

### **A Member: Summary, as Published in *CheckMark***

**A member**, whose name is being withheld from publication by order of the discipline committee, was found guilty of a charge under Rule 201.1 of failing to maintain the good reputation of the profession and its ability to serve the public interest, arising out of the member's criminal conviction for possession of child pornography. The member was fined \$3,000 and suspended for four months. The discipline committee concluded that the member's misconduct resulted from an illness, and that the rare and unusual circumstances of the case warranted the withholding of the member's name from publication.

## **CHARGES LAID re A member**

The Professional Conduct Committee hereby makes the following charges against a member of the Institute:

1. THAT, the said member, on or about the 20th day of May, 1999, failed to conduct him/herself in a manner that will maintain the good reputation of the profession and its ability to serve the public interest in that (s)he was convicted of a charge that (s)he, on or about the 27<sup>th</sup> day of October in the year 1998 in the City of Toronto, in the Toronto Region did have in his/her possession child pornography to wit: computer files, contrary to the *Criminal Code of Canada*, all of which is contrary to Rule 201.1 of the rules of professional conduct.
2. THAT, the said member, on or about the 27th day of October, 1998, lent him/herself to an unlawful activity, namely the possession of child pornography, contrary to Rule 213 of the rules of professional conduct.

Dated at Ottawa this 20<sup>th</sup> day of September, 2000.

MICHAEL CONNOLLY, FCA – DEPUTY CHAIR  
PROFESSIONAL CONDUCT COMMITTEE

## **DISCIPLINE COMMITTEE re A Member**

**DECISION AND ORDER IN THE MATTER OF:** Charges against a member of the Institute, under **Rules 201.1 and 213** of the Rules of Professional Conduct, as amended.

### **DECISION AND ORDER MADE NOVEMBER 30, 2000**

#### **DECISION**

THAT, having seen and considered the evidence, charge No. 2 having been withdrawn, and having heard the plea of guilty to charge No. 1, the Discipline Committee finds the member guilty of charge No. 1.

#### **ORDER**

IT IS ORDERED in respect of charge No. 1:

1. THAT the member be reprimanded in writing by the chair of the hearing.
2. THAT the member be and (s)he is hereby fined the sum of \$3,000, to be remitted to the Institute within six (6) months from December 1, 2000.
3. THAT the member be suspended from the rights and privileges of membership in the Institute for a period of four (4) months effective December 1, 2000.
4. THAT the member surrender his/her certificate of membership in the Institute to the discipline committee secretary within ten (10) days from December 1, 2000, to be held during the period of suspension and thereafter returned to the member.
5. THAT notice of this Decision and Order, disclosing the member's name, be given after this Decision and Order becomes final under the bylaws, to the Public Accountants Council for the Province of Ontario, and to the Canadian Institute of Chartered Accountants.
6. THAT notice of this Decision and Order, without disclosing the member's name, be given after this Decision and Order becomes final under the bylaws, by publication in *CheckMark*.
7. THAT in the event the member fails to comply with paragraph 2 of this Order within the time period specified, (s)he shall thereupon be suspended from the rights and privileges of membership in the Institute until such time as (s)he does comply, provided that (s)he complies within three (3) months from the date of his/her suspension, and in the event (s)he does not comply within this three (3) month period, (s)he shall thereupon be expelled from membership in the Institute, and notice of his/her expulsion shall be given in the manner specified above.

DATED AT TORONTO THIS 21ST DAY OF DECEMBER, 2000  
BY ORDER OF THE DISCIPLINE COMMITTEE

BRYAN W. STEPHENSON, BA, LLB  
SECRETARY - DISCIPLINE COMMITTEE

## **DISCIPLINE COMMITTEE re A Member**

**REASONS FOR THE DECISION AND ORTDER IN THE MATTER OF:** Charges against a member of the Institute, under **Rules 201.1 and 213** of the Rules of Professional Conduct, as amended.

### **REASONS FOR THE DECISION AND ORDER MADE NOVEMBER 30, 2000**

1. This panel of the discipline committee of the Institute of Chartered Accountants of Ontario met on November 30, 2000 to hear evidence concerning charges brought by the professional conduct committee against a member. The panel reconvened on May 14, 2001 to hear submissions of counsel for both the professional conduct committee and the member with respect to these reasons.
2. Mr. Paul Farley represented the professional conduct committee. The member was present at the hearing and was represented by Ms. Marlys Edwardh.
3. The panels decision and order was issued on December 21, 2000. These reasons, issued in writing pursuant to Bylaw 574, contain the panels decision and order, and the charges laid by the professional conduct committee, as well as the reasons of the panel.
4. At the beginning of the November 30, 2000 hearing, Ms. Edwardh, on behalf of the member, filed a motion that the entire hearing be held *in camera* on the basis that the report of the member's psychiatrist, which was essential to his/her case, disclosed intimate personal matters. Mr. Farley argued that only the portions of the hearing that related to the psychiatrist's report should be held *in camera*. After deliberation, the panel made the following decision:

We have decided that this hearing should be held *in camera*. Accordingly, only the member charged, his/her counsel, the members sister, the members psychiatrist and counsel for the professional conduct committee will be permitted in the Council Chamber.

