

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

DISCIPLINE COMMITTEE

IN THE MATTER OF: Charges against **THOMAS YORKE RICKETTS, CA**, a member of the Institute, under **Rules 201.1** and **202** of the Rules of Professional Conduct, as amended.

TO: Mr. Thomas Y. Ricketts, CA
785 Carlaw Avenue, Suite 301
TORONTO, ON M4K 3L1

AND TO: The Professional Conduct Committee, ICAO

REASONS
(Decision and Order Made November 16, 2006)

1. This panel of the Discipline Committee of the Institute of Chartered Accountants of Ontario met on November 16, 2006 to hear charges brought by the Professional Conduct Committee against Thomas Yorke Ricketts, a member of the Institute.

2. Ms. Barbara Glendinning appeared on behalf of the Professional Conduct Committee. She was accompanied by Ms. Kelly Khalileh, CA, the investigator appointed by the Professional Conduct Committee. Mr. Ricketts was in attendance and was represented by counsel, Ms. Sandra Dawe.

3. The decision of the panel was made known to the parties at the conclusion of the hearing on November 16, 2006, and the written decision and order was sent to them on December 6, 2006. 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

4. The following charges were laid against Mr. Ricketts by the Professional Conduct Committee on July 26, 2006:

1. THAT the said Thomas Yorke Ricketts, in or about the period April 1, 2001 through June 17, 2005, while engaged as the accountant for BNLT Inc., 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 201.1 of the rules of professional conduct, in that:
 - (a) knowing that Canada Revenue Agency erroneously made an overpayment to BNLT Inc. of approximately \$78,658 relating to GST Input Tax Credits, he failed to ensure that the error was corrected.

2. THAT the said Thomas Yorke Ricketts, in or about the period January 1, 2001 through June 17, 2005, while engaged as the accountant for BNLT Inc., 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 201.1 of the rules of professional conduct, in that:
 - (a) for the tax years 2000 through 2004, he provided U.S. W2 forms to Stephen P., CA, knowing that the forms would be relied upon for the preparation and filing of US personal tax returns for two employees of BNLT Inc., without advising the CA that the W2s had not been filed and the taxes referred to in the W2s had not been remitted.
3. THAT the said Thomas Yorke Ricketts, in or about the period February 1, 2000 through June 17, 2005, while engaged as the accountant for BNLE Inc., failed to perform his professional services with due care, contrary to Rule 202 of the rules of professional conduct, in that:
 - (a) having been engaged to prepare and file Canadian corporate tax returns for BNLE Inc. for the years ending January 31, 2000 through January 31, 2005, he failed to do so.
4. THAT the said Thomas Yorke Ricketts, in or about the period January 1, 1996 through June 17, 2005, while engaged as the accountant for BNL and BNLT Inc., failed to perform his professional services with due care, contrary to Rule 202 of the rules of professional conduct, in that:
 - (a) having been engaged to file Canadian and U.S. corporate tax returns for BNLT Inc. for the years 1996 through 2004, he failed to do so;
 - (b) having been engaged to file Business Registration forms on behalf of BNLT Inc. in applicable U.S. States, he failed to do so;
 - (c) having been engaged to file U.S. "W2 Forms" on behalf of BNLT Inc. for the years 1999 through 2004, he failed to do so;
 - (d) having been engaged to remit U.S. state income tax withholdings on salaries paid by BNLT Inc. for the years 1999 through 2004, he failed to do so;
 - (e) having remitted payments on behalf of BNLT Inc. to the U.S. Internal Revenue Service ("IRS"), he failed to respond to Notices from the IRS regarding the appropriate allocation of payments made, thereby risking the loss of credit for the payments;
 - (f) he failed to make payments on behalf of BNLT Inc. to BNL's management company, NM Limited, in a timely manner.
5. THAT the said Thomas Yorke Ricketts, in or about the period January 1, 2001 through June 17, 2005, while engaged as the accountant for "SP", failed to perform his professional services with due care, contrary to Rule 202 of the rules of professional conduct, in that:

