

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

DISCIPLINE COMMITTEE

IN THE MATTER OF: Charges against **THOMAS WALTER YANUSH, CA**, a member of the Institute, under **Rule 203.2(a) and 203.2(b)** of the Rules of Professional Conduct, as amended.

TO: Mr. Thomas W. Yanush, CA
182 – 251 Queen Street South
MISSISSAUGA, ON L5M 1L7

AND TO: The Professional Conduct Committee, ICAO

REASONS
(Decision and Order Made February 20, 2007)

1. This panel of the Discipline Committee of the Institute of Chartered Accountants of Ontario met on February 20, 2007 to hear charges of professional misconduct brought by the Professional Conduct Committee against Thomas Walter Yanush, a member of the Institute.
2. Mr. Paul Farley appeared on behalf of the Professional Conduct Committee. Mr. Yanush attended and was not represented by counsel. He acknowledged he had the right to be represented by counsel and indicated he wished to proceed without representation. Ms. Elizabeth Cowie attended as counsel to the panel.
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 February 21, 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

4. The following charges were laid against Mr. Yanush by the Professional Conduct Committee on December 12, 2006:
 1. THAT the said Thomas Walter Yanush, in or about the period June 12, 2006 to December 11, 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(a) of the rules of professional conduct.
 2. THAT the said Thomas Walter Yanush, in or about the period August 28, 2006 to December 11, 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, contrary to Rule 203.2(b) of the rules of professional conduct.

PLEA

5. Mr. Yanush entered a plea of guilty to each of 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 affidavits of Grant Dickson, Director of Practice Inspection (Exhibit 4) and Patricia Roberts, Director of Standards Enforcement (Exhibit 5). Those affidavits are evidence that Mr. Yanush was scheduled for a practice reinvestigation, and failed to provide a file requested by the Institute, despite making numerous promises to do so. He also failed to provide a substantive response to Standards Enforcement when required to do so. The Professional Conduct Committee called no further evidence.

7. Mr. Yanush did not testify or call any evidence, but he did make a statement to the panel providing an explanation for his failure to provide the file. He indicated that he could not locate the file requested, and believed he would make matters worse if he admitted the truth to the Institute. He furthered indicated he had brought the file with him, having found it a few days earlier.

DECISION

8. The evidence 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 deliberations, the panel made the following decision:

THAT, having seen and considered the evidence, and having heard the plea of guilty to charge Nos. 1 and 2, the Discipline Committee finds Mr. Thomas Walter Yanush guilty of charge Nos. 1 and 2.

SANCTION

9. Counsel for the Professional Conduct Committee submitted that a sanction of: a written reprimand; a fine in the amount of \$1,500; and publicity in the usual course, would serve the principles of rehabilitation, specific deterrence and general deterrence. He also sought costs in the amount of \$1,000.

10. Mr. Farley informed the panel that Mr. Yanush had previously been admonished by the Professional Conduct Committee for failing to cooperate with a practice inspection. In that matter, Mr. Yanush had not cooperated and provided the files required until after disciplinary charges were laid. Mr. Yanush expressed remorse and told the Professional Conduct Committee the conduct would never recur, at which time he was admonished and the charges withdrawn.

11. Mr. Farley submitted that the Professional Conduct Committee would have sought a more significant monetary penalty but, given Mr. Yanush's financial circumstances, which he detailed for the panel, the quantum submitted would be sufficient to address specific deterrence. With respect to publicity, he noted that such should be ordered except in clear and unusual circumstances. No such circumstances existed in the present matter. On the issue of costs, Mr. Farley provided a costs outline (Exhibit 7) to the panel, and noted that the costs sought did not approach even partial indemnity for those incurred. Again, he submitted that the modest amount sought was solely as a

consequence of Mr. Yanush's straitened circumstances.

12. Mr. Yanush made no submissions on sanction.

ORDER

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

IT IS ORDERED in respect of the charges:

1. THAT Mr. Yanush be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Yanush be and he is hereby fined the sum of \$1,500 to be remitted to the Institute within twelve (12) months from the date this Decision and Order becomes final under the bylaws.
3. THAT Mr. Yanush be and he is hereby charged costs fixed at \$1,000 to be remitted to the Institute within twelve (12) months from the date this Decision and Order becomes final under the bylaws.
4. THAT notice of this Decision and Order, disclosing Mr. Yanush'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. Yanush 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 3 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. Yanush's practice, employment and/or residence. All costs associated with the publication shall be borne by Mr. Yanush and shall be in addition to any other costs ordered by the committee.
6. THAT in the event Mr. Yanush 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 (3) months from the date of his suspension, and in the event he does not comply within the 3 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. Yanush's practice, employment and/or residence. All costs associated with the publication shall be borne by Mr. Yanush and shall be in addition to any other costs ordered by the committee.

REASONS FOR THE ORDER

14. Chartered accountancy is a self-regulated profession. Self-regulation can only operate effectively and in furtherance of the public interest when members respect and abide by the demands of the regulator. On two separate occasions, Mr. Yanush has refused to cooperate with the Institute, precluding the Institute from examining his files and determining whether his standards of practice are sufficient to uphold the public trust. Such a disregard strikes at the very heart of governance, and is a serious matter.

15. The panel has considered whether Mr. Yanush is ungovernable and has concluded he is capable of rehabilitation. However, should he not abide by the terms of the order, or should he find himself facing further disciplinary charges, that conclusion may well prove optimistic rather than accurate.

16. The panel considered whether a reinspection of Mr. Yanush's practice should be ordered. We have not done so, as his practice is to be inspected in 2007, according to the affidavit of Grant Dickson (Exhibit 4), and a further order seemed unnecessary.

Reprimand

17. The panel has ordered that Mr. Yanush be reprimanded to emphasize to him the serious nature of his actions and the lack of tolerance of the Institute for the obstructing of processes necessary for the preservation of the integrity of the profession and the public interest.

Fine

18. The modest amount of the fine should not be taken as an indication that failing to cooperate with the Institute is a minor matter. Member cooperation is essential for governance, and any member disregarding or disrespecting the Institute risks the entire profession. The quantum of the fine does not reflect the extent of our disapprobation, but is a result of Mr. Yanush's financial obligations and his ability to pay a fine.

Costs

19. It is appropriate that the member charged, rather than the membership as a whole, bear part of the costs of the proceeding. The costs assessed in this matter are far less than those usually imposed, and do not reflect the extent of the costs incurred, even on a partial indemnity basis. However, for the same reasons as given for the imposition of the fine, the panel has decided the quantum is appropriate.

Notice

20. Publishing the names of members found guilty of professional misconduct is often the single most significant sanction that may be administered for general deterrence, education of the membership at large, and protection of the public. It is only in the most exceptional circumstances that such important principles will be over-balanced by privacy considerations. No such circumstances were urged on the panel in this matter, and the usual notice will be given.

Failure to Comply

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

DATED AT TORONTO THIS 12TH DAY OF MARCH 2007
BY ORDER OF THE DISCIPLINE COMMITTEE

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

MEMBERS OF THE PANEL:

G.R. PEALL, CA
P. MCBURNEY (PUBLIC REPRESENTATIVE)