

Albert Chu Summary as Published in *CheckMark*

Albert Chu, of North York, 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 his convictions under the Immigration Act and the Criminal Code. Mr. Chu conspired with others to organize, induce, aid or abet the coming into Canada of persons who were not in possession of valid and subsisting visas, passports or travel documents as required by the Immigration Act. He was fined \$5,000 and expelled from the Institute.

CHARGE(S) LAID re Albert Chu

The Professional Conduct Committee hereby makes the following charges against Albert Chu, CA, a member of the Institute:

1. THAT, the said Albert Chu, on or about May 14 1997, failed to conduct himself Institute in a manner which fails to 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 he was convicted by the Ontario Court (Provincial Division) of the following offences:
 - (a) THAT he, between the 6th day of September, 1995 and the 14th day of October, 1995, both days inclusive, at the City of Metropolitan Toronto in the Toronto Region, at the city of Mississauga in the Central West Region in the Province of Ontario, and elsewhere in the Province of Ontario, and elsewhere in Canada and in Thailand, unlawfully did knowingly organize, induce, aid or abet or attempt to organize, induce, aid or abet the coming into Canada of a person, to wit: Nithicha CHANSIRI, who was not in possession of a valid and subsisting visa, passport or travel document as required by the Immigration Act, R.S.C. 1985, c.1-2 as amended or the regulations contrary to Section 94.1 for the said Act;
 - (b) that he and seven other named individuals, between the 10th day of August, 1995 and the 12th day of January, 1996, both days inclusive, at the City of Metropolitan Toronto in the Toronto Region, at the City of Markham in the Central East Region in the Province of Ontario, and elsewhere in the Province of Ontario, and in the Province of Quebec and elsewhere in Canada and in Hong Kong and in China, unlawfully did conspire and agree together, the one with the other or others of them and with Yu-Ting (Eddie) CHIU, Dick Suey YEE, Kowk-On (Robert) Low, a person known as Pak Ching WONG, a person known as Sil Wah Wong, a person known as "Old FENG", and with a person or persons unknown to organize, induce, aid or abet the coming into Canada of a group of ten or more persons, to wit: Lin Yi FENG, otherwise known as Young FENG, Ai Yun ZHOU, a person known only as TUNG, and persons unknown, who were not in possession of valid and subsisting visas, passports or travel documents contrary to Section 94.2 of the said Act, and did thereby commit an offence contrary to Section 465(1)(c) of the Criminal Code of Canada;
 - (c) that he and four other named individuals, between the 20th of December, 1995 and the 12th day of January, 1996, both days inclusive, at the City of Metropolitan Toronto in the Toronto Region, at the city of Mississauga in the Central West Region, at the City of Markham in the Central East Region in the Province of Ontario, and elsewhere in the Province of Ontario, and elsewhere in Canada and in Hong Kong and in China, unlawfully did conspire and agree together, the one with the other or others of them and with a person or persons unknown to organize, induce, aid or abet the coming into Canada of a group of ten or more

persons, to wit: persons unknown, who were not in possession of valid and subsisting visas, passports, or travel documents as required by the Immigration Act, R.S.C. 1985, c.1-2 as amended or the regulations contrary to Section 94.2 of the said Act, and did thereby commit an offence contrary to Section 465(1) of the Criminal Code of Canada

Dated at Toronto this 26th day of March, 1998

DOUGLAS A. BOUFFORD, CA – DEPUTY CHAIR
PROFESSIONAL CONDUCT COMMITTEE

DISCIPLINE COMMITTEE re Albert Chu

DECISION AND ORDER IN THE MATTER OF: A charge against **ALBERT CHU, CA**, a member of the Institute, under **Rule 201.1** of the Rules of Professional Conduct, as amended.

DECISION AND ORDER MADE MAY 19, 1999

DECISION

THAT, having seen, heard and considered the evidence, including the agreed statement of facts, filed, the Discipline Committee finds Albert Chu guilty of the charge.

ORDER

IT IS ORDERED in respect of the charge:

1. THAT Mr. Chu be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Chu 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. Chu be and he is hereby expelled from membership in the Institute.
4. THAT notice of this Decision and Order, disclosing Mr. Chu's name, be given after this Decision and Order becomes final under the bylaws:
 - (a) to the Public Accountants Council for the Province of Ontario;
 - (b) to the Canadian Institute of Chartered Accountants;
 - (c) by publication in *CheckMark*; and
 - (d) by publication in *The Toronto Star*.
5. THAT Mr. Chu surrender his certificate of membership in the Institute to the discipline committee secretary within ten (10) days from the date this Decision and Order becomes final under the bylaws.

