST was paid in 2004.

17. After Mr. Day's misconduct was discovered in 2007, he agreed to pay the client for the wedding services, and the client was invoiced and paid the accounting firm for the accounting services rendered in 2004. The fact that the value of the services was ultimately recorded as revenue for tax purposes, and GST was ultimately paid, does not exonerate Mr. Day's misconduct in 2004.

18. The panel concluded that the charge had been proven and Mr. Day was found guilty of the charge.

### **SANCTION**

19. Neither party called evidence with respect to sanction.

20. Mr. Bellmore outlined the sanction which the Professional Conduct Committee sought, namely: a reprimand; a fine of \$10,000; a suspension for six months; and the customary publicity, including a notice in *CheckMark* disclosing the member's name. The Professional Conduct Committee also asked for an order for costs in the amount of \$12,500.

21. Mr. Bellmore submitted that the misconduct demonstrated a lack of integrity, a core qualification of the CA profession. He submitted that Mr. Day's lack of integrity affected his clients, his partners, his associates and the government.

22. Mr. Bellmore filed a Book of Authorities (Exhibit 3) and he referred to the cases of *Norris* (1992), *Greenspan* (1999), and *Stone* (2009), which he said were precedents that supported the terms of the order sought.

23. Mr. Bellmore submitted that a suspension was necessary as both a specific deterrent to Mr. Day, and a general deterrent to other members. It was the position of the Professional Conduct Committee that acting dishonestly and without integrity breached the fundamental duties of the profession and required a sanction which would be seen to have an impact on Mr. Day. He added that the evasion of tax, albeit the amount of tax evaded was relatively small and was ultimately paid, was a factor which supported the imposition of a suspension.

24. Mr. Bellmore filed a Costs Outline (Exhibit 4) which showed that the total cost of the investigation and hearing exceeded \$42,000. He said that the Professional Conduct Committee had concluded, given the charges which actually arose from the investigation, the appropriate partial reimbursement for costs would be \$12,500, 50% of the costs attributable to the investigation relative to the charges actually made and the hearing itself.

25. Ms. Parker said that the member accepted that a reprimand, a suspension of six months, and an order for costs was appropriate. She asked that Mr. Day be given six months to pay the \$6,250 for costs.

26. Ms. Parker submitted that a fine of \$5,000, payable in 90 days, would be a more appropriate fine. She referred to the cases of *Norris*, *Greenspan* and *Stone*, particularly the

amount of the fine imposed in those cases, and suggested that in light of Mr. Day's cooperation, and the fact that he had accepted responsibility for the misconduct, a fine of \$5,000 would be more appropriate.

27. As it seemed there was some confusion about the amount of the costs actually claimed, the panel asked for clarification. It became clear that the amount sought by the Professional Conduct Committee for costs was actually \$12,500. The total costs of the investigation and hearing exceeded \$42,000, however the Professional Conduct Committee concluded that \$25,000 of this amount was attributable to the prosecution and hearing and that part of the investigation which resulted in the charges. Ms. Parker was still of the view that costs of \$6,250 would be more appropriate.

28. In reply, Mr. Bellmore submitted that a fine of \$5,000 was too low, particularly given that the fine in *Norris*, a 1992 decision, was \$7,500.

### **Order**

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

IT IS ORDERED in respect of the charges:

1. THAT Mr. Day be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Day be and he is hereby fined the sum of \$5,000 to be remitted to the Institute within three (3) months from the date this Decision and Order becomes final under the bylaws.
3. THAT Mr. Day be suspended from the rights and privileges of membership in the Institute for a period of six (6) months from the date this Decision and Order becomes final under the bylaws.
4. THAT the public accounting licence of Mr. Day be suspended for a period of six (6) months from the date this Decision and Order becomes final under the bylaws.
5. THAT notice of this Decision and Order, disclosing Mr. Day'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 Mr. Day 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.
7. THAT in the event Mr. Day fails to comply with the requirements of this Order, he shall thereupon be suspended from the rights and privileges of membership in the Institute and his public accounting licence shall

thereupon be suspended until such time as he does comply, provided that he complies within three (3) months from the date of his suspension, and in the event he does not comply within the three (3) month period, he shall thereupon be expelled from membership in the Institute and his licence shall thereupon be revoked, and notice of his expulsion and licence revocation, disclosing his name, shall be given in a newspaper distributed in the geographic area of Mr. Day's practice, employment and/or residence. All costs associated with the publication shall be borne by the member and shall be in addition to any other costs ordered by the committee.

