

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

**DISCIPLINE COMMITTEE**

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

**TO:** Mr. Sidney F. Wilner, CA  
156 Banbury Rd.  
Don Mills, ON M3B 2L8

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

**REASONS**  
**(Decision and Order Made April 13, 2007)**

1. This panel of the Discipline Committee of the Institute of Chartered Accountants of Ontario met on April 13, 2007, to hear charges of professional misconduct brought by the Professional Conduct Committee against Mr. Sidney Freeman Wilner, a member of the Institute.
2. Mr. Paul Farley appeared on behalf of the Professional Conduct Committee. Mr. Wilner attended and was represented by Mr. Howard Kerbel.
3. The decision of the panel was made known at the conclusion of the hearing and the written Decision and Order sent to the parties on May 14, 2007. These reasons, given pursuant to Bylaw 573, contain the charges, the decision, the order, and the reasons of the panel for its decision and order.

**CHARGES**

4. The following charges were laid against Mr. Wilner by the Professional Conduct Committee on July 11, 2006:
  1. THAT the said Sidney Freeman Wilner, in or about the period February 24, 2005 to March 7, 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 Sidney Freeman Wilner, in or about the period October 24, 2005 to May 9, 2006, failed to promptly reply in writing to a letter from the Institute dated October 24, 2005, in which a written reply is specifically required, contrary to Rule 104 of the rules of professional conduct.
  3. THAT the said Sidney Freeman Wilner, in or about the period March 13, 2006 to May 9, 2006, failed to co-operate with officers, servants or agents of the Institute who have been appointed to arrange or conduct an investigation on behalf of the

professional conduct committee, in that he failed to provide information requested in a letter dated March 13, 2006, contrary to Rule 203.2 of the rules of professional conduct.

## **PLEA**

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

## **EVIDENCE**

6. The Professional Conduct Committee tendered the affidavits of Grant Dickson, Director of Practice Inspection (Exhibit 4) and Patricia Roberts, Director of Standards Enforcement (Exhibit 5) together with a chronology (Exhibit 6) of the events set out in the affidavits. Those affidavits are evidence that Mr. Wilner was selected randomly for a practice inspection and required to fill out a series of standard forms. Despite numerous communications to him, he failed to respond and, eventually, the matter was referred by the Practice Inspection Committee to the Professional Conduct Committee.

7. The Professional Conduct Committee, through Standards Enforcement, also made many efforts to communicate with Mr. Wilner, without a response. Five months after initially being requested to complete the forms, Mr. Wilner did provide the forms necessary to commence the practice inspection and apologized for the delay explaining that he had been incapacitated for several weeks.

8. As a result of his belated compliance, the Professional Conduct Committee decided not to proceed to formal charges, but provided Mr. Wilner with guidance and advice in an admonishment letter. Mr. Wilner was required to acknowledge in writing receipt of this letter dated October 24, 2005. As of the date of the hearing he had failed to do so, despite numerous requests and reminders.

9. Having received the forms, practice inspection selected a specific file and wrote to Mr. Wilner, requiring him to deliver it by December 2, 2005. He did not, nor did he respond to practice inspection despite a number of communications from them. Once again, the matter was referred to the Professional Conduct Committee. On March 7, 2006, Mr. Wilner delivered the file when he came to appear before the Professional Conduct Committee to answer the complaint.

10. As a result of his attendance before the Professional Conduct Committee, that committee had certain questions, which were put to Mr. Wilner in writing in a letter dated March 13, 2006. Mr. Wilner failed to respond to those questions, despite follow up requests, although he did reply to them verbally two months later at a subsequent attendance before the Professional Conduct Committee.

11. The file provided by Mr. Wilner was reviewed by a practice inspector, and no significant deficiencies were noted.

12. The Professional Conduct Committee called no further evidence, and Mr. Wilner neither called evidence nor made submissions on the issue of guilt.

## **DECISION**

13. The evidence of a consistent pattern of failing to respond promptly to requests of the Institute in this matter is clear, cogent, compelling and uncontradicted, and proves the breaches of the rules as alleged in the charges. Further, those breaches, and the failure to meet the accepted standards of practice, are so significant as to constitute professional misconduct. After deliberating, the panel made the following decision:

THAT, having seen and considered the evidence, including exhibits filed, and having heard the plea of guilty to charge Nos. 1, 2 and 3, the Discipline Committee finds Mr. Sidney Freeman Wilner guilty of charge Nos. 1, 2 and 3.

## **SANCTION**

14. Counsel for the Professional Conduct Committee has submitted that a sanction of: a written reprimand; three professional development courses (*Staying out of Trouble, Organize for Success, and Time Management – Surviving Your Schedule*); and publicity in the usual course would satisfy the principles of rehabilitation and both general and specific deterrence. He has also sought costs in the amount of \$3,000 and filed an outline of costs (Exhibit 8).

15. It is the submission of the Professional Conduct Committee that Mr. Wilner is capable of rehabilitation and that such rehabilitation should be encouraged. However, the practice inspection system is an important component of public confidence in chartered accountancy, and any failure to abide by the requirements of practice inspection must be treated with great seriousness.

16. The Professional Conduct Committee is not seeking a fine in this matter, although the precedents indicate a fine in the range of \$4,000 would be appropriate, solely due to the member's straitened financial circumstances. Therefore, the publicity is the only aspect of the proposed sanction which speaks to the issue of deterrence.