The shorthand reporter is hereby directed not to make a copy of the transcript of this hearing available, except to counsel for the professional conduct committee or the member charged or his/her counsel without the approval of the chairperson of this hearing.

The secretary of the committee is hereby directed to keep confidential the exhibits filed during this hearing, and not to make them available to anyone who enquires, without the approval of the chairperson of this hearing.

At the conclusion of this hearing, the panel will hear submissions as to whether all or part of the record should remain *in camera* and the record sealed.

5. At the conclusion of the November 30, 2000 hearing, Ms. Edwardh and Mr. Farley made further submissions with respect to whether all or part of the record of this hearing should remain *in camera* and the record sealed. Following further deliberation, the panel

decided that the entire hearing with respect to the charges against the member would remain *in camera*. The panel also decided that the reasons of the panel which include the charges and the order would not be sealed or *in camera* and would form part of the public record. The panel also advised the member that it would take care in drafting these reasons so that the reasons do not disclose the intimate personal information which gave rise to the panels decision at the hearing that the hearing should be *in camera* and the record sealed.

6. On May 14, 2001, the panel reconvened to hear further submissions with respect to our reasons. Following submissions by Mr. Farley and Ms. Edwardh, the panel made the following decision:

We have completed our deliberations with respect to the issues raised at this hearing. We will attempt to fashion our reasons to be consistent with the *in camera* decision made at the hearing on November 30, 2000. In that regard, our reasons will clarify that our reasons will be available with the member's name in the record of proceedings for this matter. However, our reasons will also state that to be consistent with the *in camera* decision made at the November 30, 2000 hearing, we will recommend that the member's name be withheld from all materials kept in the Institute's library or posted to the Institute's Web site.

## **DECISION ON THE CHARGE**

7. The notice of hearing and charges were entered as exhibits to the hearing. The charges laid against the member by the professional conduct committee read as follows:
  1. THAT, the said member, on or about the 20th day of May, 1999, failed to conduct him/herself in a manner that will maintain the good reputation of the profession and its ability to serve the public interest in that (s)he was convicted of a charge that (s)he, on or about the 27th day of October in the year 1998 in the City of Toronto, in the Toronto Region did have in his/her possession child pornography to wit: computer files, contrary to the *Criminal Code of Canada*, all of which is contrary to Rule 201.1 of the rules of professional conduct.
  2. THAT, the said member, on or about the 27th day of October, 1998, lent him/herself to an unlawful activity, namely the possession of child pornography, contrary to Rule 213 of the rules of professional conduct.
8. At the hearing on November 30, 2000, the professional conduct committee withdrew charge No. 2. The member entered a plea of guilty to the remaining charge and confirmed that (s)he understood that on the basis of his/her plea alone (s)he could be found guilty of the charge.
9. On the evidence before the panel, it was clear that the member was guilty of the charge and, accordingly, (s)he was found guilty of the charge. The decision read:

## **DECISION**

THAT, having seen and considered the evidence, charge No. 2 having been withdrawn, and having heard the plea of guilty to charge No. 1, the Discipline Committee finds the member guilty of charge No. 1.

## **ORDER AS TO SANCTION**

10. Counsel generally agreed on the aggravating and mitigating factors in this case.
11. The sanction proposed by the professional conduct committee was a reprimand in writing by the chair of the hearing, a fine in the amount of \$3,000, suspension for a period of three to six months, and publication of the decision and order of the panel without the members name.
12. Both Ms. Edwardh and Mr. Farley referred the panel to a number of helpful precedents that we reviewed in making our determination as to the appropriate sanction.
13. In this case, the panel considered the three general principles of sentencing, namely rehabilitation, general deterrence and specific deterrence, and concluded that all three principles apply.
14. This panel is imposing a sanction on a member of a profession. Chartered accountants are highly educated and have proven their competence by satisfying a rigorous qualification standard. The profession expects members to recognize if they have an illness and seek appropriate help. We do not disagree with the proposition that it is the illness that needs treatment if the misconduct is to be precluded. We want members of the profession to recognize that the conduct is unacceptable and that they should seek treatment. Accordingly, the need for general deterrence is a significant factor in the sanction imposed in this case.
15. Specific deterrence is also a factor in the imposition of sanction in this case. The member needs to know that the profession regards his/her conduct as unacceptable. Accordingly, specific deterrence is also a significant factor in this case. Perhaps the most significant specific deterrent is the member's knowledge that if such conduct is repeated and brings him/her again before the discipline committee, (s)he should expect to be expelled.
16. In this case, we gave priority to the principle of rehabilitation as we were convinced in the particular circumstances of this case that the member could be rehabilitated.
17. After deliberating on the evidence and the submissions heard, the committee made the following order:

### **ORDER**

IT IS ORDERED in respect of charge No. 1:

1. THAT the member be reprimanded in writing by the chair of the hearing.
2. THAT the member be and (s)he is hereby fined the sum of \$3,000, to be remitted to the Institute within six (6) months from December 1, 2000.
3. THAT the member be suspended from the rights and privileges of membership in the Institute for a period of four (4) months effective December 1, 2000.
4. THAT the member surrender his/her certificate of membership in the Institute to the discipline committee secretary within ten (10) days from December 1, 2000,

to be held during the period of suspension and thereafter returned to the member.

5. THAT notice of this Decision and Order, disclosing the member's name, be given after this Decision and Order becomes final under the bylaws, to the Public Accountants Council for the Province of Ontario, and to the Canadian Institute of Chartered Accountants.
6. THAT notice of this Decision and Order, without disclosing the member's name, be given after this Decision and Order becomes final under the bylaws, by publication in *CheckMark*.
7. THAT in the event the member fails to comply with paragraph 2 of this Order within the time period specified, (s)he shall thereupon be suspended from the rights and privileges of membership in the Institute until such time as (s)he does comply, provided that (s)he complies within three (3) months from the date of his/her suspension, and in the event (s)he does not comply within this three (3) month period, (s)he shall thereupon be expelled from membership in the Institute, and notice of his/her expulsion shall be given in the manner specified above.

### **Reprimand**

18. The panel believes that a reprimand in writing from the chair of the hearing stresses to the member the unacceptability of his/her conduct as a chartered accountant.

### **Fine**

19. The professional conduct committee submitted that a fine should be levied against the member in the amount of \$3,000. The panel determined that a fine of \$3,000 was appropriate in this case, both as a deterrent to like-minded members, and as a demonstration to the public of the profession's intolerance of the conduct of the member.

### **Suspension**

20. The committee concluded that, even though the members conduct arose as a result of an illness, the misconduct did require an order of suspension of the members rights and privileges of membership in the Institute for a period of time. In making this determination, the committee decided to issue a rehabilitative order in this case rather than one of expulsion. In the circumstances of this case, the committee came to the conclusion that expulsion was not required as a general deterrent. It was ultimately determined that a suspension of four months was the appropriate period.

Since the member waived his/her right to an appeal of this decision and order, the member's suspension will commence on December 1, 2000 and conclude on March 31, 2001.

### **Notice**

21. Publication of the decision and order is, in the opinion of the discipline committee, a general deterrent. Communication of the fact that the profession views breaches of its bylaws and rules of professional conduct seriously is an important factor in the governance of the profession. Such notification is also necessary to demonstrate to the



public that the profession is regulating itself, so as to retain public confidence in the professions ability to self-govern.

The committee determined that publication in *CheckMark* of the decision and order without the members name was appropriate in these circumstances. The committee determined that the rare and unusual circumstances that would justify publication without the members name were present in this case. The committee made this determination based on the following reasons:

- The member poses no risk to those members of the public who rely on the services of a chartered accountant, and no risk to the general public.
- There is no benefit in publishing the members name in these circumstances and the consequences in publishing the members name are unique.
- This case is unique on its facts.

### **Certificate**

22. The committee felt that during the time of the four month suspension, it was important that the member not hold him/herself out to the general public as a chartered accountant, and, accordingly, ordered that (s)he submit his/her membership certificate to the committee secretary, to be held during the period of suspension.

DATED AT TORONTO THIS 27TH DAY OF JUNE, 2001  
BY ORDER OF THE DISCIPLINE COMMITTEE

M. BRIDGE, CA - DEPUTY CHAIR  
THE DISCIPLINE COMMITTEE

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

E.R. ARCHIBALD, CA  
H.B. BERNSTEIN, CA  
L.G. BOURGON, CA  
M.A. MANERA, CA  
G. BECK (Public representative)