DATED AT TORONTO THIS 27TH DAY OF MAY, 1999
BY ORDER OF THE DISCIPLINE COMMITTEE

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

DISCIPLINE COMMITTEE re Albert Chu

REASONS FOR THE DECISION AND ORDER IN THE MATTER OF: A charge against **ALBERT CHU, CA**, a member of the Institute, under **Rule 201.1** of the Rules of Professional Conduct, as amended.

REASONS FOR THE DECISION AND ORDER MADE MAY 19, 1999

This panel of the discipline committee of the Institute of Chartered Accountants of Ontario met on May 19, 1999 to hear evidence concerning a charge brought by the professional conduct committee against Albert Chu.

The professional conduct committee was represented by Ms. Deborah McPhadden. Mr. Chu was present and represented by his counsel, Mr. Symon Zucker.

Mr. Chu pleaded not guilty to the following charge laid by the professional conduct committee:

1. *THAT, the said Albert Chu, on or about May 14, 1997, failed to conduct himself in a manner which 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 he was convicted by the Ontario Court (Provincial Division) of the following offences:*

- (a) that he, between the 6th day of September, 1995 and the 14th day of October, 1995, both days inclusive, at the City of Metropolitan Toronto in the Toronto Region, at the city of Mississauga in the Central West Region in the Province of Ontario, at the City of Markham in the Central East Region in the Province of Ontario, and elsewhere in the Province of Ontario, and elsewhere in Canada and in Thailand, unlawfully did knowingly organize, induce, aid or abet or attempt to organize, induce, aid or abet the coming into Canada of a person, to wit: Nithicha CHANSIRI, who was not in possession of a valid and subsisting visa, passport or travel document as required by the Immigration Act, R.S.C. 1985, c.I-2 as amended or the regulations contrary to Section 94.1 of the said Act;*
- (b) that he and seven other named individuals, between the 10th day of August, 1995 and the 12th day of January, 1996, both days inclusive, at the City of Metropolitan Toronto in the Toronto Region, and at the City of Markham in the Central East Region in the Province of Ontario, and elsewhere in the Province of Ontario, and in the Province of Quebec and elsewhere in Canada and in Hong Kong and in China, unlawfully did conspire and agree together, the one with the other or others of them and with Yu-Ting (Eddie) CHIU, Dick Suey YEE, Kwok-On (Robert) Low, a person known as Pak Ching WONG, a person known as Sil Wah WONG, a person known only as "Old FENG", and with a person or persons unknown to organize, induce, aid or abet the coming into Canada of a group of ten or more persons, to wit: Lin Yi FENG, otherwise known as Young FENG, Ai Yun ZHOU, a person known only as TUNG, and persons unknown, who were not in possession of valid and subsisting*

visas, passports or travel documents as required by the Immigration Act, R.S.C. 1985, c.1-2 as amended or the regulations contrary to Section 94.2 of the said Act, and did thereby commit an offence contrary to Section 465(1)(c) of the Criminal Code of Canada;

(c) that he and four other named individuals, between the 20th of December, 1995 and the 12th day of January, 1996, both days inclusive, at the City of Metropolitan Toronto in the Toronto Region, at the City of Mississauga in the Central West Region, at the City of Markham in the Central East Region in the Province of Ontario, and elsewhere in the Province of Ontario, and elsewhere in Canada and in Hong Kong and in China, unlawfully did conspire and agree together, the one with the other or others of them and with a person or persons unknown to organize, induce, aid or abet the coming into Canada of a group of ten or more persons, to wit: persons unknown, who were not in possession of valid and subsisting visas, passports or travel documents as required by the Immigration Act, R.S.C. 1985, c.1-2 as amended or the regulations contrary to Section 94.2 of the said Act, and did thereby commit an offence contrary to Section 465(1) of the Criminal Code of Canada.

The panel heard the professional conduct committee's case against Mr. Chu, and his answer to that case, following which, upon deliberation, it concluded that he was guilty of the charge. The panel announced its decision at the hearing, and proceeded to deal with the issue of sanction.

When the panel had heard the evidence and submissions with respect to sanction, it again deliberated and gave its order.

These are the reasons for the decision and order of the discipline committee.

DECISION ON THE CHARGE

The Case for the Professional Conduct Committee

Ms. McPhadden filed an agreed statement of facts which she, on behalf of the professional conduct committee, and Mr. Chu had both signed. She also filed as an exhibit a document brief, which contained a certified copy of the information setting out the criminal charges made against Mr. Chu, and the notation of guilt and sanction imposed by the court; a copy of the transcript of the criminal proceeding at which Mr. Chu entered a plea of guilty, was found guilty, and was sentenced to a term of imprisonment of one year to be served in the community; and copies of newspaper articles which made reference to the conviction, one of which identified Mr. Chu as a chartered accountant.