- (a) having been engaged to file U.S. Federal and State personal tax returns for SP for the years 2000 through 2004, he failed to do so;
 - (b) having been engaged to prepare and file Canadian personal tax returns for SP for 2004, he failed to do so.
6. THAT the said Thomas Yorke Ricketts, in or about the period November 13, 2000 through June 17, 2005, while engaged as the accountant for "ER", failed to perform his professional services with due care, contrary to Rule 202 of the rules of professional conduct, in that:
- (a) having been engaged to file U.S. federal and state personal tax returns for ER for the years 2000 through 2004, he failed to do so;
 - (b) having prepared and filed U.S. federal personal tax returns for ER for the year 1999, he failed to respond to Notices from the IRS regarding ER's outstanding tax liability.
7. THAT the said Thomas Yorke Ricketts, in or about the period January 1, 2001 through June 17, 2005, while engaged as the accountant for "KH", failed to perform his professional services with due care, contrary to Rule 202 of the rules of professional conduct, in that:
- (a) having been engaged to file U.S. Federal and State personal tax returns for KH for the years 2000 through 2004, he failed to do so.
8. THAT the said Thomas Yorke Ricketts, in or about the period January 1, 2004 through June 17, 2005, while engaged as the accountant for "TS" and "JS", failed to perform his professional services with due care, contrary to Rule 202 of the rules of professional conduct, in that:
- (a) having been engaged to prepare and file Canadian personal tax returns for TS and JS for the year 2004, he failed to do so.
5. At the outset of the hearing, Ms. Glendinning withdrew particular (b) of charge No. 5. When asked to enter a plea Mr. Ricketts said he did not contest the charges. A plea of not guilty to each of the charges was entered on his behalf.

EVIDENCE

6. The evidence in this matter was received by way of a Statement of Facts (Exhibit 4), an accompanying Document Brief (Exhibit 5), and an organizational chart setting out the relevant corporate structure of the client (Exhibit 6). The 78 paragraph Statement of Facts, sets out Mr. Ricketts' professional background and the background to the charges. It then sets out the facts with respect to each charge and particular.
7. Mr. Ricketts also testified and in so doing he made it clear not only that he did not contest the facts set out in the Statement of Facts but he confirmed their essential accuracy. He acknowledged that he had the responsibility to file the various returns and forms as alleged in charge Nos. 2 to 7, and confirmed that the particulars of those charges were true.
8. Mr. Ricketts apologized to the panel for his conduct which made these proceedings necessary. He confirmed, as set out in the Statement of Facts, that he had done most of the work

and the documents were prepared, he just did not file them. He also failed to pay the taxes as alleged although the money to do so was available. He also testified that the failure to file the W2 forms as required for the tax year 2000 (as alleged in charge No. 2) was the root of many of the subsequent problems. He knew that his failure in 2000 to file the W2 forms would be discovered if the other returns and documents were filed.

SUBMISSIONS

9. Ms. Glendinning submitted that Mr. Ricketts should be found guilty of all the charges before the panel. Specifically, she noted that, although he was aware of the GST overpayment, he took no steps to rectify it; that he allowed the accountant for two band members to be misled and kept him from dealing accurately with the tax obligations of those members; and that he failed to file various returns and forms required for the different entities and persons, despite being aware of the obligation to do so.

10. On behalf of Mr. Ricketts, Ms. Dawe conceded that there had been deficiencies in the accounting, due in part to the incredible success of the band, and its business expansion. She questioned, however, whether such deficiencies amounted to professional misconduct. In particular, she submitted that the GST overpayment was accounted for and available to the authorities; that the assertion to the accountant for two band members that the W2 had been filed was an honest mistake; and that the filing of the 2004 tax return for TS and his wife was precluded by the requirement to turn all records over to the successor accountant, a requirement with which Mr. Ricketts complied fully.