17. On behalf of Mr. Wilner, Mr. Kerbel has taken issue with only two aspects of the proposed sanction – the publicity and the costs. It is his submission that there are rare and unusual circumstances which should lead this panel not to make an order for publicity. In particular, he has pointed out that Mr. Wilner has been a member of the Institute for forty years, and has an unblemished record. His practice is winding down, and he has approximately 15 clients. He is not accepting new clients.

18. Mr. Kerbel has also submitted that the behaviour which has brought Mr. Wilner before the Discipline Committee is uncharacteristic of him, and will not be repeated. Mr. Wilner went through an 18 month period of extreme personal stress and loss, which greatly impeded his functionality.

19. Given Mr. Wilner's very modest means, Mr. Kerbel has submitted that the costs ordered, if any, should be low and that Mr. Wilner should be given a lengthy time in which to pay. In summary, he notes Mr. Wilner's long history of exemplary service and the fact that no harm was done to any client or member of the public.

20. Counsel for the Professional Conduct Committee submitted in reply that a period of eight to twelve months to pay costs should be permitted.

21. After the commencement of deliberations, the panel had some concerns about the lack of a fine being sought in this matter, and so recalled the parties to make further submissions.

22. The Professional Conduct Committee has taken the position that rehabilitation is the most important principle in this matter and that the principle of deterrence may be adequately addressed

through publicity. Although a fine is usually ordered, it should not be tantamount to expulsion.

23. Mr. Wilner, through his counsel, would remind the panel that the decision whether to impose a fine is completely within the discretion of the panel, and that precedent cannot be a substitute for that discretion. He has submitted that the imposition of a fine would add nothing to the gravity of the result.

## ORDER

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

IT IS ORDERED in respect of the charges:

1. THAT Mr. Wilner be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Wilner be and he is hereby fined the sum of \$1,000 to be remitted to the Institute within nine (9) months from the date this Decision and Order becomes final under the bylaws.
3. THAT Mr. Wilner be and he is hereby charged costs fixed at \$2,000 to be remitted to the Institute within eighteen (18) months from the date this Decision and Order becomes final under the bylaws.
4. THAT Mr. Wilner be and he is hereby required to pay for and complete, in their entirety, within eighteen (18) 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*;
  - (b) *Organize for Success*; and
  - (c) *Time Management – Surviving Your Schedule*.
5. THAT notice of this Decision and Order, disclosing Mr. Wilner'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 in the event Mr. Wilner fails to comply with all 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 three (3) months from the date of his suspension, and in the event he does not comply within the three month 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. Wilner's practice, employment and/or residence. All costs associated with the publication shall be borne by Mr. Wilner and shall be in addition to any other costs ordered by the committee.

## **REASONS FOR THE ORDER**

25. Chartered accountancy is a self-regulated profession. One integral aspect of self-governance is the public trust in the profession's ability to protect the public from breaches by its members of the standards and duties of the profession. Practice inspection is one of the most significant means by which the Institute carries out that mandate. The circumvention by any member of the practice inspection process erodes the public trust and threatens self-governance itself. It is a matter of the greatest gravity.

### ***Reprimand***

26. A reprimand is necessary to emphasize to Mr. Wilner the serious nature of his actions and the lack of tolerance by the Institute for the obstructing of processes necessary for the preservation of the integrity of the profession and the public interest.

### ***Professional Development***

27. The Professional Conduct Committee has submitted that Mr. Wilner is capable of rehabilitation. This panel agrees. His history would indicate he has been a competent, functioning member of this profession; there is every expectation that he will again. The courses of professional development ordered will assist in that rehabilitation.

### ***Fine***

28. The fine of \$1,000 ordered by the panel in this matter is minimal and but for Mr. Wilner's exceptionally modest financial circumstances and means, the quantum of the fine would have been much higher. Such a quantum would, in these unique circumstances, have proved, in effect, an expulsion, rendering any rehabilitation irrelevant and imposing a sanction beyond our intent. And so we have tempered justice with mercy.

### ***Costs***

29. Likewise, the costs of \$2,000 ordered in this matter are extraordinarily modest, for the same reasons as given above. Before moving away from the financial aspects of the sanction, there is one concern the panel would like to articulate. While both parties made submissions as to the financial circumstances of the member, neither party provided any evidence to support those submissions. The panel finds this troubling, particularly in a matter where it has been urged to impose a sanction that would otherwise be considered inappropriate, by reason of those financial circumstances.

### ***Notice***

30. Mr. Wilner appears to have lost control over important business aspects of his practice. The Institute communicated with him on 31 occasions. At no time prior to his attendance at the assignment hearing for this discipline matter did Mr. Wilner provide an explanation for his non-responsiveness. Nor did he seek help. As our profession ages, it is possible that there will be an increasing incidence of such difficulties, and it is essential that the membership be aware of and guard against this danger. Publicity is the most effective means of ensuring the membership is made aware and wary. Publicity also assures the public that their trust is well-placed.

***Failure to Comply***

31. To encourage compliance with discipline orders in cases in which members are not expelled outright, orders of a panel generally specify suspension, followed by, should the member still fail to comply, expulsion from membership with newspaper notification to the public as an ultimate consequence for non-compliance. The panel so orders in this proceeding.

DATED AT TORONTO THIS 25<sup>th</sup> DAY OF JUNE, 2007  
BY ORDER OF THE DISCIPLINE COMMITTEE

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

MEMBERS OF THE PANEL:

D.L. FLEWELLING, CA  
D.O. STIER, CA  
R.H. CARRINGTON (PUBLIC REPRESENTATIVE)