After reviewing the agreed statement of facts and document brief, Ms. McPhadden advised the panel she had concluded the case for the professional conduct committee.

The Case for the Member

Mr. Zucker then proceeded with his case, and called Mr. Chu as a witness. Mr. Chu stated that the facts presented by Ms. McPhadden were not in dispute. He had completed serving his sentence, including eighty hours of community service, which he fulfilled by driving cancer patients to and from their appointments.

Mr. Chu testified that he had not received any money or benefit from the activity which led to his conviction. With respect to the first criminal charge, reflected as charge No. 1(a) in these proceedings, he testified that he thought he was doing a personal favour for a cousin, and that he was not engaged in a business activity at all.

With respect to charges Nos. 1 (b) and (c), he testified that what started out as legitimate business ventures went badly off track without his knowledge. While he conceded the \$10,000 bribe given to Mr. Fortin was quite improper, he said that he had not dealt with or met Mr. Fortin.

Mr. Chu stated that he went to China to see people as part of what he thought was a legitimate business activity, and was surprised when there were no people to see.

Mr. Chu cooperated with the police without benefit of an agreement that he would be given a lesser sentence as a result, and was the key witness against two crooked immigration officers, which enabled the prosecution to succeed against them.

Under cross-examination, Mr. Chu acknowledged that a criminal act is a criminal act, and that he could not avoid professional responsibility for his criminal activity simply by not using his professional designation while engaging in it. He nevertheless persisted in the view that he had not participated in the activity as a chartered accountant, and accordingly had not brought the profession into disrepute. Mr. Chu did not know whether his business card identified him as a chartered accountant or not.

Submissions with Respect to Guilt or Innocence

Ms. McPhadden submitted that this was a clear case of a member having been convicted of a criminal offence, and that it was not possible for a member to compartmentalize his or her life into roles of business person or private citizen separate and distinct from his or her identity as a chartered accountant. She submitted that the conviction was clearly a breach of Rule 201.1, and that criminal activity, particularly when there is publicity about that criminal activity identifying the member as a chartered accountant, obviously fails to maintain the good reputation of the profession and its ability to serve the public interest.

Ms. McPhadden filed a brief of authorities, and made reference to those authorities in support of her submissions.

Mr. Zucker submitted that Mr. Chu was not acting as a chartered accountant while engaging in the conduct which gave rise to the charge against him, and that there was no evidence to prove that his actions had failed to maintain the good reputation of the profession and its ability to serve the public interest. He pointed out that in some of the cases referred to by Ms. McPhadden, particularly the cases involving Mr. Gourlay and

Mr. Rapier, the argument had not been made that the member's alleged misconduct did not amount to a failure to maintain the good reputation of the profession and its ability to serve the public interest.

He submitted that there was a distinction between cases such as that of Mr. Platis, where there was a rebuttable presumption that Rule 201.1 had been breached because the charge was based on the member's conviction of a criminal offence identified in Rule 102.1, and the present case where there was no such presumption. He submitted that no evidence had been put before the committee which supported a breach of the rule and its two-fold test, namely failure to maintain the good reputation of the profession, and failure to maintain the profession's ability to serve the public interest.

Mr. Zucker further submitted that Mr. Chu should be believed when he said he did not think of himself as acting as a chartered accountant, and suggested that Mr. Chu did not think at all about what capacity he was acting in when he committed the offences.

In response, Ms. McPhadden pointed out that there had been no rebuttable presumption in the cases involving Mr. Shorrocks or Mr. Altberg, and that the professional conduct committee was always required to prove its case whether or not there was a plea of guilty or an argument with respect to a point. Further, she submitted that no expert evidence was needed to deal with the issue of whether or not Mr. Chu had failed to maintain the good reputation of the profession and its ability to serve the public interest, as had been suggested by Mr. Zucker.

The Determination of Guilt or Innocence

Upon deliberation, the panel concluded that the charge had been proven. Mr. Chu acknowledged the criminal conviction, and, while there was no rebuttable presumption that he had breached Rule 201.1, the panel was satisfied on the facts that he had, in fact, breached the rule. The activity leading to the criminal conviction, the criminal conviction itself, and the publicity surrounding the conviction, in the view of the discipline committee, had damaged the good reputation of the profession, and, in doing so, had impaired the profession's ability to serve the public interest. The member engaged in business activity so inimical to the public interest that it resulted in a criminal conviction.

The argument that a member cannot be convicted of bringing the good reputation of the profession into disrepute because he or she was not acting as a chartered accountant while engaging in his or her misconduct has been rejected by the discipline committee in the past, and was rejected again in this case. As a chartered accountant, Mr. Chu was subject to the rules of professional conduct of the Institute, regardless of what activities he was engaged in, and his illegal conduct constituted professional misconduct. The argument that a member has to abide by the ethical requirements of the profession only when acting in the capacity of a chartered accountant, suggests a serious misunderstanding of the standard of conduct all members must meet.