**AND IT IS FURTHER ORDERED:**

8. THAT Mr. Day be and he is hereby charged costs fixed at \$7,500 to be remitted to the Institute within six (6) months from the date this Decision and Order becomes final under the bylaws.

**Mr. Day's misconduct**

30. The panel agreed with counsel for the Professional Conduct Committee that Mr. Day's misconduct, acting dishonestly and without integrity, breached the fundamental requirements of the profession. His misconduct did affect his then partners, his clients and government. Moreover, his misconduct damaged the good reputation of the profession and, therefore, its ability to serve the public interest. It appears that Mr. Day has already paid a price for his misconduct as he has left his firm. However, the panel was convinced that both Mr. Day and the membership at large must know that such misconduct will result in a significant sanction.

**Reprimand**

31. The panel ordered that Mr. Day be reprimanded to emphasize to him the seriousness of his misconduct and the fact that it would not be tolerated.

**Fine and suspension**

32. The panel concluded that as a matter of general deterrence and specific deterrence, the sanction imposed in this case should be seen to have a significant impact on Mr. Day. Further, the panel concluded that the impact of the order would depend on the notice, the fine and the suspension.

33. Given his circumstances and the misconduct in this case, the panel concluded that a fine of \$5,000, payable in six months, and a suspension of six months were appropriate. It is relevant that Mr. Day is not a member of a firm who could be given other duties which would minimize the impact of a suspension.

**Notice**

34. The Discipline Committee and the Appeal Committee have established that notice to the profession disclosing the member's name serves the purpose of specific deterrence and general deterrence, and informs both the membership at large and the public that the Institute takes the obligation to govern its members' conduct seriously.

35. It has been held that it is only in the most rare and unusual circumstances that the name of the member should be withheld from the notice. As members value their reputations, the effectiveness of the notice lies in the fact that members know that should they misconduct themselves, any finding of their misconduct and the sanction imposed will be made known to the profession and made available to the public. In this case, there were no rare and unusual circumstances that outweighed the need for publication of the notice disclosing the member's name.

36. Bylaw 575(3) requires that the suspension of a public accounting licence be posted on the Institute's website and published in a newspaper in the area of the member's practice, unless such notice is not necessary for the protection of the public and would be unfair to the member. The panel has considered whether to order such publication and has determined it should not be made. Mr. Day does not practise in a large, anonymous city where such notice might be required to inform the public of his status. Further, the professional misconduct of which he was found guilty was unrelated to his competence as a public accountant or his ability to perform engagements to the standards of the profession, and the suspension of his licence, which coincides with his suspension from membership, is not of such a lengthy period as to necessitate notice.

#### **Suspension and Expulsion for failure to comply**

37. An order of the Discipline Committee which did not provide for consequences in the event a member fails to comply with the terms of the order would be meaningless. Accordingly, as is usual, this order provides that if the member fails to comply with any terms of the order, he shall first be suspended, and if he still does not comply, he will be expelled. In the event of expulsion, notice will be given in a newspaper published in the area where the member practised or resides, and the costs of the publication shall be borne by the member.

#### **Costs**

38. The panel was satisfied that Mr. Day, whose misconduct was responsible for the costs of the investigation and hearing, should reimburse the Institute to the extent of \$7,500. The panel also thought that Mr. Day should be given six months to pay the costs.

DATED AT TORONTO THIS 28th DAY OF JULY 2009.  
BY ORDER OF THE DISCIPLINE COMMITTEE

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

#### **MEMBERS OF THE PANEL:**

R.A. VICKERS, FCA  
S.B. WALKER (PUBLIC REPRESENTATIVE)  
D.G. WILSON, CA