DECISION

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

THAT, having seen, heard and considered the evidence, charge No. 5, particular (b) having been withdrawn by the Professional Conduct Committee, the Discipline Committee finds Mr. Thomas Yorke Ricketts not guilty of charge Nos. 1 and 8, and guilty of charge Nos. 2, 3, 4, 5, 6 and 7.

REASONS FOR THE DECISION

12. The panel was satisfied that the particulars set out in the charges had been proven. The particulars set out in charge Nos. 2 to 7 provide a succinct summary of Mr. Ricketts' misconduct.

Charge No. 2

13. Mr. Ricketts acknowledged that he failed to file the W2 forms and pay the taxes required as alleged. He also acknowledged that he provided the forms to the accountant for two of the band members knowing that the accountant would rely on those forms and consider the taxes to have been paid. The forms were prepared and the taxes calculated but Mr. Ricketts did not file the returns or pay the taxes. The failure to file the forms, the failure to pay the taxes and allowing the chartered accountant acting for two of the band members to think he had filed the forms and paid the taxes constituted a breach of Rule 201.1. This conduct was a significant departure from the conduct required of a chartered accountant and Mr. Ricketts was found guilty of the charge.

Charge Nos. 3, 4, 5, 6 and 7

14. The failures set out in these charges, which Mr. Ricketts acknowledged, occurred for the most part over a number of years and establish that he did not perform his professional services with due care as alleged. The repeated failures to file the appropriate documents, many of which he had prepared and were ready to be filed, constitutes professional misconduct. We found Mr. Ricketts guilty of these five charges.

Charge No. 1

15. While Mr. Ricketts' actions in response to the receipt of a GST overpayment may not have been ideal, the records of the company clearly set out the source of those funds, and the funds always remained available for repayment. He also advised his client of the overpayment. In these circumstances, we concluded the evidence fell short of establishing that his conduct was a breach of Rule 201.1. We found him not guilty of the charge.

Charge No. 8

16. Mr. Ricketts had filed the Canadian tax returns for TS and his wife for a number of years without incident. In 2005, the 2004 return was prepared, and the anticipated tax paid. The fact that the return itself was not filed on time is not sufficient, given the background and the intervention of a successor accountant, to constitute professional misconduct. We found him not guilty of the charge.

SANCTION

17. On behalf of the Professional Conduct Committee, Ms. Glendinning submitted that a sanction of: a written reprimand; a fine in the amount of \$5,000; two professional development courses; reinvestigation with the cost up to \$3,000 payable by the member; and publicity, would be appropriate. She further sought \$10,000 in costs and provided a costs outline to the panel.

18. Ms. Glendinning took the position that the misconduct was not motivated by malice or greed and did not result in any gain to Mr. Ricketts. However, she pointed out that he did not avail himself of options which were available to him, and which would have avoided the difficulties in which he now finds himself, and the potential harm to his clients. She notes that, while the sanctions put forth would address the principles of general and specific deterrence, and rehabilitation, the main focus was on the latter. For that reason, the Professional Conduct Committee was not seeking a period of suspension. The committee had considered whether supervised practice was required, but had decided that the deficiencies could be addressed through education, and the risk to the public through a reinvestigation.

19. Ms. Dawe, on behalf of Mr. Ricketts, took issue only with the monetary aspects of the proposed sanction. She submitted that the charges and hearing themselves have had the necessary specific deterrent effect and, furthermore, that Mr. Ricketts had not only lost a valuable client but had strained personal relationships. She noted that Mr. Ricketts has practiced for 26 years without concern or complaint, and that he did attempt to rectify the situation. She submitted that he is remorseful and had cooperated fully with the investigation. In the circumstances, she submitted that a fine should not be imposed, as it can have no further effect and would prove onerous, that costs be reduced to \$5,000 and that the cost of the reinvestigation to Mr. Ricketts be capped at \$1,500.