ORDER AS TO SANCTION

The parties were advised of the decision of the panel, and the hearing then proceeded to deal with the issue of sanction.

Ms. McPhadden said that she did not propose to call evidence. Mr. Zucker called two character witnesses on behalf of his client, and again called Mr. Chu as a witness. Mr. Chu expressed remorse for his behaviour, and requested that the panel treat him lightly and allow him a chance for rehabilitation.

Mr. Chu stated during his testimony that he had been before the discipline committee on two previous occasions. In 1993, he pleaded guilty to a single charge under Rule 104 of the rules of professional conduct. He was found guilty and fined \$1,000, and the usual order as to publication was made. In 1996, he pleaded guilty to charges under Rules 203.2 and 218. Upon being found guilty of these charges, he was fined \$3,500 and suspended from membership for three months, and again publication of the proceeding was ordered. Acknowledging that this was his third conviction, Mr. Chu stated before this panel that he had learned his lesson and could be rehabilitated.

Determination of Sanction

After hearing the evidence and submissions on sanction, and after deliberation and consideration of the three general principles which govern the imposition of sanction, namely rehabilitation, general deterrence and specific deterrence, the panel determined that the following would be the appropriate order in the circumstances of this case:

ORDER

IT IS ORDERED in respect of the charge:

1. THAT Mr. Chu be reprimanded in writing by the chair of the hearing.
2. THAT Mr. Chu 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. Chu be and he is hereby expelled from membership in the Institute.
4. THAT notice of this Decision and Order, disclosing Mr. Chu's name, be given after this Decision and Order becomes final under the bylaws:
 - (a) to the Public Accountants Council for the Province of Ontario;
 - (b) to the Canadian Institute of Chartered Accountants;
 - (c) by publication in *CheckMark*; and
 - (d) by publication in *The Toronto Star*.
5. THAT Mr. Chu surrender his certificate of membership in the Institute to the discipline committee secretary within ten (10) days from the date this Decision and Order becomes final under the bylaws.

Reprimand

The panel concluded that a letter of reprimand to Mr. Chu was necessary to stress to him the unacceptability of his actions, and to underline the fact that a chartered accountant has a duty to uphold the good reputation of the profession.

Fine

The professional conduct committee requested a fine in the range of \$5,000 to \$10,000, and cited numerous precedent cases to substantiate the range. Mr. Zucker did not object to a fine, and in fact suggested that a fine would be in order, but took exception to the amount requested.

His suggestion was a fine in the range of \$3,000 to \$5,000. The panel decided that a fine of \$5,000 would be appropriate to act as a general deterrent to like-minded members.

Expulsion

The panel felt that expulsion was required in this case as a general deterrent, as Mr. Chu was guilty of a crime that involved moral turpitude. The criminal activity resulting in Mr. Chu's conviction represents a type of conduct that cannot be tolerated by this profession.

In addition, the panel concluded that Mr. Chu could not be rehabilitated. This was the third time he had been found guilty of professional misconduct. The two previous findings of professional misconduct raised the question of whether or not Mr. Chu was willing or able to be governed by the rules of professional conduct. Aside from the conclusion that his conduct, in and of itself, warranted expulsion, the panel concluded that a third conviction for professional misconduct was evidence that Mr. Chu was not capable of rehabilitating himself.

Notice

The giving of notice, including publication, of this decision and order, disclosing Mr. Chu's name, is, in the opinion of the panel, a general deterrent. An important factor in the governance of a profession is the communication to its members and the general public that it does not take breaches of its bylaws and rules of professional conduct lightly. As a general deterrent, publication impresses on the membership that the failure of a member to cooperate with the self-regulatory functions of the Institute can result in serious consequences.

Accordingly, the panel ordered the giving of notice of these proceedings, including by way of newspaper publication of expulsion in the *Toronto Star*, as there had been no grounds presented to interfere with the application of Bylaw 575(3) in this regard.

Surrender of Certificate

As is usual in cases involving expulsion, the panel ordered Mr. Chu to surrender his certificate of membership, to which he is no longer entitled.

DATED AT TORONTO, THIS 17TH DAY OF AUGUST, 1999
BY ORDER OF THE DISCIPLINE COMMITTEE

D.P. SETTERINGTON, CA - CHAIR
THE DISCIPLINE COMMITTEE

MEMBERS OF THE PANEL:
E.R. ARCHIBALD, CA
G.R. PEALL, CA
R.D. WHEELER, FCA
N.C. AGARWAL (Public representative)