ORDER

20. After considering the submissions and precedents, and deliberating, the panel made the following order:

IT IS ORDERED in respect of the charges:

1. THAT Mr. Ricketts be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Ricketts 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.
3. THAT Mr. Ricketts be and he is hereby charged costs fixed at \$10,000 to be remitted to the Institute within twelve (12) months from the date this Decision and Order becomes final under the bylaws.
4. THAT Mr. Ricketts be and he is hereby required to pay for and complete, in their entirety, within twelve (12) 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) *Time Management – Surviving Your Schedule*; and
 - (c) *Organize for Success*.
5. THAT Mr. Ricketts be reinvestigated by the Professional Conduct Committee, or by a person retained by the Professional Conduct Committee, on one occasion between eighteen (18) and twenty-four (24) months from the date this Decision and Order becomes final under the bylaws, the cost of the reinvestigation, up to \$3,000, to be paid by Mr. Ricketts within thirty (30) days of receiving notification of the cost of the reinvestigation.
6. THAT notice of this Decision and Order, disclosing Mr. Ricketts' 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; andand shall be made available to the public.
7. THAT in the event Mr. Ricketts 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 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. Ricketts' employment and/or residence.

All costs associated with the publication shall be borne by Mr. Ricketts and shall be in addition to any other costs ordered by the committee.

8. THAT in the event Mr. Ricketts 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 three months from the date of his suspension, and in the event he does not comply within the three-month 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. Ricketts' practice. All costs associated with the publication shall be borne by Mr. Ricketts and shall be in addition to any other costs ordered by the committee.

REASONS FOR THE ORDER

Reprimand

21. Mr. Ricketts' failure to perform his professional services to the standard expected and required of a member of this profession endangered his clients, exposing them to significant risk. The reprimand will make clear to him that this behaviour is wholly unacceptable.

Fine

22. We take Ms. Dawe's point that the discipline process itself has had the desired salutary effect on Mr. Ricketts. However, his actions, or inactions, were serious and detrimental to the entire profession. A fine is necessary both as a general and as a specific deterrent. The quantum of the fine, while significant, is still at the lower end of the range for conduct of this nature, and its effects on Mr. Ricketts will be lessened to an appropriate level by the time given to pay.

Costs

23. It is appropriate that the member himself, rather than the membership as a whole, bear a part of the costs to investigate and prosecute his misconduct. The amount imposed will not even partially indemnify the Institute, but is appropriate given the totality of the sanction.

Professional Development

24. The Professional Conduct Committee has characterized rehabilitation as the primary focus of the sanction. We agree. Mr. Ricketts has the ability and appears to have the will to be a contributing member of this profession. The professional development courses ordered are essential to assist him in that rehabilitation.

Reinvestigation

25. We are placing a certain amount of trust in Mr. Ricketts that he will take the steps he has promised to ensure he meets the standards of the profession. In the circumstances, we do not believe that trust is misplaced. We have ordered a reinvestigation to be certain that Mr. Ricketts fulfills his promises and meets the standards of the profession. As with the costs of the hearing itself, it is appropriate that the member being reinvestigated, rather than the membership at large, bear a portion of the cost of that reinvestigation, and we have so ordered.

Notice

26. Publishing names of members found guilty of professional misconduct is often the single most significant sanction that can be administered for general deterrence, education of the membership at large, and protection of the public. Such publication is to be ordered except in exceptional circumstances. No such circumstances have been urged on the panel in this matter.

Failure to Comply

27. While the panel has every anticipation that Mr. Ricketts will comply with its order, it is necessary to provide for consequences should he not do so. In that event, both his membership in the Institute and his licence to practise public accounting will be first suspended and then revoked. These actions are necessary to ensure the public is both protected and informed.

DATED AT TORONTO THIS 5TH DAY OF JULY, 2007
BY ORDER OF THE DISCIPLINE COMMITTEE

H.B. BERNSTEIN, CA – CHAIR
DISCIPLINE COMMITTEE

MEMBERS OF THE PANEL:

J.A. CULLEMORE, FCA
S.M. DOUGLAS, FCA
M.S. LEIDERMAN, CA
J.G. SEDGWICK, CA
P. MCBURNEY (PUBLIC REPRESENTATIVE)